
A BILL FOR AN ACT

RELATING TO RECYCLING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that recycling programs
2 in the State are designed and intended to help protect Hawaii's
3 precious, finite natural resources by reducing the amount of
4 solid waste that enters the State's landfills. However, most,
5 if not all, of the costs of operating recycling programs falls
6 on the government and, thus, the taxpaying public.

7 The legislature further finds that nearly fifty years ago,
8 the Organisation for Economic Cooperation and Development
9 adopted the polluter pays principle, meaning that a polluter
10 should bear the costs of "measures decided by public authorities
11 to ensure that the environment is in an acceptable state". The
12 concept of "extended producer responsibility", which is based on
13 this principle, holds that producers bear responsibility for the
14 environmental costs associated with a product, throughout its
15 life cycle. The premise is that companies that sell products
16 pay fees that help cover the cost of recycling packaging,
17 shifting the financial burden from taxpayers and government to



1 those who are sending these materials onto the market. Extended
2 producer responsibility is a modern type of waste management
3 policy created to safely and responsibly dispose of difficult-
4 to-recycle products and materials.

5 In the United States, packaging waste, including plastics,
6 accounts for approximately thirty per cent of the waste stream.
7 Recycling rates have stagnated over the past two decades as the
8 amount of packaging, the complexity of materials, and costs have
9 all increased. On July 12, 2021, Maine became the first state
10 in the nation to enact extended producer responsibility
11 legislation for packaging. In August 2021, Oregon became the
12 second state to do so. Furthermore, nearly all members of the
13 European Union, Japan, South Korea, and five Canadian provinces
14 already have similar laws.

15 The legislature additionally finds that the benefits of
16 extended producer responsibility legislation for packaging
17 surpass simply recovering and reusing recyclable material at a
18 higher rate. Such laws also inspire innovations in package
19 design, from the increased use of recycled material to the
20 simplicity of cutting back on weight or packaging elements.
21 Plastic, which is the least recycled material, is ubiquitous in



1 packaging; plastic pollution could be drastically curtailed by
2 extended producer responsibility legislation for packaging. The
3 legislature further finds that Hawaii would benefit from a law
4 that shifts the financial burden of recycling packaging from
5 government and taxpayers to the companies that are responsible
6 for producing the potential waste.

7 Therefore, the purpose of this Act is to establish a
8 packaging stewardship program within the department of health to
9 reduce the amount of packaging material that becomes solid
10 waste.

11 SECTION 2. Chapter 342G, Hawaii Revised Statutes, is
12 amended by adding a new part to be appropriately designated and
13 to read as follows:

14 **"PART**

15 **PACKAGING STEWARDSHIP PROGRAM**

16 **§342G-A Definitions.** (a) As used in this part, unless
17 the context otherwise requires:

18 "County" means the city and county of Honolulu, county of
19 Hawaii, county of Maui, and county of Kauai.

20 "Department" means the department of health.



1 "Low-volume producer" means a producer that sold, offered
2 for sale, or distributed for sale in or into the State during
3 the prior calendar year products contained, protected,
4 delivered, presented, or distributed in or using more than one
5 ton but fewer than fifteen tons of packaging material in total.

6 "Packaging material" means a discrete type of material, or
7 a category of material that includes multiple discrete types of
8 material with similar management requirements and similar
9 commodity values, used for the containment, protection,
10 delivery, presentation, or distribution of a product, including
11 a product sold over the Internet, at the time that the product
12 leaves a point of sale with or is received by the consumer of
13 the product. "Packaging material" does not include a discrete
14 type of material, or a category of material that includes
15 multiple discrete types of material, that is:

- 16 (1) Intended to be used for the long-term storage or
17 protection of a durable product and that can be
18 expected to be usable for that purpose for a period of
19 at least five years;
- 20 (2) A beverage container under part VIII;
- 21 (3) Covered under chapter 339D;



1 (4) Covered under chapter 342I; and

2 (5) Covered under chapter 342J.

3 "Packaging stewardship contract" means the contract entered
4 into by the department and the stewardship organization pursuant
5 to section 342G-C.

6 "Packaging stewardship fund" or "fund" means a privately
7 held account established and managed by the stewardship
8 organization pursuant to section 342G-L.

9 "Packaging stewardship organization" or "stewardship
10 organization" means the entity contracted by the department
11 under section 342G-C to operate the packaging stewardship
12 program.

13 "Packaging stewardship program" or "program" means the
14 program implemented under this part by the stewardship
15 organization to assess and collect payments from producers based
16 on the weight of packaging material sold, offered for sale, or
17 distributed for sale in or into the State by each producer and
18 to reimburse participating counties for certain county recycling
19 and waste management costs.

20 "Post-consumer material" means new material produced using
21 material resulting from the recovery, separation, collection,



1 and reprocessing of material that would otherwise be disposed of
2 or processed as waste and that was originally sold for
3 consumption. "Post-consumer material" does not include post-
4 industrial material or pre-consumer material.

5 "Producer" means a person that:

- 6 (1) Has legal ownership of the brand of a product sold,
7 offered for sale, or distributed for sale in or into
8 the State contained, protected, delivered, presented,
9 or distributed in or using packaging material; or
10 (2) Imports into the State for sale, offers for sale, or
11 distributes for sale in or into the State a product
12 contained, protected, delivered, presented, or
13 distributed in or using packaging material that is
14 branded by a person that meets the requirements of
15 paragraph (1) and has no physical presence in the
16 United States.

