



Committee: Education, Energy, and the Environment

Testimony on: SB 901 “Environment – Packaging Materials -- Producer Responsibility Plans”

Position: Favorable with Amendments

Hearing Date: February 18, 2025

SB901 is an important piece of legislation that intends to improve Maryland’s recycling and waste management. It provides a framework for: (1) “modernizing and improving waste and recycling systems in the State” and (2) “reimbursing local governments for costs associated with transporting, collecting, and processing packaging materials.” Both objectives are achieved by making producers of packaging responsible for financing and implementing the program, with oversight from the Maryland Department of the Environment (MDE).

The Maryland Chapter of the Sierra Club supports SB901 with amendments to strengthen the framework for producer responsibility for packaging beyond recycling, by focusing on minimizing the environmental impact of packaging and invoking both upstream and downstream policies. This will enhance the program’s effectiveness and impact over the long run. We also urge the Committee to enact both a beverage container deposit-return program to reduce litter, and the producer responsibility for packaging program to reduce packaging, support redesign to make packaging more recyclable, and promote use of recycled content and reusable packaging. These two programs complement each other, and both make producers responsible for the environmental impacts of their packaging over the life cycle of the product. Importantly, SB901 does not currently include in its framework the possibility of a beverage container deposit-return system, which has been demonstrated to be the most effective way to address beverage container litter and recycling in other states and nations. While such a system could in principle emerge from the broader framework that would be established by SB901, it would take years, and it would be more effective for the General Assembly to establish that program by statute directly while also initiating producer responsibility for other forms of packaging as envisioned by SB901.

The burden and environmental impact of packaging waste

Containers and packaging are a substantial share of municipal solid waste generated in the United States—28.1% by weight in 2018.¹ Only about 54% of all container and packaging materials by weight were recycled, but recycling rates vary by material, from a high of 81% for paper and cardboard packaging to a low of only 14% for plastic. Multi-layer plastic packaging, multi-resin pouches, and aseptic cartons for beverages and soups are not designed to be recyclable. Plastic film is generally not accepted for single stream recycling; it fouls equipment, becomes contaminated, and lacks a market.

Used beverage containers, particularly plastic bottles, are a major component of litter on the land and in waterways. Only about a quarter of the 5.5 billion beverage containers sold annually in the State are captured for recycling; the rest are left in the environment (landfills, litter) or incinerated.² Plastic packaging escapes into the environment, where it breaks down into ever smaller particles, ingested by wildlife and people. Seven of the top ten plastic items collected in beach cleanups in the U.S. are plastic

¹U.S. Environmental Protection Agency. https://www.epa.gov/sites/default/files/2021-01/documents/2018_ff_fact_sheet_dec_2020_fnl_508.pdf, p. 9.

² Container Recycling Institute, Culver City, CA.

packaging or containers.³ The genesis of the efforts for producer responsibility for packaging in Maryland was largely based on concerns about the impact of plastic packaging on the environment.⁴

Producer responsibility for packaging

The Sierra Club embraces the principle of producer responsibility, in which the producer or brand owner of a product takes responsibility for minimizing the product's environmental and social impacts across all stages of the product's life cycle. Producer responsibility programs have the potential to create incentives to reduce packaging and redesign it to be reusable or recyclable. They are one of several tools to reduce packaging waste, including beverage container deposit-return programs, minimum post-consumer recycled content requirements, and bans or restrictions on single-use plastics. In these programs, producers are generally financially responsible, but not necessarily physically responsible, for implementing the program, subject to public oversight and accountability.⁵

Producer responsibility programs for packaging are common in Canada and Europe.⁶ However, there is limited experience with producer responsibility for packaging programs in the U.S., apart from the ten states with beverage container deposit programs.⁷ Only five U.S. states (California, Colorado, Maine, Minnesota, and Oregon) have enacted producer responsibility programs for other types of packaging, and none of those states' programs are yet operational. Three of the five states (California, Maine, and Oregon) already have separate longstanding and successful beverage container deposit-return programs.

What the bill would do

SB901 would create a framework for a producer responsibility program for packaging that focuses primarily on recycling and waste reduction. In the framework created by SB901, producers are both financially and physically responsible for implementation, underscoring the need for strong public oversight to ensure that targets are met, and that funds generated are used appropriately.

