



SB292 – Environment - Packaging Materials - Producer Responsibility

Testimony before Senate Finance Committee

February, 17 2022

Position: Favorable with amendments

Dear Finance Committee Members,

My name is Ruth Auerbach, and I represent the 750+ members of Indivisible Howard County. We are providing written testimony today to ***support with amendments SB292***, for extended producer responsibility for packaging materials. Indivisible Howard County is an active member of the Maryland Legislative Coalition (with 30,000+ members). We are grateful for the leadership of Sen. Augustine for sponsoring this critical legislation.

An Extended Producer Responsibility bill for packaging is desperately needed to realign incentives and achieve reductions in waste and increase reuse, recycling, and composting of packaging. In our current system, the cost of managing waste is hoisted on governments, while packaging waste damages the environment and public health. Consumers are responsible for understanding the packaging of their products along with the associated costs, handling, disposal, and damage both short- and long-term, and acting on this understanding. Meanwhile, producers have little incentive to limit the costs and harms of the packaging they use once the packaging is with the consumer. **It's absolutely necessary that producers, who are best positioned to understand the options for packaging and their associated environmental and financial costs for disposal, have a strong incentive to make socially responsible choices.**

However, we must be sure this bill will actually achieve its intended purpose. We propose the following changes:

1. More explicit goals should be stated in the legislation. Without stating precise targets in the legislation, we risk the possibility that the producer responsibility plans will not include strong enough goals. The only goal explicitly stated in HB307 is "REDUCE ALL PACKAGING MATERIAL WASTE TO THE MAXIMUM EXTENT PRACTICABLE, AND BY NOT LESS THAN 25% FOR EACH PACKAGING MATERIAL TYPE, WITHIN 5 YEARS AFTER THE DATE ON WHICH THE FIRST VERSION OF THE PLAN IS APPROVED." There are no explicit goals for recycling in this bill. Recycling of beverage containers should have a precise target. States with a 10 cent deposit fee on beverage containers are getting a recycling rate of 90%. Further, producers are advertising on television that they can get every bottle back. Current studies have shown that only 22% of beverage containers are being recycled in Maryland. We suggest including a goal of 90% of beverage containers recycled within 5 years of the first plan. We also recommend including the following goals for all single-use packaging
 - a) to have at least 75% postconsumer content by October 1, 2027; and
 - b) be readily recyclable or compostable by October 1, 2030

2. The bill should make clear that the goals of the producer responsibility plans described in 9–2404 (B)(3) must meet or exceed the goals established by the department in 9–2404(C). Further, the department should be able to approve with conditions or reject a plan if the goals in the plan do not meet the minimum established by the department in 9-2404(C).
3. This bill should provide stronger enforcement mechanisms for producers who fail to achieve the goals in their producer responsibility plan. This bill allows the department to require amendment of a producer responsibility plan if the producers fail to make sufficient progress on the goals in the plan. How will the department manage a producer responsibility organization that repeatedly fails to meet the goals in each of its subsequent amended plans? Some substantial enforcement mechanism needs to be included in the bill.
4. The legislation is unclear about what constitutes a single violation that incurs penalties. This ambiguity may lead to a very weak interpretation that has penalties which are much too small for the size of the corporations being regulated. Is the sale of each individual item without an approved producer responsibility plan a single penalty, or might a single penalty be millions of dollars of sales at one or more locations over one or more years without a producer responsibility plan? Whether the penalties stated in this legislation are effective depends on how violation is defined. We recommend defining “violation” and including penalties that are substantial enough to affect the activity of the producers.
5. The position of local governments should be strengthened in this bill. Producers should have limited time to reimburse local governments. After the time limit, late fees should be imposed. Further, local governments should be eligible for reimbursement for the administrative costs associated with seeking reimbursement from the producer responsibility organizations. Such a requirement would create an incentive to make the process of applying for reimbursement simple and efficient.
6. Members of producer responsibility organizations should not be voting members on the advisory board. A primary role of the advisory board is to review and make recommendations on the producer responsibility plans. Members of producer responsibility organizations that serve on this board will have a conflict of interest.
7. This legislation should ensure that there is sufficient public oversight. While the bill states that the producers will cover the costs of review, oversight, and enforcement of producer responsibility plans, the legislation should state that these funds must cover the costs of outside independent auditors and additional department staff to handle the additional responsibilities of the department.
8. 9–2404 (A)(1)(II)1.A. should read “**RECYCLING SERVICES FOR RESIDENTS AND VISITORS IN THE STATE ARE PROVIDED IN A SEAMLESS MANNER; AND**” In particular, locations that may have out-of-state visitors, such as hotels, airports, and tourist attractions should also have seamless recycling services.
9. This legislation should prohibit non-profit producer responsibility organizations from using funds generated by this program for litigation.

Thank you for your consideration of this important legislation.

We respectfully urge a favorable report on this bill with amendments.

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