17 "Producer" includes a low-volume producer and a franchisor of a
18 franchise located in the State but does not include the
19 franchisee operating that franchise. "Producer" does not
20 include a nonprofit organization exempt from taxation under
21 Section 501(c) (3) of the Internal Revenue Code.



1 "Readily recyclable" means, with respect to a type of
2 packaging material, that the type of packaging material, as
3 determined by the department by rule:

4 (1) Can be sorted by entities that process recyclable
5 material generated in the State; and

6 (2) Has a consistent market for purchase. As used in this
7 paragraph, "consistent market for purchase" means,
8 with respect to a type of packaging material, that
9 entities processing recyclable material are willing to
10 purchase full bales of that type of fully sorted
11 packaging material in quantities equal to or in excess
12 of the supply of that fully sorted packaging material.

13 "Readily recyclable" does not include types of packaging
14 material that entities that process recyclable material
15 generally accept only in small quantities or that such entities
16 typically sort out from other recyclable material during
17 processing.

18 "Recycling" means the recovery, separation, collection,
19 reprocessing, and sale or reuse of secondary resources that
20 would otherwise be disposed of as county solid waste and is an



1 integral part of a manufacturing process aimed at producing a
2 marketable product made of post-consumer material.

3 **§342G-B Producer exemptions.** Notwithstanding any
4 provision of this part to the contrary, a producer shall be
5 exempt from the requirements and prohibitions of this part in
6 any calendar year in which:

- 7 (1) The producer realized less than \$2,000,000 in total
8 gross revenue during the prior calendar year;
9 (2) The producer sold, offered for sale, or distributed
10 for sale in or into the State during the prior
11 calendar year products contained, protected,
12 delivered, presented, or distributed in or using less
13 than one ton of packaging material in total; or
14 (3) The producer realized more than fifty per cent of its
15 total gross revenue in the prior calendar year from
16 the sale of goods it acquired through insurance
17 salvages, closeouts, bankruptcies, and liquidations.

18 A producer claiming an exemption under this section shall
19 provide to the department sufficient information to demonstrate
20 that the producer meets the requirements for an exemption under



1 this section within thirty days of receiving a request from the
2 department to provide such information.

3 **§342G-C Selection of stewardship organization; contract.**

4 (a) Consistent with the requirements of this part, the
5 department shall select and enter into a contract with a
6 packaging stewardship organization to operate the packaging
7 stewardship program under this part.

8 (b) No later than January 1, 2023, and consistent with
9 applicable competitive bidding requirements under chapter 103D,
10 the department shall issue a request for proposals for the
11 operation of the packaging stewardship program by a packaging
12 stewardship organization. The proposals shall be required to
13 cover a ten-year operation of the packaging stewardship program
14 by the successful bidder and shall include, at a minimum:

15 (1) A description of how the bidder will administer the
16 packaging stewardship program, including:

17 (A) The mechanism or process, to be developed with
18 input from producers, by which a producer may
19 request and receive assistance from the
20 stewardship organization in the reporting of
21 required information and regarding methods by



1 which the packaging material used by a producer
2 may be modified so as to reduce the producer's
3 payment obligations under section 342G-F; and
4 (B) The mechanism or process, to be developed with
5 input from the counties, by which a participating
6 county may request and receive assistance from
7 the stewardship organization in the reporting of
8 required information and regarding methods by
9 which a county's recycling program may be
10 modified so as to increase access to and
11 participation in the program;
12 (2) A description of how the bidder, if selected, intends
13 to solicit and consider input from interested persons,
14 including producers, counties, environmental
15 organizations, and waste management and recycling
16 organizations, regarding the bidder's operation of the
17 packaging stewardship program;
18 (3) A description of how the bidder intends to establish
19 and manage the packaging stewardship fund consistent
20 with section 342G-L, including:



- 1 (A) The staffing the bidder intends to use for
2 management of the fund;
- 3 (B) A plan to ensure equity of access to the fund for
4 financially challenged or otherwise disadvantaged
5 counties or communities;
- 6 (C) A plan for providing technical support to
7 producers and counties regarding program
8 requirements; and
- 9 (D) A plan for administering payments to and
10 reimbursements from the fund and the financial
11 mechanisms, including investment types, if any,
12 the bidder intends to use in managing the fund;
- 13 (4) A proposed financial assurance plan that ensures all
14 funds held in the packaging stewardship fund are
15 immediately and exclusively forfeited and transferred
16 to or otherwise made immediately available to the
17 department to support waste diversion, reuse, or
18 recycling programs when the packaging stewardship
19 contract is terminated by the department or expires,
20 unless the stewardship organization enters into a new
21 packaging stewardship contract with the department in



H.B. NO. 1684

1 accordance with subsection (c) prior to the expiration
2 of the stewardship organization's existing packaging
3 stewardship contract;

4 (5) A proposed budget outlining the anticipated costs of
5 operating the packaging stewardship program, including
6 identification of any start-up costs that will not be
7 ongoing and a description of the method by which the
8 bidder intends to determine and collect producer
9 payments during the initial start-up period of program
10 operation to fund the program's operational costs
11 during that initial start-up period and to reimburse
12 or require additional payments by those producers
13 subsequent to that initial start-up period based on
14 producer reporting of the actual amount of packaging
15 material sold, offered for sale, or distributed for
16 sale in or into the State by each producer during that
17 initial start-up period; provided that the proposed
18 budget under this paragraph may overestimate the cost
19 of operating the program during its initial start-up
20 period of operation but shall describe the method and
21 basis for any overestimate;



