



Montgomery County

Office of Intergovernmental Relations

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HB 284

DATE: February 22, 2023

SPONSOR: Delegate Love, et al.

ASSIGNED TO: Environment and Transportation

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POSITION: Support with Amendments (Department of Environmental Protection)

Environment – Reducing Packaging Materials – Producer Responsibility

The Montgomery County Department of Environmental Protection strongly support this bill with amendments that clarify several components. The bill would enhance recycling and diversion, improve recycling markets, and reduce waste in the State through: (1) conducting a statewide recycling needs assessment every ten years; (2) requiring producers to develop producer responsibility plans related to increasing postconsumer recycled content in packaging; (3) reducing packaging waste overall; and (4) creating a process through which local governments may request reimbursement for portions of the cost of collecting, transporting, and processing (including removing contamination) recyclable and compostable materials. These are crucial steps in reducing the wasted resources and excess greenhouse gases associated with single use behaviors, as we hope to move towards a more circular economy.

Section 9-1702.2(B) requires the Office of Recycling within the Maryland Department of the Environment to perform a statewide assessment of recycling needs at least every 10 years, including recycling infrastructure and capacity; an evaluation of local government requirements related to multi-family recycling services, and their implementation; sufficiency of recycling education programs relative to desired equity outcomes; recommendations for improving equity and equitable outcomes for underserved populations in Maryland's recycling system, including recommendations for new responsibilities of producer responsibility organizations and recommendations for funding the new responsibilities; among other issues. This regular assessment should help to identify areas of opportunities as both recycling markets and packaging are constantly subject to change.

Section 9-2503(C) states that HB 284 does not affect the authority of the State or a local jurisdiction to regulate the sale or use of any packaging material. Montgomery County currently has existing laws in effect prohibiting the sale and use of all polystyrene food service ware and mandated requirements in place concerning the distribution of plastic

straws. The County seeks to retain local authority to further regulate the sale or use of packaging materials the future through establishment of local legislation and/or regulations. Therefore, the County requests that the bill be amended to clarify that it does not preempt more restrictive local laws in this area that do not conflict with State law

Section 9-2504(B)(4) requires each participating producer to reduce all packaging material waste by 25% within five years of the approval of the Producer Responsibility Plan. This requirement would further progress in source reduction or waste reduction, the highest priority in the waste management hierarchy.

Section 9-2504(D)(3)(II) calls for use of eco-modulation for determining the fee structure for packaging materials as a means for encouraging packaging redesign with an eye toward waste reduction. This variable rate fee structure includes: a higher fee for packaging materials with low recyclability or recycled content, and a discounted fee for packaging materials with high recyclability or recycled content. This supports efforts to increase the recyclability of products collected and processed and/or increase the use of recycled materials in the design of products that should in turn stimulate and ensure even stronger demand for the recyclable materials collected and processed by the County.

House Bill 284 provides a strong framework for extended producer responsibilities but lacks clarity on how to deal with many complexities of our systems in the following areas:

- Section 9-1702.2(B)(2) includes the term “commingled recycling processing facility” but does not define this term, leaving the requirement nebulous and subject to interpretation. We suggest providing a definition for this term.
- Section 9-1702.2(B)(4) requires an evaluation of local government requirements related to multi-family recycling services. Montgomery County has existing recycling regulations in effect that requires all multi-family properties to have on-site recycling collection programs in place, as well as to meet numerous other requirements. The County also has mandatory recycling for businesses/organizations as well as for single-family residents. We suggest evaluations should be expanded to include single-family residents as well as businesses, organizations, not-for-profit organizations, local, state, and Federal government facilities, and commercial properties.
- Section 9-2501(C)(2) states the volume of beverage containers covered will not exceed a volume of more than 5 liters. There is no minimum size requirement stated. This section should be amended to include a minimum size for beverage containers. In addition, the maximum volume of 5 liters would exclude larger beverage containers, such as refillable water containers, which currently are accepted for recycling in Montgomery County’s recycling program and at the County’s Materials Recovery Facility (MRF) or Recycling Center for processing. The maximum volume should be amended to include larger beverage containers.

- Section 9-2503(D) does not prohibit a producer responsibility organization from establishing a deposit-return system for beverage containers or other packaging materials. HB 284 is silent on any further details that provide considerations as to what such a system would entail. A deposit-return system for beverage containers may have a negative impact on Montgomery County's recycling program depending on how the system is implemented. Any proposed deposit-return system should be developed in a way to minimize negative impacts on existing recycling program.
- Section 9-2504(A)(2)(II)B and (B)(10)(III-IV) – Education and outreach should be coordinated with existing education and outreach programs to ensure education is consistent and does not conflict with existing educational materials. The County has had mandatory recycling in effect since 1993 and has a very mature recycling program in place for all sectors: single-family, multi-family, and commercial/non-residential. In addition, Sections 9-2504 (B)(10)(III)2 and 3 require that the instructions be easy to understand and easily accessible. Accessibility should consider the diversity of residents to be fully inclusive, including providing information in alternate and varied formats as well as translated into appropriate languages.
- Section 9-2504(B)(12) requires producer responsibility organizations to describe the process for local government to request reimbursement for costs associated with transporting, collecting, and processing packaging materials that are identified in the plan. It is important to include in details of how a local government will request reimbursement if the local government collects multiple packaging types of multiple brands. Tracking this information at the local level would be extremely challenging.
- Section 9-2504(D)(1)(II)1-4 requires the financing method that will be used by a producer responsibility organization to provide a reasonable annual rate per ton of recycled or composted packaging materials for reimbursing local governments. The costs associated with collecting, transporting, processing, and recycling materials diverted for recycling or composting vary greatly by jurisdiction. Further consideration and specific requirements are recommended to ensure that an adequate level of reimbursement is provided to each specific jurisdiction.