

Committee: Education, Energy, and Environment

Testimony on: SB 222 “Environment – Reducing Packaging Materials -- Producer Responsibility”

Position: Support with Amendments

Hearing Date: February 9, 2023

The objective of SB 222 is to provide a framework for modernizing and improving Maryland’s waste and recycling systems, including: improving reuse, composting, recycling, and recycling markets; reducing waste; and increasing recycling rates. The framework also incorporates reimbursement of local governments by producers for the costs of transporting, collecting, and processing packaging materials. The Maryland Chapter of the Sierra Club supports SB 222 for advancing these objectives and proposes amendments to strengthen its effectiveness and the accountability for achieving the desired results.

Producer responsibility and packaging

The Sierra Club embraces the principle of producer responsibility, in which the producer or brand owner of a product takes responsibility for minimizing the product’s environmental and social impacts across all stages of the product’s life cycle. Producer responsibility should focus upstream – on waste reduction, redesign, reuse, and use of recycled content for new products. Producers should be financially responsible, but not necessarily physically responsible, for implementing the program, subject to public oversight and accountability.¹ SB 222 would create a producer responsibility program for packaging in which producers are *both* financially and physically responsible for implementation, underscoring the need for strong public oversight to ensure that targets are met, and funds generated are used appropriately.

Containers and packaging are a substantial share of municipal solid waste generated in the United States – 28.1% by weight in 2018.² Only about 54% of all container and packaging materials by weight were recycled, but recycling rates vary by material, from a high of 81% for paper and cardboard packaging to a low of only 14% for plastic. Multi-layer plastic packaging, multi-resin pouches, and aseptic cartons for beverages and soups are not designed to be recyclable. Plastic film is generally not accepted for single stream recycling; it fouls equipment, becomes contaminated, and lacks a market. Plastic packaging also escapes into the environment as litter. Seven of the top ten plastic items collected in beach cleanups in the U.S. are plastic packaging or containers.³ Producer responsibility programs have the potential to create incentives to reduce packaging and redesign it to be reusable or recyclable. They are one of several tools to reduce packaging waste, including beverage container deposit/return programs, minimum post-consumer recycled content requirements, and bans or restrictions on single-use plastics.

Producer responsibility programs for packaging are common in Canada and Europe.⁴ In the U.S., there are over 118 producer responsibility programs in 33 states for a range of other individual products that facilitate the lifecycle management of these difficult-to-recycle items like electronics, paint, or batteries.

¹[Sierra Club Zero Waste Policy](#) (2019).

²U.S. Environmental Protection Agency. https://www.epa.gov/sites/default/files/2021-01/documents/2018_ff_fact_sheet_dec_2020_fnl_508.pdf, p. 9.

³ Food wrappers, bottle caps, plastic beverage bottles, plastic bags, lids, takeout containers (plastic and foam). 5Gyres *et al.* 2017. *Better Alternatives Now: BAN 2.0*.

⁴ Northeast Recycling Council (NERC) and Northeast Waste Management Officials’ Association (NEWMOA). 2020. “White Paper: Extended Producer Responsibility (EPR) for Packaging and Paper Products.” April.

However, there is limited experience with producer responsibility for packaging programs in the U.S., apart from the ten states with beverage container deposit programs.⁵ Only four U.S. states (California, Colorado, Maine, and Oregon) have enacted producer responsibility programs for other types of packaging, and those states' programs are not yet operational. Three of them have separate longstanding and successful beverage containers deposit programs.

What the bill would do

Under SB 222, packaging producers, individually or as part of a Producer Responsibility Organization (PRO), would submit a Producer Responsibility Plan to the Maryland Department of the Environment (MDE). The Plan must: identify the producers and the brands of packaging covered; propose performance goals for each material type; describe the financing to implement the Plan; and indicate how the goals will be met, including reimbursement of local governments for collecting, transporting, and processing packaging materials. After approval by MDE, the Plan would be implemented by the producers or PRO.

Oversight of the program would be provided by MDE, which would be charged with reviewing and approving the Producer Responsibility Plans and annual reports. MDE would also be responsible for conducting a statewide recycling needs assessment every 10 years, financed by producers. The bill creates a Producer Responsibility Plan Advisory Council, responsible for: advising the PRO at its request on the drafting or amendment of a Plan; reviewing the Plan and annual reports submitted by the PRO; making recommendations to MDE regarding Plan approval; and making recommendations to MDE and the PRO on implementation of the Plan. The producers participating in Maryland's program would include multinational corporations that are already participating in packaging programs elsewhere in the world.⁶

Since last session, the bill has been improved such that PRO representatives, who were previously voting members on the Advisory Council that advises on the approval of PRO plans, are now non-voting members, removing a conflict of interest. Third-party certification of performance targets is required for results cited in the annual reports. In addition, a modest administrative penalty for the PRO of not more than \$5,000 has been introduced for failure of producers to achieve certain targets in the producer responsibility plan.

Recommended amendments to improve effectiveness and accountability for results

We respectfully request amendments in two sections to improve the effectiveness and accountability of this program largely managed by producers and PROs.