- 1 (6) Certification that:
- 2 (A) The bidder will not share, except with the
- 3 department, information provided to the bidder by
- 4 a producer that is proprietary information and
- 5 that is identified by the producer as proprietary
- 6 information; and
- 7 (B) Includes a description of the methods by which
- 8 the bidder intends to ensure the confidentiality
- 9 of the information described in subparagraph (A);
- 10 (7) A description of how the bidder will conduct a
- 11 statewide recycling needs assessment that, at a
- 12 minimum, includes an evaluation of:
- 13 (A) Current funding needs affecting recycling access
- 14 and availability in the State;
- 15 (B) The capacity, costs, and needs associated with
- 16 the collection and transportation of recyclable
- 17 material in the State;
- 18 (C) The processing capacity, market conditions, and
- 19 opportunities in the State and regionally for
- 20 recyclable material; and



1 (D) Consumer education needs in the State with
2 respect to recycling and reducing contamination
3 in collected recyclable material; and

4 (8) Any additional information required by the department.

5 (c) In accordance with applicable requirements of state
6 purchasing laws, the department shall enter into a contract with
7 a bidder that has submitted a proposal in accordance with the
8 requirements of this section, the term of which shall cover
9 ten years of operation of the packaging stewardship program by
10 the stewardship organization. The contract shall, at a minimum,
11 include provisions to ensure that the stewardship organization
12 will operate the program in accordance with all applicable
13 statutory requirements and any rules adopted by the department.

14 (d) If, at the close of the competitive bidding process
15 under subsection (b), the department determines that no bidder
16 has submitted a proposal that meets the requirements of this
17 section, the department may reopen a new competitive bidding
18 process.

19 **§342G-D Prohibition; producer compliance information.** (a)
20 Beginning one calendar year following the effective date of the
21 packaging stewardship contract:



1 (1) A producer shall not sell, offer for sale, or
2 distribute for sale in or into the State a product
3 contained, protected, delivered, presented, or
4 distributed in or using packaging material for which
5 the producer has not complied with all applicable
6 requirements of this part; and

7 (2) A retailer shall not sell, offer for sale, or
8 distribute for sale in or into the State a product
9 contained, protected, delivered, presented, or
10 distributed in or using packaging material if, based
11 on the information made available by the department
12 pursuant to subsection (c), the product is contained,
13 protected, delivered, presented, or distributed in or
14 using packaging material for which its producer has
15 not complied with all applicable requirements of this
16 part.

17 (b) At the department's request, the stewardship
18 organization shall provide to the department a list of producers
19 that are participating in the program and are compliant with the
20 program's requirements and, if known to the stewardship
21 organization, a list of producers that are not participating in



1 the program and are not compliant with the program's
2 requirements.

3 (c) Based on information provided to the department under
4 subsection (b) and any other information considered by the
5 department, the department shall make available on its publicly
6 accessible website a regularly updated list of producers that
7 the department has determined are compliant with all applicable
8 requirements of this part and a list of producers and, where
9 applicable, specific products for which the department has
10 determined the producer has not complied with all applicable
11 requirements of this part. The department shall conduct
12 outreach to retailers to provide notification of the information
13 made available under this subsection and any changes to that
14 information.

15 **§342G-E Annual reporting by stewardship organization.**

16 Beginning one calendar year following the effective date of the
17 packaging stewardship contract and annually thereafter, the
18 stewardship organization shall submit to the department and make
19 available on the organization's publicly accessible website a
20 report that includes, at a minimum, the following information:

21 (1) Contact information for the stewardship organization;



H.B. NO. 1684

- 1 (2) A list of participating producers and the brands of
2 products associated with those producers;
- 3 (3) The total weight of each type of packaging material
4 sold, offered for sale, or distributed for sale in or
5 into the State by each participating producer as
6 reported pursuant to section 342G-G;
- 7 (4) As applicable, the total weight of each type of
8 packaging material collected and managed by each
9 participating producer through alternative collection
10 programs approved by the department under
11 section 342G-H;
- 12 (5) A complete accounting of payments made to and by the
13 stewardship organization during the prior calendar
14 year, including information on how the stewardship
15 organization determined the amount of such payments in
16 accordance with sections 342G-F and 342G-J and the
17 rules adopted under sections 342G-M(b)(1) and (4);
- 18 (6) A list of producers that are required to participate
19 in the program but are not participating in the
20 program and any product-specific noncompliance, if
21 known by the stewardship organization;



- 1 (7) A description of education and infrastructure
2 investments made by the stewardship organization in
3 prior calendar years and an evaluation of how those
4 investments were designed to increase access to
5 recycling in the State and to encourage the reuse of
6 packaging material;
- 7 (8) A description of the results of the representative
8 audits required pursuant to section 342G-C(b) (7)
9 and (8);
- 10 (9) An assessment of the progress made toward the
11 achievement of any program goals required by the
12 department by rule pursuant to section 342G-M(b) (5);
- 13 (10) An assessment of whether the payment schedule for
14 producer payments adopted by the department by rule
15 pursuant to section 342G-M(b) (1) has been successful
16 in incentivizing improvements to the design of
17 packaging material as encouraged through the allowance
18 of payment adjustments;
- 19 (11) Any proposals for changes to the packaging stewardship
20 program or investments in education and infrastructure
21 designed to reduce the amount of packaging material



1 used, increase access to recycling, increase the
2 recycling of or recyclability of packaging material,
3 reduce program costs, or otherwise increase program
4 efficiency, which may include an analysis of best
5 practices for county recycling programs;

6 (12) The results of a third-party financial audit of the
7 stewardship organization paid for by the stewardship
8 organization; and

9 (13) Any additional information required by the department.

