



March 27, 2025

Chair Korman  
Environment and Transportation Committee  
Maryland House of Delegates  
Room 251  
House Office Building  
Annapolis, Maryland 21401

**RE: Testimony on SB 901 – Extended Producer Responsibility for Packaging.  
Position – Favorable with Amendments.**

Dear Chair Korman, and Members of the Maryland Environment, and Transportation Committee:

Thank you for the opportunity to provide a testimony on SB 901. Just Zero supports the development of a comprehensive Extended Producer Responsibility for packaging program in Maryland. However, we have significant concerns with SB 901 as written. Therefore, we are urging the committee to make strategic amendments to the bill.

Just Zero is a national environmental non-profit advocacy organization that works to implement just and equitable solutions to climate-damaging and toxic production, consumption, and waste disposal practices. We believe that all people deserve Zero Waste solutions with zero climate-damaging emissions and zero toxic exposures.

SB 901 would establish an EPR for packaging program. Currently, five states have adopted this type of policy – California, Colorado, Maine, Minnesota, and Oregon. Just Zero has worked with stakeholders in each of these states to enact and develop these important programs. When properly designed and implemented, EPR for packaging programs reduce packaging waste, increase recycling rates, and incentivize companies to redesign their products and packaging to be less toxic, and more sustainable. Moreover, as a form of producer responsibility, these programs accomplish this without imposing costs on consumers, local governments, or the state.

EPR for packaging programs can be transformative. However, the details are extremely important. We believe several changes are necessary to ensure SB 901 will effectively address Maryland's plastic pollution and packaging waste crisis.

Therefore, we urge you to make the following amendments to the bill:

- (1) Revise Section 9-2505(D) to explicitly clarify that the Department shall establish performance goals for each of the following categories: (a) recycling rates, (b) composting rates, (c) reuse rates, (d) reduction rates, and (e) post-consumer recycled content rates.

- (2) Revise Section 9-2505(J)(5) to:
- Ensure the penalties the Department may impose for failure to meet the performance goals apply to ***both*** (a) the performance goals established through the producer responsibility plan, and (b) the performance goals established by the Department.
  - Ensure that failure to meet the performance goals results in increased producer fees to fund investments and actions that will get the program back into compliance.
- (3) Revise the “eco-modulated fees” in Section 9-2505(E)(3)(II)(2) to align the eco-modulation factors with California, Colorado, Maine, Minnesota, and Oregon. This will make the fee structure clearer. It will also make compliance easier for producers.
- (4) Revise the definition of “producer” in Section 9-2512(P) to remove unnecessary exemptions. We believe the program can protect small businesses better if the de-minimis producer definition is expanded.
- (5) Remove the language in Section 9-2505(A)(1)(III)(B)(2) that only allows the Department to be reimbursed for the costs of rulemaking actions in 2026. The Department will need to engage in additional rulemaking and the cost all rulemakings should be covered by the Producer Responsibility Organization.
- (6) Revise the membership of the Advisory Council in Section 9-2503(c) to add a public health expert.

**I. Amendment 1: Explicitly Authorize the Department to Develop an Array of Statewide Performance Goals.**

Just Zero strongly support the language in SB 901 which authorizes the Department to establish “performance goals for each covered material type.”<sup>1</sup> However, we believe the section must be redrafted to explicitly clarify the types of performance goals the Department shall establish. The section is written in a way that implies that the Department has the authority to establish an array of performance goals. However, we are concerned that the inclusion of only one explicit example may lead to confusion regarding the scope of performance goals the Department can establish.

Redrafting this section will make the program more transparent and clearer. This is extremely important given the size and scope of EPR for Packaging Programs. Clarity in the statute will make the rulemaking process simpler and more efficient. We specifically recommend that the bill be amended to include the criteria from Minnesota’s program. Minnesota’s program authorizes the Pollution Control Agency to set statewide performance goals for: (a) recycling rates, (b) composting rates, (c) reuse rates, (d) reduction rates, and (e) post-consumer recycled content rates. Maine’s program also required the Department of Environmental Protection to establish similar goals.<sup>2</sup>

*Amended Language for Section 9-2505(D).*

- Based on the results of the most recent statewide recycling needs assessment conducted under Chapter 645 of the Acts of the General Assembly of 2024 or § 9–1702.2 of this title, the Department, in coordination with a Producer Responsibility Organization and via the approval of the producer responsibility plans, shall establish performance goals for each

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<sup>1</sup> SB 901, Section 9-2505(D).

