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Committee: Environment and Transportation Testimony on: HB 168 Environment – Plastic Products – Postconsumer Recycled Content Program

Position: Support

Hearing Date: February 7, 2024

Potomac Riverkeeper Network strongly supports HB 168. This bill will prohibit producers of plastic beverage containers, rigid plastic food containers, and rigid plastic household cleaning and personal care products from selling, offering for sale, or distributing the products in Maryland *unless* the products are produced using a certain minimum percentage of post-consumer¹ recycled (PCR) content. The timeline for adoption and the target percentage of PCR content differ across products.

Recycled content mandates like HB 168 require a minimum percentage of recycled content in new plastic containers, creating a steady demand for recycled plastic that replaces cheaper virgin plastic and prevents the negative environmental impacts of production of virgin plastic. According to the U.S. Environmental Protection Agency (EPA) about 40% of plastic in the municipal solid waste stream is plastic packaging, and almost all of it is made from virgin plastic. Mandating recycled content for new containers conserves resources, diverting waste from landfills and incinerators. It reduces the demand for virgin materials and the greenhouse gas emissions and energy associated with their extraction and manufacture. It provides stability and viability in the marketplace for recyclers, as well as incentives to improve the overall quality of PCR materials and redesign products to be more recyclable.³ Recycled content mandates are a major policy tool for developing recycling markets in Maryland, and the objective of HB 164 “Recycling Market Development,” enacted in 2021.

Concerns about plastic pollution have led multinational corporations to set voluntary recycled content targets for 2025 as high as 50% for plastic packaging, but progress has been slow and there are no financial consequences for missing the targets (Exhibit1).⁵ HB 168 would make all producers selling or distributing the covered containers in Maryland accountable for reaching recycled content targets and create a level, competitive playing field across producers. Producers would also be responsible for financing the program’s oversight by the Maryland Department of the Environment (MDE). They would have to register annually with MDE and pay a registration fee; registration fees and penalties would be placed in a special account in the State Recycling Trust Fund that can only be used by MDE to cover the costs of planning, implementing, administering, monitoring, enforcing,



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and evaluating the program. The registration fee is calculated annually to cover the estimated costs for the following year and assessed on each producer in proportion to its share of the total amount of plastic sold in the state in each product category. MDE's start-up costs financed from the General Fund would be reimbursed. 1 "Post-consumer" material is generated after a product is made, sold, used, collected, and sorted. "Pre-consumer" or "postindustrial" materials are generated as a byproduct of a manufacturing process.

The success of the program in increasing recycled content in new products will depend on both demand- and supply-side policies. On the demand side for recycled content, it is important to have appropriate targets – "aggressive, but not technically infeasible." HB 168's recycled content targets increase gradually over a decade to match increased supply, from 15% to 50% recycled content for plastic beverage containers and from 15% to 40% recycled content for rigid plastic food containers by 2033. The ramp to 35% recycled content for rigid plastic household cleaners and personal care products is longer, 2035.

These targets and timelines are consistent with those in enacted legislation in the European Union and five U.S. states – California, Connecticut, Maine, New Jersey, and Washington. Achievements will be confirmed via third-party independent certification. • On the supply side, availability of recycled content can be achieved by policies that incentivize redesign of products to be more recyclable, including via packaging producer responsibility laws, and adoption of beverage container deposit-return systems ("bottle bills"). The latter, which achieve a high collection and recycling rate, provide a large volume of clean, uncontaminated, food-grade recycled plastic content that can be used in the manufacture of new beverage containers, in support of a circular economy. HB 168 has benefitted from consultations with government agencies in states that have already adopted mandatory recycled content laws and testimony on the 2023 bill.

In response to concern about the impact of anomalous market conditions or lack of supply of recycled content beyond producers' control in meeting program targets, the bill allows a reduction in administrative penalties if a producer submits a corrective action plan approved by MDE. The threshold for applicability of the law to a producer has been raised from annual sales of a minimum of 1,000 units of a covered product to minimum sales of 1 ton of covered product, to improve consistency with legislation in other states. New definitions have been added for covered products and greater clarity is provided on third-party certification.

In 2012, Maryland enacted a statewide goal of diverting 60% of all waste by 2020. However, only 42.25% of municipal solid waste was diverted in 2020. Meeting the 2020 goal or a more ambitious one will require producers to create post-consumer materials of high quality and incentives to increase postconsumer content in new products.

HB 168 is a key policy for achieving that objective for plastic packaging. It will stimulate recycling markets, reduce plastic waste and greenhouse gas emissions, and provide an incentive for product redesign for recyclability.

We respectfully request a favorable report.

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