10 **§342G-F Producer payments.** (a) Pursuant to this section
11 and the rules adopted by the department, no later than one
12 hundred eighty days after the effective date of the packaging
13 stewardship contract and annually thereafter, a producer shall
14 make payments to the stewardship organization to be deposited
15 into the packaging stewardship fund based on the net weight of
16 each type of packaging material sold, offered for sale, or
17 distributed for sale in or into the State by the producer and
18 not managed by the producer under an approved alternative
19 collection program.

20 (b) The department shall adopt rules setting forth the
21 manner in which such payments shall be calculated, including:



H.B. NO. 1684

- 1 (1) Requiring the amount of a producer's payment to
2 include that producer's share of the:
3 (A) Program's operational costs as set forth in the
4 proposed budget pursuant to section 342G-C(b) (5);
5 and
6 (B) Administrative and enforcement costs incurred by
7 the department pursuant to this part;
- 8 (2) Requiring the amount of a producer's payment to
9 reflect the per-ton costs associated with the
10 collection, processing, transportation, and recycling
11 or disposal of the producer's packaging material by
12 the counties and the costs associated with increasing
13 access to recycling of that packaging material type
14 through investments in infrastructure and education
15 under section 342G-K;
- 16 (3) Allowing a low-volume producer to elect to pay a flat
17 fee in lieu of a material-specific producer payment
18 calculated pursuant to this part; provided that a
19 producer seeking to pay a flat fee as a low-volume
20 producer pursuant to this paragraph shall submit to
21 the department the information necessary to



1 demonstrate that the producer meets the definition of
2 "low-volume producer"; provided further that the
3 department may adopt rules that relieve a producer
4 from paying fees under this paragraph with respect to
5 packaging material acquired by the producer through
6 insurance salvage, closeout, bankruptcy, or
7 liquidation; and

8 (4) Through an adjustment of a producer's payment
9 responsibility calculated in accordance with this
10 section and section 342G-M(b)(1), encouraging:

11 (A) A reduction in packaging material waste;

12 (B) The reuse of packaging material;

13 (C) The use of readily recyclable materials in
14 packaging material;

15 (D) The reduction of the toxicity of packaging
16 material;

17 (E) The use of post-consumer recycled material in
18 packaging material; provided that such use does
19 not increase the toxicity of packaging material;

20 (F) The reduction of litter from packaging material;



- 1 (G) The use of single-material packaging that
2 includes prominent and easily understandable
3 recycling or disposal instructions for consumers
4 or other design characteristics intended to
5 reduce consumer confusion regarding recyclability
6 and to reduce recycling contamination; and
7 (H) Any other incentives designed to support the
8 management of packaging material.

9 Unless otherwise approved by the stewardship organization,
10 a producer, other than a low-volume producer, that makes a
11 payment required pursuant to this section shall submit the
12 payment to the stewardship organization at the same time that it
13 submits its annual report to the stewardship organization
14 required pursuant to section 342G-G.

15 **§342G-G Annual reporting by producers.** (a) Beginning no
16 later than one hundred eighty days after the effective date of
17 the packaging stewardship contract and annually thereafter, a
18 producer shall report to the stewardship organization the total
19 weight of each type of packaging material sold, offered for
20 sale, or distributed for sale in or into the State by the
21 producer in the prior calendar year.



- 1 (b) The report shall include:
- 2 (1) A description of the methods used by the producer in
- 3 determining the amounts reported for each type of
- 4 packaging material;
- 5 (2) A description of the characteristics of each type of
- 6 packaging material reported that are relevant to the
- 7 payment adjustment criteria adopted pursuant to
- 8 section 342G-F; and
- 9 (3) A list of all of the producer's brands associated with
- 10 each type of packaging material.
- 11 (c) A low-volume producer that elects to pay a flat fee
- 12 pursuant to section 342G-F shall not be required to submit an
- 13 annual report to the stewardship organization under this
- 14 section.
- 15 (d) The department shall adopt rules that authorize a
- 16 producer that is unable to fully satisfy the reporting
- 17 requirements of this section due to a failure to obtain
- 18 sufficient information regarding the characteristics of the
- 19 packaging material the producer sells, offers for sale, or
- 20 distributes for sale in or into the State to alternatively
- 21 report to the stewardship organization an estimate of the total



1 weight of the producer's packaging material based on unit
2 quantities; provided that such alternative reporting includes a
3 description of the methods used by the producer to calculate
4 such estimates.

5 **§342G-H Alternative collection programs.** (a) Pursuant to
6 this part and any rules adopted by the department, a producer or
7 group of producers may develop and operate an alternative
8 collection program to collect and manage a type or types of
9 packaging material sold, offered for sale, or distributed for
10 sale in or into the State by the producer or producers. A
11 producer that manages a type of packaging material under an
12 approved alternative collection program through reuse,
13 recycling, and, where approved by the department, management of
14 that packaging material through incineration may wholly or
15 partially offset the producer's payment obligations under the
16 packaging stewardship program with respect to that same type of
17 packaging material only.

