

Maryland-Delaware Solid Waste Association
a chapter of the



**National
Waste & Recycling
AssociationSM**

Collect. Recycle. Innovate.

TO: The Honorable Kumar P. Barve, Chair
Members, House Environment Transportation Committee
The Honorable Sara Love

FROM: Pamela Metz Kasemeyer
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DATE: February 22, 2023

RE: **SUPPORT ONLY IF AMENDED** – House Bill 284 – *Environment – Reducing Packaging Materials – Producer Responsibility*

The Maryland Delaware Solid Waste Association (MDSWA), a chapter of the National Waste and Recycling Association, is a trade association representing the private solid waste industry in the State of Maryland. Its membership includes hauling and collection companies, processing and recycling facilities, transfer stations, and disposal facilities. MDSWA and its members **support only if amended** House Bill 284.

House Bill 284 proposes to create a framework for what is commonly referred to as “Extended Producer Responsibility” or EPR to address the growing challenges associated with recycling. That is, volatile recycling commodity prices leading to increasing costs to maintain recycling services. MDSWA continues to believe that the most effective approach to addressing current recycling challenges is to focus on initiatives to increase demand for recyclable materials through a focus on market development. We further believe post-consumer minimum recycled content requirements are an essential component to increased demand. However, market development has not been considered sufficient and instead, there is a growing interest in EPR. EPR shifts responsibility for managing recycling to brands, which does not take into account the needs of other stakeholders involved in recycling. Any process that considers management of recycling should consider the needs of each of the stakeholders. To that end, attached is the National Waste and Recycling Association’s policy position on EPR.

While the industry believes that EPR, appropriately structured, has the potential to positively impact current recycling challenges, the framework of an EPR program is critical to its success and, if not properly created and implemented, can result in upending existing recycling systems by creating duplicative and unnecessary programs that have failed to take into consideration current collection, processing and management infrastructure, and the flow of revenues and expenses. To that end, while House Bill 284 is intended to provide a structure for addressing Maryland’s current recycling challenges, the legislation, as drafted, requires additional clarification and amendment if it is to achieve its objectives and not create unintended consequences that undermine the program.

First and foremost, the proposed needs assessment is essential to structuring an effective EPR framework that will achieve the intended objectives and succeed in funding local government recycling programs. MDSWA believes the needs assessment should be conducted in conjunction with/or a part of the establishment of the “Task Force on Recycling Policy and Recycling and Waste Systems in Maryland” reflected in House Bill 109. This approach will provide comprehensive information on the existing state of recycling in Maryland as well as the additional infrastructure and funding requirements necessary to achieve the objectives of an effective EPR program.

MDSWA strongly believes that references to organics and organics recycling throughout the legislation is too broad and outside the intended objectives of this legislation. Presumably, the objective to include compostable packaging in the program is the objective of inclusion of organics in the legislation. MDSWA urges the bill be amended to use the phrase “compostable packaging” as opposed to “organics.” The industry is also strongly opposed to the authorization for a Producer Responsibility Organization (PRO) to establish a bottle deposit program or deposit-return program for other packaging materials. Such programs negatively impact the current collection and processing framework and should not be authorized within this legislation. If there is an interest in considering the establishment of such programs, it should only be done through separate legislation where the unique implications of such programs can be considered. Because bottle deposit programs divert some of the most valuable material away from curbside recycling programs, they will likely increase the cost of recycling for municipalities.

MDSWA also believes that this legislation should only apply to residential recycling and should not include the commercial recycling system. The structural and operational issues related to commercial sector recycling vs residential recycling differ significantly and Maryland will be more successful in establishing an effective EPR system if it focuses solely on residential.

House Bill 284 does not clearly define how funding will flow to invest in infrastructure. There are a number of provisions relative to funding that do not take into account the complexity of the collection and processing of recyclables. There are no provisions clarifying how money will flow to invest in infrastructure other than the PRO develops the method. There is significant variability across the State relative to how waste and recyclables are collected and managed. That variability will have a significant impact on the structure and effectiveness of an EPR program. Virtually, every jurisdiction in the State approaches collection of both waste and recyclables in a different manner. Some jurisdictions provide collection to their residents through public employees, such as Baltimore City. Some jurisdictions contract with private haulers for collection. Some jurisdictions do not provide any collection and residents, or homeowners associations, privately contract for collection and/or manage their disposal of waste and recyclables themselves. The variability in collection and processing frameworks across jurisdictions must be accounted for in the development of an EPR program. It is just one example of a component of the recycling continuum that is not sufficiently reflected in the legislation. Furthermore, the bill appears to focus on residential recycling, but the language is not sufficiently clear. Local governments primarily focus on residentially-generated recyclables, including those generated in multi-family housing and in public spaces, although, many manage small amounts of commercially-generated recyclables. The bill will require an amendment to make that clarification.

Further examples of the lack of clarity and failure to understand the complexity of the recycling infrastructure and service provision, are the provisions that limit transportation to the nearest recycling facility. This provision fails to recognize that, in many instances, the closest facility is out-of-state and/or in another jurisdiction that does not accept out-of-County materials. Similarly, there are no provisions for the reimbursement of private haulers and recyclers that may manage some or all of the collection and processing of a local jurisdiction’s waste and recyclables. Additionally, critical to an effective funding framework is the authority for both publicly and privately owned and operated material recycling facilities to market the materials they process to maximize revenues. The legislation should be amended to provide this authority along with a provision that a PRO does not have the authority to build a materials recycling facility for itself or a contractor.

Finally, while the legislation creates an Advisory Council with which the PRO may consult, there is not a binding requirement for following the Advisory Council recommendations. Further, the Advisory Council includes members that are also members of a PRO which is a conflict of interest. The Advisory Council membership should be amended to limit membership to remove this conflict.

MDSWA applauds the sponsor for her interest in positively addressing recycling challenges in Maryland. To that end, MDSWA looks forward to working with the sponsor and other stakeholders to address the issues raised by the industry as well as other stakeholders in order to craft an EPR program that will have the potential to achieve the intended objectives of this legislation. However, without the amendments outlined above and other required amendments that have been raised by interested stakeholders, MDSWA cannot support the legislation.