<sup>2</sup> See, Minnesota Packaging Waste and Cost Reduction Act, Section 13, Subsection 7. [115A.1454].

covered material type using a baseline year that is informed by the statewide recycling needs assessment, including establishing: (a) recycling rates, (b) composting rates, (c) reuse rates, (d) reduction rates, and (e) post-consumer recycled content rates, at 5-, 10-, and 15-year intervals.

## **II. Amendment 2: Strengthen the Enforcement of the Performance Goals.**

Just Zero strongly recommends that the Committee amend SB 901 to (A) clarify that failure to meet the performance goals established by the Producer Responsibility Organization AND the Department are enforceable, and (B) ensure that failure to meet the performance goals results in a fee increase, the proceeds of which will be used to fund actions and investments that will get the program back into compliance with the missed goal.

### **A. The Committee Must Clarify that the Performance Goals Set by the Producer Responsibility Organization and the Goals Set by the Department are Enforceable.**

SB 901 requires the development of two sets of performance goals. First, the Producer Responsibility Organization – through the Producer Responsibility Plan process – must establish performance goals for each packaging material type.<sup>3</sup> At a minimum, these performance goals must include: (a) recycling rates, (b) composting rates, (c) reuse rates, (d) return rates, (e) the percentage of covered materials to be waste reduced, and (f) greenhouse gas reduction goals.<sup>4</sup> Second, the Department is responsible for establishing “performance goals for each covered material type.”<sup>5</sup>

Currently, only the performance goals established by the Producer Responsibility Organization are enforceable.<sup>6</sup> Section 9-2025(J)(5) states that “if based on the annual report submitted under §9-2509 of this subtitle, the performance goals established under subsection (C)(1)(III) of this section have not been achieved, the Department may: (I) require that a producer or producer responsibility organization amend the producer responsibility plan; and (II) impose an administrative penalty on a producer or producer responsibility organization in accordance with § 9-2512 of this subtitle.”<sup>7</sup>

Importantly, the performance standards references are the ones set by the Producer Responsibility Organization – not the Department. The performance goals established by the Department must be enforceable. This is necessary to ensure the state has an active role in developing benchmarks for success. Unless amended, the performance goals set by the Department will not have any meaningful impact on the development of the program

### **B. Failure to Meet the Performance Goals Should Result in an Automatic Fee Increase Which Is Used to Fund Investments and Actions That Bring the Program Back into Compliance.**

Additionally, we believe that the bill should reflect the enforcement approach Maine has adopted. Maine’s EPR for Packaging Program requires the Department of Environmental Protection to develop an array of performance goals. Under Maine’s law, if those performance goals are not met,

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<sup>3</sup> SB 901, §9-2505(c)(1)(III).

<sup>4</sup> *Id.*

<sup>5</sup> SB 901, Section 9-2505(D).

<sup>6</sup> SB 901, Section 9-2505(J)(5).

<sup>7</sup> *Id.*

the fees which the producer or Producer Responsibility Organization must pay will increase. The increased revenue generated from the higher fees is used to fund investment and actions which will bring the program back into compliance with the goal. We strongly recommend that the committee adopt this approach to enforcement. This is a tailored approach that ensures that if a goal is not met, revenue is generated to fund the actions and investments necessary to get the program back on track.

Amended Language for Section 9-2505(J)(5).

(5) If based on the if based on the annual report submitted under §9-2509 of this subtitle, the performance goals established under subsection (C)(1)(III) and (D) of this section have not been achieved:

- (I) a producer or producer responsibility organization shall amend the producer responsibility plan to include: (1) list the actions and investments that will be implemented to bring the program back into compliance with the goals, and (2) a new fee structure that ensures the proposed actions and investments will be implemented; and
- (II) the Department may impose an administrative penalty on a producer or producer responsibility organization in accordance with § 9-2512 of this subtitle

**III. Revise the Eco-Modulated Fees to Align the Eco-Modulation Factors with the Requirements of the States with EPR for Packaging Laws.**

We are also recommending that the committee revise the eco-modulated fee structure. We appreciate the inclusion of eco-modulation in the bill. However, we believe the structure of the eco-modulated fees should be modified to better align with the systems adopted by the five states with EPR for Packaging Laws.