18 (b) Beginning on the effective date of the packaging
19 stewardship contract, a producer or group of producers seeking
20 to implement an alternative collection program shall submit a



1 proposal for the establishment of that program to the department
2 for approval.

3 (c) The department shall:

4 (1) Approve or deny the proposal within one hundred twenty
5 days of receipt of the proposal; and

6 (2) Provide an opportunity for public review and comment
7 on the proposal prior to its approval or denial.

8 The department may approve an alternative collection
9 program for a term of five years and, at the expiration of the
10 term, the producer or group of producers operating the program
11 may submit an updated proposal to the department for approval.

12 (d) In determining whether to approve a proposed
13 alternative collection program, the department shall consider:

14 (1) Whether the alternative collection program will
15 provide year-round, convenient, free, statewide
16 collection opportunities for the types of packaging
17 material to be collected under that program;

18 (2) To what extent the alternative collection program
19 intends to manage those types of packaging material to
20 be collected under the program through reuse for an
21 original purpose, through recycling, or through



1 disposal at an incineration facility; provided that
2 the department shall not approve an alternative
3 collection program that proposes management of a
4 packaging material type through disposal at an
5 incineration facility, unless that packaging material
6 is not readily recyclable and the program proposes a
7 process to begin reuse or recycling of that type of
8 packaging material within a period of three years or
9 less;

10 (3) Whether the education and outreach strategies proposed
11 for the alternative collection program can be expected
12 to significantly increase consumer awareness of the
13 program throughout the State;

14 (4) How the alternative collection program intends to
15 accurately measure the weight of each packaging
16 material type collected, reused, recycled, disposed of
17 at an incineration facility, or otherwise managed
18 under the program; and

19 (5) To what extent approval of the alternative collection
20 program may disproportionately impact any community in
21 the State.



1 (e) A proposed modification to an approved alternative
2 collection program shall be submitted to the department for
3 written approval. The department shall approve or deny a
4 proposed modification based on the criteria identified in
5 subsection (d). The department may waive payment of any fees
6 associated with review and approval of a proposed modification
7 to an approved alternative collection program if the review of
8 the proposed modification does not require a significant
9 expenditure of time by department staff.

10 (f) Beginning no later than one hundred eighty days after
11 the effective date of the packaging stewardship contract and
12 annually thereafter, a producer or producers managing an
13 approved alternative collection program shall report annually to
14 the stewardship organization and to the department the following
15 information:

16 (1) The total tons of each type of packaging material
17 collected, reused, recycled, disposed of at an
18 incineration facility, or otherwise managed under the
19 alternative collection program in the prior calendar
20 year, including a breakdown of the total tons of each



1 type of material to be credited to each producer
2 participating in the alternative collection program;
3 (2) A list of the collection opportunities in the State
4 for the types of packaging material managed under the
5 alternative collection program that were made
6 available in the prior calendar year;
7 (3) A description of the education and outreach strategies
8 implemented by the alternative collection program in
9 the prior calendar year to increase consumer awareness
10 of the program throughout the State; and
11 (4) Any additional information required by the department.
12 (g) If the department determines that an approved
13 alternative collection program is not operating in a manner
14 consistent with the proposal approved under this section, the
15 department shall provide written notice to the producer or
16 producers operating the alternative collection program regarding
17 the nature of the deficiency, the actions necessary to correct
18 the deficiency, and the time by which such actions shall be
19 implemented. If the department determines that the producer or
20 group of producers has failed to implement the actions described
21 in the written notice within the required time, the department



1 shall notify the producers or group of producers as well as the
2 stewardship organization in writing that the producer or group
3 of producers is ineligible to offset payment obligations under
4 the packaging stewardship program based on packaging material
5 managed under the alternative collection program.

6 **§342G-I Requirements for participating counties.** (a)

7 Pursuant to this part and any rules adopted by the department, a
8 county may elect to, but is not required to, participate in the
9 packaging stewardship program under this part. To be eligible
10 for reimbursement of costs under section 342G-J as a
11 participating county, a county shall, at a minimum:

12 (1) Provide for the collection and recycling of packaging
13 material that is generated in the county and is
14 readily recyclable; and

15 (2) Annually report to the stewardship organization, on a
16 form provided and approved by the department, all
17 information necessary for the stewardship organization
18 to determine the county's incurred costs associated
19 with its collection, processing, transportation, and
20 recycling or disposal of recyclable material and of
21 county solid waste.



1 (b) Two or more counties, county-owned solid waste
2 processing facilities, or quasi-county entities that manage
3 waste materials on behalf of a county may elect to jointly
4 report to the stewardship organization pursuant to
5 subsection (a) (2) and to jointly receive reimbursement payments
6 pursuant to section 342G-J from the stewardship organization.

7 **§342G-J County reimbursements.** (a) In accordance with
8 the rules adopted by the department pursuant to section 342G-M,
9 the stewardship organization shall annually disburse to
10 participating counties from the packaging stewardship fund:

11 (1) Reimbursement payments for the median per-ton cost of
12 managing packaging material that is readily
13 recyclable;

14 (2) Reimbursement payments for the median per-ton cost of
15 managing packaging material that is not readily
16 recyclable; and

17 (3) Per capita payments associated with packaging material
18 disposed of by participating counties.