(1) Set at least one measurable and enforceable target on reducing packaging in the statute, with meaningful financial incentives for achieving it. While the statute requires producer responsibility plans to set goals, the only specific target set in SB 222 is to "Require each participating producer to reduce all packaging material waste to the maximum extent practicable, and not by less than 25% for each packaging material type, within 5 years after the date on which the first version of the plan is approved."⁷

This is potentially a strong target, but "packaging material waste" is not defined in the bill, and the target needs to be measurable. Further, there are no penalties in the bill for failure to achieve this

⁵ California, Connecticut, Hawaii, Iowa, Maine, Massachusetts, Michigan, New York, Oregon, Vermont.

⁶ Small producers of containers and packaging are exempted from SB 222.

⁷§9-2504, page 14, lines 22-25.

target.⁸ All other targets are left for the PROs to propose in their plans later, after the bill is passed, subject to MDE approval.

Recommendation:

- (a) Define “packaging material waste” and how it will be measured; and
- (b) Impose a penalty for each producer of 20¢ per pound of material short of the 25% target.

(2) Incorporate a beverage container recycling target in the bill or remove beverage containers as a covered product in favor of a separate modern beverage container deposit law. Deposit/return systems are considered an international best-practice in recovery of containers for recycling and for reducing litter.⁹ As written, SB 222 provides little or no incentive for the public or businesses to divert empty beverage containers from the waste stream or to reduce litter, nor would it provide recycled material of sufficient quantity or quality to be used for new food-grade packaging. Based on decades of experience in the U.S. and around the world, a beverage container deposit program with a 10-cent deposit:

- Could recover 90% of beverage containers sold in Maryland, a level of recycling that is unmatched by any conventional recycling program without a deposit incentive that SB 222 would finance;
- Would produce a large volume of source-separated, high-quality recycled material to meet postconsumer content requirements legislated across the country, especially for food-grade recycled content, which cannot be achieved by mixed materials collection;¹⁰ and
- Would greatly reduce beverage container litter, a source of plastic pollution in our waterways and the Chesapeake Bay.¹¹ In the absence of a deposit that incentivizes customers to return used beverage containers for recycling, SB 222 would have little impact on litter and plastic pollution.

Recommendation:

- (a) Incorporate an additional target in SB 222 of a 90% beverage container recycling rate by the end of the first 5-year Plan, with a penalty of 10¢ per container short of the 90% target.¹²
- (b) Remove aluminum, plastic, and glass beverage containers from SB 222 and pass a separate beverage container deposit bill, as recommended by leaders in the recycling and zero waste

⁸ A modest administrative penalty of \$5,000 for the PRO (not for individual producers) has been added to §9-2510 for failure to meet performance goals embedded in the producer responsibility plans (p. 27, lines 23-27), but there are no penalties for failing to achieve the overarching target mentioned in the bill.

⁹ See the literature review in the Sierra Club’s Guidance on Beverage Containers (2021):

<https://www.sierraclub.org/sites/default/files/Sierra-Club-Beverage-Container-Guidance.pdf>.

¹⁰ Balkan, Elizabeth. 2021. “Deposit return systems are a key part of solving the plastic paradox,” *Waste Dive*, March 29. <https://www.wastedive.com/news/deposit-return-systems-solution-plastic-reloop/597277/>

¹¹ “...there is little evidence that any other program, in and of itself, is nearly as effective as deposit programs at reducing litter rates.” University of Maryland, Environmental Finance Center (EFC). 2011. “2011 Impact Analysis of a Beverage Container Deposit Program in Maryland.” December 15. p.4. Also see Reloop/CRI, *Fact Sheet: Deposit Return Systems Reduce Litter*, January 2021.

¹²The PRO should have to show it can achieve a recycling rate at least as high as the best alternative program. Maryland already has a baseline recycling rate for beverage containers sold in Maryland (23%) calculated by the Container Recycling Institute for 2019. It is not necessary to await the Needs Assessment to establish the baseline.

community.¹³ A beverage container deposit bill has been submitted this session.¹⁴

In summary, the Sierra Club supports producer responsibility for packaging with strong public oversight, meaningful and enforceable targets, and financial incentives to ensure the targets are achieved. SB222 sets up an ambitious program to reduce waste and recycle more. We respectfully request a favorable report on HB 222 and consideration of the above amendments.

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¹³See, for example, Beyond Plastics and Just Zero, “[Ten Requirements for Effective Packaging Reduction Policies](#),” (January 2023), #4: “Include a modernized Beverage Deposit Law, a.k.a Bottle Bill: ...deposit return laws are the best example of EPR and the most effective way to handle beverage containers.” Also see the [2022 testimony by the Container Recycling Institute on HB 307/SB 292](#), which documents why the packaging bill will not be able to meet its objectives without inclusion of a beverage container deposit program, and the Sierra Club’s Guidance on Beverage Containers (<https://www.sierraclub.org/sites/default/files/Sierra-Club-Beverage-Container-Guidance.pdf>) pp 8-9..

¹⁴ “Maryland Beverage Container Recycling Refund and Litter Reduction Act,” sponsored by Del. Terrasa. A second bill, HB342, “Plastics Postconsumer Recycled Content Program,” would set recycled content requirements for plastic beverage containers, food containers, and packaging of personal care and household cleaning products, all of which are packaging covered by SB 222.