Eco-modulated fees are designed to increase and decrease the fees producers pay to incentivize or disincentivize specific action. Currently, SB 901 requires the fees to be eco-modulated to: (A) have a higher fee for covered materials that are not recycled or have low-recycled content, and (B) have a lower fee for covered materials that are recyclable and have high-recycled content.<sup>8</sup>

While we support this requirement, we believe the eco-modulation factors should be more robust to incentivize and disincentivize a broad range of actions. We recommend adopting an eco-modulation system similar all other EPR for Packaging Programs. This includes having eco-modulation factors for: (1) recyclability and compostability, (2) post-consumer recycled content, (3) packaging reduction and optimization, (4) reduction of toxic chemicals and components, (5) improved labeling, (6) reusability, and (7) litter reduction.

The table below summarizes the eco-modulation factors for California, Colorado, Maine, Minnesota, and Oregon.

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<sup>8</sup> SB 901, Section 9-2505(E)(3)(II)(2)

### Fee Structure + Eco-Modulation Requirements For Existing Programs

State	Who Sets the Fee	Eco-Modulation Factors.
California <sup>9</sup>	PRO subject to approval by Department.	Fees are eco-modulated to incentivize: (1) increased recycled content, (2) source reduction, (3) standardization of packaging to increase reuse, recycling, and composting, (4) reduction in toxics, (5) improved labeling, and (6) reuse + refill.
Colorado <sup>10</sup>	PRO subject to approval by Department.	The fees must be eco-modulated to incentivize: (1) reduction, (2) innovation and practices to enhance recyclability and commodity value, (3) post-consumer recycled content, and (4) designed for reuse/refill. The fees must also be eco-modulated to disincentivize: (1) practices that increase costs of reuse, recycling, and composting, (2) design that disrupts recycling of other materials, and (3) producers from using materials not on the minimum recyclable list.
Maine <sup>11</sup>	Department	The fees are eco-modulated to incentivize: (1) post-consumer recycled content, (2) increased recyclability, (3) reduced toxicity, (4) reduction, (5) litter reduction, (6) increased reusability, and (7) reduced confusion surrounding labeling.
Minnesota <sup>12</sup>	PRO subject to approval by Department.	The fees shall be eco-modulated to incentivize: (1) minimization of environmental and human health impacts, (2) elimination of toxics, (3) reduction in packaging, (4) increased reuse + refill, and (5) increased recyclability and compostability.
Oregon <sup>13</sup>	PRO subject to approval by Department	The fees are eco-modulated to account for: (1) post-consumer content of the material, (2) product to package ratio, (3) producer's choice of material, (4) life-cycle of environmental impacts, and (5) recycling rate of the material.  Dept. is responsible for establishing a contamination management fee and commingled recycling processing fee which are paid by PRO.

#### Amended Language for Section 9-2505(E)(3)(II)(2)

(II) The fee structure established under paragraph 1(III) of this section shall be variable based on:

(1) Costs associated with transporting, collecting, and processing covered materials;

(2) An eco-modulation of fees to incentivize;

(i) Reduction and optimization

(ii) Increased recyclability and compostability

(iii) Increased use of post-consumer recycled content

(iv) Reduction of toxicity

(v) Improved labeling

(vi) Reusability; and

(vii) Litter reduction; and

(3) Any other factors, as determined by the Department.

<sup>9</sup> See, Cal. Env. Code §42053(e).

<sup>10</sup> CO Rev Stat § 25-17-705(4)(i)(IV).

<sup>11</sup> 38 M.R.S.A., § 2146(13)(A)(1)(c).

<sup>12</sup> See, Minnesota Packaging Waste and Cost Reduction Act, Section 14, Subsection 3. [115A.1454].

<sup>13</sup> See, ORS 459A.926 §11(4).