19 For the purposes of this section, the cost to a county of
20 managing packaging material may include the costs associated
21 with: the collection of packaging material, the transportation



1 of packaging material to a recycling establishment or disposal
2 facility, and the cleanup and abatement of packaging material
3 litter.

4 (b) Pursuant to rules adopted by the department, the
5 stewardship organization shall determine the amount of payments
6 to participating counties under this section based on the
7 following:

8 (1) Information provided by participating counties to the
9 stewardship organization in accordance with
10 section 342G-I regarding the costs incurred by those
11 counties in recycling packaging material that is
12 readily recyclable and packaging material that is not
13 readily recyclable and the tons of county solid waste
14 disposed of in those counties, including waste
15 disposed of in public spaces and schools, which may
16 include packaging material collected for recycling or
17 disposal in public spaces and schools;

18 (2) Information provided to the department by recycling
19 establishments and aggregated and made available by
20 the department to the stewardship organization,
21 including the tons of recyclable material received by



1 each recycling establishment from each county and the
2 tons of processed recyclable material sold by each
3 recycling establishment;

4 (3) Information provided to the department by recycling
5 establishments not located in the State or by
6 participating counties and made available by the
7 department to the stewardship organization regarding
8 the tons of recyclable material brokered by those
9 counties to those recycling establishments and
10 processed and sold by those recycling establishments;

11 (4) Information obtained by the stewardship organization
12 through the audits of facilities that process
13 recyclable material generated in the State as required
14 by section 342G-M; and

15 (5) Any other information required by the department by
16 rule.

17 (c) Pursuant to rules adopted by the department, the
18 stewardship organization shall use the information described in
19 subsection (b) to determine the total tons of each packaging
20 material type recycled by all counties at each recycling



1 establishment and the percentage of those total tons
2 attributable to each participating county.

3 In the case of two or more counties that jointly send
4 recyclable material to a recycling establishment, the
5 stewardship organization shall assume that an equal amount of
6 the jointly sent material is attributable to each resident of
7 each counties, unless those counties by agreement identify an
8 unequal per capita division of that jointly sent material for
9 the purposes of this section.

10 **§342G-K Investments in education and infrastructure.** (a)

11 Pursuant to this section and as approved by the department, the
12 stewardship organization shall provide every six months for the
13 expenditure of funds within the packaging stewardship fund that
14 are designed to improve recycling education and infrastructure
15 in the State.

16 (b) The total amount of investments in education and
17 infrastructure made by the stewardship organization pursuant to
18 this section shall be directly proportional to the total amount
19 of payments received from all producers for all packaging
20 material that is not readily recyclable and is not actually
21 recycled.



1 (c) Every six months, the department shall solicit
2 proposals for investments in education and infrastructure. A
3 county or group of counties, a business, or a recycling
4 establishment may apply to the department to receive funding
5 from the stewardship organization for a proposed investment in
6 education and infrastructure.

7 (d) The department shall review investment proposals
8 received pursuant to this section and shall solicit input on
9 those proposals from producers, participating counties, and
10 recycling establishments.

11 (e) After determining the total amount of funds required
12 for investment in accordance with this section and considering
13 the input received pursuant to subsection (d), the department
14 shall direct the stewardship organization to award funds to
15 applicants that submitted proposals pursuant to subsection (c).

16 (f) The department shall ensure that preference for
17 funding is given to proposals that:

18 (1) Support the State's solid waste management goals;

19 (2) Promote a circular economy for packaging material
20 types for which producers were required to make
21 payments under section 342G-F;



- 1 (3) Increase the recyclability of packaging material that
- 2 is not readily recyclable;
- 3 (4) Increase access to recycling infrastructure in the
- 4 State;
- 5 (5) Improve consumer education in the State regarding
- 6 recycling and recyclability; and
- 7 (6) Support recycling and education efforts in financially
- 8 challenged or otherwise disadvantaged counties or
- 9 communities and in other counties or communities that
- 10 have received minimal or no prior funding pursuant to
- 11 this section.

12 **§342G-L Packaging stewardship fund; authorized**

13 **expenditures.** (a) Pursuant to this section and rules adopted
14 by the department, the stewardship organization shall establish
15 and manage a packaging stewardship fund.

16 (b) The stewardship organization shall deposit into the
17 fund all payments received from producers under section 342G-F
18 and shall expend those funds for the following purposes:

- 19 (1) To reimburse participating counties in accordance with
- 20 the applicable provisions of sections 342G-I, 342G-J,



- 1 and 342J-K and the applicable rules adopted by the
2 department;
- 3 (2) To cover the operating costs of the stewardship
4 organization, which shall be annually verified by a
5 third-party financial audit paid for by the
6 stewardship organization as required by
7 section 342G-E;
- 8 (3) To pay to the department all applicable fees required
9 under section 342G-M, including reimbursement of any
10 costs incurred by the department in adopting rules and
11 in administering and enforcing this part prior to the
12 effective date of the packaging stewardship contract;
13 and
- 14 (4) To support investments in education and infrastructure
15 made in accordance with section 342G-K.

16 **§342G-M Administration and enforcement; rulemaking; fees;**
17 **department report.** (a) The department shall administer and
18 enforce this part and shall adopt rules as necessary to
19 implement, administer, and enforce this part.

20 (b) Rules adopted by the department with respect to this
21 part shall include, at a minimum:



- 1 (1) A process for annually determining a schedule of
2 producer payments required under section 342G-F, which
3 shall include a flat fee option for low-volume
4 producers pursuant to that section; provided that:
- 5 (A) The payment schedule adopted under this paragraph
6 shall be designed to ensure that the total amount
7 of payments collected each year is equal to or in
8 excess of the anticipated amount of expenditures
9 required pursuant to section 342G-L; and
- 10 (B) The payment schedule adopted under this paragraph
11 shall provide for a flat fee option to be
12 assessed on a tiered basis such that a low-volume
13 producer shall be required to pay no more than
14 \$500 per ton of packaging material and no more
15 than \$7,500 in total annual fees to the
16 stewardship organization under this part;
- 17 (2) A process for determining on an annual basis those
18 types of packaging material that are readily
19 recyclable, which shall involve consultation with the
20 stewardship organization and recycling establishments
21 and shall include a transitional period between the



1 time that a type of packaging material is determined
2 to be readily recyclable or to be not readily
3 recyclable and the time that such determinations will
4 be effective for the purposes of calculating producer
5 payments and county reimbursements in accordance with
6 this part;

7 (3) A process for determining on an annual basis which
8 counties shall be considered similar counties, which
9 shall involve consultation with participating
10 counties;

11 (4) For purposes of determining participating county
12 reimbursements under section 342G-J, a process for
13 determining the median per-ton cost of managing
14 packaging material that is readily recyclable, the
15 median per-ton cost of managing packaging material
16 that is not readily recyclable, and the costs
17 associated with the disposal of packaging material by
18 participating counties, which shall involve
19 consultation with participating counties;

20 (5) Requirements for the assessment of program performance
21 by the stewardship organization, including the setting



1 of program goals used to inform the producer payment
2 schedule determined pursuant to paragraph (1) and the
3 investments in infrastructure and education made
4 pursuant to section 342G-K, which shall include:

5 (A) Program goals supporting an overall reduction by
6 producers in the amount of packaging material
7 used;

8 (B) An increased reuse by producers of packaging
9 material and an increased amount of post-consumer
10 recycled content in packaging material used by
11 producers;

12 (C) Recycling access and collection rate goals for
13 participating counties;

14 (D) Overall program and material-specific recycling
15 rate goals;

16 (E) Packaging material litter reduction goals; and

17 (F) Any other goals required by the department;

18 (6) Requirements for the stewardship organization to
19 conduct representative audits of recyclable material
20 processed and sold by facilities that process
21 recyclable material generated in the State, of



1 municipal solid waste disposed of in the State and of
2 waste littered in the State. The requirements shall
3 include but are not limited to:

4 (A) Provisions regarding the sampling techniques to
5 be used in those audits, which must include
6 random sampling;

7 (B) For audits of recyclable material, provisions
8 regarding:

9 (i) How those audits must be designed to collect
10 information regarding the extent to which
11 recyclable material processed and sold by
12 those facilities reflects the tons of each
13 type of packaging material collected in the
14 State for recycling and the tons of each
15 type of packaging material recycled in the
16 State, as well as the ultimate destination
17 of and intended use for that recycled
18 material;

19 (ii) How those audits must be designed so that
20 information collected through the audit of
21 one facility will not be used to infer



1 information about a different facility that
2 uses different processing equipment,
3 different sorting processes, or different
4 staffing levels to conduct processing; and
5 (iii) The process by which a facility will be
6 allowed to request and receive an audit if
7 it can credibly demonstrate that an audit
8 result being applied to its material output
9 is not representative of its current
10 operations;

11 (C) For audits of municipal solid waste, provisions
12 regarding how the audits will be designed to
13 collect information regarding the types and
14 amount, whether by weight or volume, of packaging
15 material in the waste stream and the percentage
16 by weight and volume of the waste stream that is
17 composed of packaging material; and

18 (D) For audits of waste littered in the State,
19 provisions regarding how the audits will be
20 designed to collect information regarding the
21 packaging material type by amount, whether by



1 weight or volume, in sampled litter,
2 identification of the producer or producers of
3 the packaging material in sampled litter, if
4 identifiable, and an evaluation based on those
5 audits regarding the areas of the State in which
6 litter accumulation is greatest;

7 (7) A schedule by which the stewardship organization must
8 annually report to the department pursuant to
9 section 342G-E and a schedule by which a producer or
10 group of producers operating an approved alternative
11 collection program must annually report to the
12 stewardship organization and to the department
13 pursuant to section 342G-H; and

14 (8) A process by which the stewardship organization will
15 develop and submit for department review, and a
16 process by which the department shall review and
17 approve or deny, a proposed investment in education
18 and infrastructure pursuant to section 342G-K. The
19 process shall set forth the manner in which the
20 stewardship organization is required to solicit and
21 incorporate input in the development of proposed



1 investments from producers, recycling establishments,
2 and participating municipalities.

3 (c) To the maximum extent practicable, material-specific
4 recycling rate goals adopted pursuant to subsection (b)(5) shall
5 reflect the following recycling standards:

6 (1) Sorted glass is considered recycled if it does not
7 require further processing before entering a glass
8 furnace or before use in the production of filtration
9 media, abrasive materials, glass fiber insulation, or
10 construction materials;

11 (2) Sorted metal is considered recycled if it does not
12 require further processing before entering a smelter
13 or furnace;

14 (3) Sorted paper is considered recycled if it does not
15 require further processing before entering a pulping
16 operation; and

17 (4) Plastic separated by polymer is considered recycled if
18 it does not require further processing before entering
19 a pelletization, extrusion, or molding operation or,
20 in the case of plastic flakes, does not require
21 further processing before use in a final product.