#### **IV. Revise the Definition of Producer to Remove Specific Exemptions for Small Businesses That are Better Addressed Through the De-Minimis Producer Exemption**

Just Zero recommend that the committee remove several of the producer exemptions. Specifically, we recommend deleting the exemptions for (a) mills that use any virgin wood fiber in the products it produces, (b) paper mills that produce container board derived from 100% post-consumer or pre-consumer recycled content, (c) Maryland-based restaurants and food carts, and (d) Maryland-based single retail establishments, should be deleted. We understand that some of these exemptions are designed to protect small businesses. However, a better approach would be to increase which businesses qualify as a “de-minimis producer.” De-minimis producers are exempt from the requirements of the law.

It is important to understand that any exempted producers will still be selling packaging materials in Maryland but leaving the responsibility of paying for the management of this material to other producers or taxpayers. This is inequitable and contrary to the fundamental rationale behind producer responsibility. Therefore, producer exemptions should be very limited in scope because:

- Exemptions add administrative complications for the stewardship organization; because producers should only be accountable for obligated materials, significant auditing is required to account for exempted materials collected by municipalities.
- Exemptions benefit producers of exempted materials, creating an unlevel marketplace.
- Exemptions make performance measurement challenging (e.g., recovery rate/collection rate) as there is no full reporting of the material sold and significant work is required to audit material collected.

##### **A. Exemption for Mills that Use Virgin Wood Fiber Should be Deleted.**

The purpose of the exemption for mills that use virgin wood fiber is unclear. Wood fiber is not defined in statute. Wood fiber packaging could include an array of packaging materials ranging from paper and cardboard to molded pulp to create trays, egg cartons, or other protective packaging. There is no reason to exclude the producers of this material from the program.

##### **B. Exemption for Mills that Use 100% Post-or-Pre-Consumer Recycled Content to Producer Containerboard Should be Deleted.**

While manufacturing containerboard out of pre-and-post-consumer recycled content is admirable, it does not mean the producer should be exempt from the requirements the law. Containerboard is not defined. It could be interpreted as include all cardboard packaging. Exempting these producers does not remove the material from Maryland. Rather, containerboard waste will still be generated in the state. The exemption simply means the company responsible for the material is not paying to cover the costs of collecting, transporting, and recycling the material. Additionally, the law is already structured in a way to reduce the impacts on companies that are using environmentally friendly packaging materials.

C. The Exemption for Maryland-Based Food Service Businesses and Retail Establishments Should be Deleted and Replaced with a Broader De-Minimis Producer Exemption.

As currently drafted, SB 901 has two exemptions which are designed to protect Maryland-based businesses.

- The first exempts “entities that own or operate a restaurant, food cart, or similar establishment that (1) is headquartered in the state, and (2) primarily sells food that is generally intended to be consumed immediately and without the need for further preparation.”<sup>14</sup>
- The second exempts “an entity that owns a single-retail sales establishment that: (1) has not online sales, and (2) is not supplied or operated as part of a franchise or chain.”<sup>15</sup>

Just Zero appreciates the intent behind these exemptions. However, providing blanket exemptions for a majority of Maryland-based food services and retail businesses will result in a significant number of exemptions. Exempting such a large number of producers will limit the effectiveness of the program. For instance, any Maryland-based deli, coffee shop, restaurant, food chain, mini-mart, etc. will be entirely exempt from the law. Additionally, any retail establishment in the state that is not a chain will also be exempt. These exemptions are regardless of whether the producer is generating a significant amount of packaging waste or has sufficient revenues to participate in the program.

Just Zero suggests that these exemptions be removed from the bill. To protect small businesses, the committee should increase the threshold for who qualifies as a “de-minimis producer.” De-minimis producers are exempt from the law. Currently, a de-minimis producer is a person that in the most recent fiscal year: (1) introduced less than 1 ton of covered material into the state, or (2) earned a global gross revenue of less than \$2,000,000.

We recommend raising the packaging threshold to 2.5 tons and increasing the gross revenue requirement to \$3,000,000. This change will ensure that small businesses and businesses that do not generate a significant amount of single-use packaging are exempt from the law while ensuring large businesses are not.

Amended Language for Section 9-2512(J)

- (J) “De-minimis producer” means a person that in their most recent fiscal year:
- (1) introduced less than ~~1~~ 2.5 tons of covered material into the state; or
  - (2) earned global gross revenue of less than ~~\$2,000,000~~ \$3,000,000.