1 (d) At the time that the stewardship organization submits
2 its annual report to the department pursuant to section 342G-E,
3 the stewardship organization shall pay to the department a
4 reasonable annual fee established by the department, not to
5 exceed \$300,000, to cover the department's actual costs for
6 review of the stewardship organization's annual report and the
7 department's costs during the prior fiscal year for its
8 oversight, administration, and enforcement of the packaging
9 stewardship program.

10 (e) Pursuant to section 342G-L(b)(3), the annual fee
11 required under subsection (d) may include reimbursement of any
12 costs incurred by the department in adopting rules and in
13 administering and enforcing this part prior to the effective
14 date of the packaging stewardship contract.

15 (f) A producer or group of producers, when submitting a
16 proposal to the department for the establishment of an
17 alternative collection program or submitting a proposal to the
18 department for modifications to an approved alternative
19 collection program pursuant to section 342G-H, shall pay to the
20 department a reasonable fee established by the department to



1 cover the department's actual costs for review of the proposal
2 or proposed modifications.

3 (g) A producer or group of producers operating an approved
4 alternative collection program pursuant to section 342G-H shall
5 pay to the department a reasonable annual fee established by the
6 department, not to exceed \$10,000 per participating producer, to
7 cover the department's actual costs for review of the producer's
8 or group's annual report and the department's costs for the
9 oversight, administration, and enforcement of the alternative
10 collection program, which may be waived by the department if
11 those activities by the department do not require a significant
12 expenditure of time by department staff.

13 (h) At least twenty days prior to the convening of the
14 regular session of 2024, and at least twenty days prior to the
15 convening of each regular session thereafter, the department
16 shall submit a report to the legislature regarding the packaging
17 stewardship program and alternative collection programs
18 implemented pursuant to this part.



1 The report shall include, at a minimum:

2 (1) Data on the amount and type of packaging material

3 associated with products sold, offered for sale, or

4 distributed for sale in or into the State;

5 (2) Data regarding how that packaging material was

6 managed; and

7 (3) Any proposed legislation to amend the packaging

8 stewardship program and alternative collection

9 programs implemented pursuant to this part, including:

10 (A) The establishment of new program goals; or

11 (B) The imposition of a prohibition on the sale,

12 offer for sale, or distribution for sale in or

13 into the State of products associated with

14 packaging material that the department has

15 determined:

16 (i) Is nonessential;

17 (ii) Is contaminating collected recyclable

18 material;

19 (iii) Is a common source of litter; or

20 (iv) Exhibits toxicity, particularly if that

21 toxicity is demonstrated to have a



1 disproportionate impact on any community in
2 the State.

3 (i) At least twenty days prior to the convening of the
4 regular session of 2028, and at least twenty days prior to the
5 convening of every fifth regular session thereafter, the report
6 required under subsection (h) shall:

7 (1) Describe the results of a comprehensive review of the
8 rules adopted by the department pursuant to this part;
9 and

10 (2) Include recommendations by the department for any
11 legislation or rules deemed necessary as a result of
12 that review, including:

13 (A) Changes to the flat fee that may be paid by a
14 low-volume producer pursuant to
15 section 342G-F(b) (3); and

16 (B) A description of any changes to rules that the
17 department intends to propose.

18 **§342G-N Antitrust exclusions.** A producer or stewardship
19 organization, including a producer's or stewardship
20 organization's officers, members, employees, and agents who
21 organize a packaging stewardship program or an alternative



1 collection program under this part, shall be immune from
2 liability for the producer's or stewardship organization's
3 conduct under state laws relating to antitrust, restraint of
4 trade, unfair trade practices, and other regulation of trade or
5 commerce only to the extent necessary to plan and implement the
6 producer's or stewardship organization's packaging stewardship
7 program or alternative collection program consistent with this
8 part.

9 **§342G-O Proprietary information.** Proprietary information
10 submitted to the department pursuant to this part or rules
11 adopted pursuant to this part that are identified by the
12 submitter as proprietary information shall remain confidential
13 and shall be handled by the department as required by law.

14 **§342G-P Rules.** All rules adopted by the department under
15 this part shall be adopted pursuant to chapter 91."

16 SECTION 3. In codifying the new sections added by
17 section 2 of this Act, the revisor of statutes shall substitute
18 appropriate section numbers for the letters used in designating
19 the new sections in this Act.

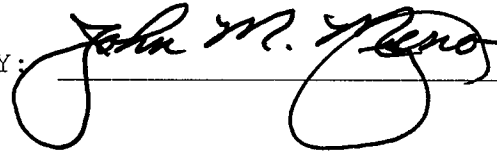


H.B. NO. 1684

1 SECTION 4. This Act shall take effect upon its approval.

2

INTRODUCED BY:

A handwritten signature in black ink, appearing to read "John M. Reno", is written over a horizontal line.

JAN 21 2022



H.B. NO. 1684

Report Title:

Packaging Stewardship Program; Extended Producer Responsibility;
Solid Waste; DOH

Description:

Establishes the packaging stewardship program within the department of health to reduce the amount of packaging material that becomes solid waste.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