Amended Language for Section 9-2512(P)

- (2) “Producer” does not include:
- (i) state, federal, or state agency, a political subdivision, or other government unit;
  - (ii) registered 501(c)(3) charitable organization or 501(c)(4) social welfare organization;
  - (iii) a de-minimis producer;
  - ~~(iv) a mill that uses any virgin wood fiber in the producers it produces~~
  - ~~(v) a paper mill that produces containerboard derived from 100% recycled postconsumer recycled content or non-postconsumer recycled content;~~

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<sup>14</sup> Section 9-2512(P)(2)(vi).

<sup>15</sup> Section 9-2512(P)(2)(vii).



- ~~(vi) an entity that owns or operates a restaurant food cart, or similar establishment that:~~
  - ~~(A) Is headquartered in the State; and~~
  - ~~(B) Primarily sells to members of the public food that is 2 generally intended to be consumed immediately and without the need for further 3 preparation, either on or off the premises;~~
- ~~(vii) An entity that owns or operates a single retail sales establishment that:~~
  - ~~(1) Has no online sales; and~~
  - ~~(2) Is not supplied or operated as part of a franchise or a chain; or~~
- (viii) an entity that is licensed under Title 2 of the Alcoholic Beverages and Cannabis Article and generated less than \$10,000,000 in gross revenues during the immediately preceding calendar year.

**V. Amend the Bill to Allow the Department to be Reimbursed for All Rulemaking Activities Related to the Program.**

A key component of EPR for Packaging Programs is ensuring that the entire cost of implementing the program is covered by the producers. Therefore, we recommend that the Committee amend Section 9-2505(A)(1)(III)(B)(2) to allow the Department to be reimbursed for all rulemaking activities related to the program.

Currently, the bill only allows the Producer Responsibility Organization to reimburse the Department for rulemaking activities that occur in 2026.<sup>16</sup> The practical effect of this language is that the Department may only be reimbursed for the initial rulemaking. This is a very large program that will exist in perpetuity unless the underlying statute is revoked by the legislature. Therefore, the Department will have to engage in subsequent rulemaking actions. The costs of amending and revising the rules should be covered by the annual registration fee. Moreover, it is not guaranteed that the Department will finish the initial rulemaking process in 2026. The rulemaking process has taken over a year in all five states that currently have EPR for Packaging Programs.

Amendment Language for Section 9-2505(A)(1)(III)(B)(2)

- (III) At the time of filing the registration form, the producer responsibility organization shall pay to the Department an annual registration fee, as set by the Department, in an amount sufficient to cover:
- (1) In each year:
    - (A) The costs of record keeping under this subtitle, not to exceed \$1,000; and
    - (B) The costs of developing and updating the list required under §9-2508 of this subtitle;
  - (2) ~~In 2026 only~~, the costs of developing and implementing regulations in accordance with §9-2511 of this subtitle; and
  - (3) In 2028 and each year thereafter, the costs of registered providers under §9-2507 of this subtitle.

<sup>16</sup> Section 9-2505(A)(1)(III)(B)(2) states that the annual registration fee producers pay which is designed to reimburse the Department for overseeing, implementing, and enforcing the law can only cover rulemaking activities that occur in 2026.



**VI. The Committee Should Amend the Advisory Council to Allow for a Representative with Expertise in Public Health and Toxicology.**

Finally, we recommend that the Committee amend the make-up of the Advisory Council to allow for a representative with expertise in public health and toxicology. A large portion of the regulated covered material is packaging for food and cosmetics. Having a representative on the Advisory Council who can speak to the public health impacts associated with chemical leaching into our food and cosmetics from packaging materials is important for the success of this program.

**VII. Conclusion**

Maryland must act to reduce plastic, improve recycling, and hold corporations accountable for the waste they create. An amended version of SB 901 can develop a program that will fix Maryland's broken and disjointed approach to managing packaging waste. This legislation can be a key step in the process of creating a fairer, more sustainable model that is paid for by the responsible parties, not Maryland residents.

Thank you for your time and consideration of this testimony. We look forward to continuing to work with you on the development of this program.

Respectfully submitted,

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Just Zero