Under SB901, packaging producers, individually or as part of a Producer Responsibility Organization (PRO), would submit a Producer Responsibility Plan to MDE. The Plan must: identify the producers and the brands of packaging covered; propose performance goals for each material type; describe the financing to implement the Plan; and indicate how the goals will be met, including reimbursement of local governments for collecting, transporting, and processing packaging materials. After approval by MDE, the Plan would be implemented by the producers or PRO.

Oversight of the program would be provided by MDE, which would be charged with reviewing and approving the Producer Responsibility Plans and annual reports. MDE would also be responsible for conducting a statewide recycling needs assessment every 10 years, financed by producers. The bill creates a Producer Responsibility Advisory Council, responsible for: advising the PRO at its request on the drafting or amendment of a Plan; reviewing the Plan and annual reports submitted by the PRO; making recommendations to MDE regarding Plan approval; and making recommendations to MDE and the PRO on implementation of the Plan.

SB901 has been strengthened since it was last introduced two years ago. "Packaging material waste" is now defined. PRO representatives, who were previously voting members on the Advisory Council, are

³ Food wrappers, bottle caps, plastic beverage bottles, plastic bags, lids, takeout containers (plastic and foam). 5Gyres *et al.* 2017. *Better Alternatives Now: BAN 2.0*.

⁴HB209, Plastics and Packaging Reduction Act (2020 Maryland General Assembly Session)

⁵[Sierra Club Zero Waste Policy](#) (2019).

⁶ Northeast Recycling Council (NERC) and Northeast Waste Management Officials' Association (NEWMOA). 2020. "White Paper: Extended Producer Responsibility (EPR) for Packaging and Paper Products." April.

⁷ California, Connecticut, Hawaii, Iowa, Maine, Massachusetts, Michigan, New York, Oregon, Vermont.

now non-voting members, removing a conflict of interest. Third-party certification of performance targets is required for results cited in the annual reports.

Still, the primary focus of SB901 remains on recycling, and it is being introduced without the benefit of the results of the Recycling Needs Assessment required by legislation (SB222) enacted in 2023, which will be delivered this month, or the input of that effort's Advisory Council, which also has not benefitted from the results of the Needs Assessment. The framework in SB901 would be strengthened by encompassing objectives and definitions that can guide a successful program for the long term, to address upstream results and environmental impacts more generally. Target-setting is generally left to the producers, subject to approval by MDE. The bill continues to incorporate beverage containers in the program, despite the existence of a highly impactful, well-tested program to handle them.

Proposed amendments

As noted, SB901 is an important bill, and we look forward to sharing feedback with the sponsor on a number of issues. In particular, we would propose two amendments.

Amendment #1: Update the legislative intent of the bill to include producer responsibility for minimizing the environmental impact of packaging and on pursuing both upstream and downstream packaging policies over the long term.

We propose to adjust the legislative intent of the framework to include minimizing the environmental and human health impacts of packaging and to link them to a list of upstream and downstream policies to achieve that objective (including but not limited to modernizing and improving waste and recycling systems in the State). We define three terms embedded in the objectives and policies: "environmental impact," "recycle" or "recycling," and "responsible end markets." The definitions are based on programs approved in other states.

Amendment #2: Exclude deposit beverage containers from the definition of beverage containers in the event that a beverage container deposit system is adopted, so that they belong to only one program at a time, and ensure harmonization across the two programs.

Beverage container deposit-return systems and producer responsibility for packaging programs are complementary, and both should be supported.

- The beverage container deposit program is a proven, highly effective policy for reducing litter, can be put into operation in a relatively short period of time (2-3 years), and will triple the recycling rate of most beverage containers, which are easy to recycle. With a 10-cent deposit, it will divert 3.6 billion beverage containers annually from Maryland's litter and the waste stream to recycling.
- The producer responsibility for packaging program is considerably more complex, mainly aimed at products that are difficult to recycle, and holds the promise of reducing unnecessary packaging and packaging waste and incentivizing producers to redesign packaging to be recyclable or reusable. There is much less experience with these programs, and they require longer lead time (5-8 years).⁸ They are expected to have a much smaller impact on litter.

Passage of a deposit system before or together with the packaging program will jump start the increase in recycling and reduction in litter, while reducing the complexity and challenges of the rest of the packaging program that deals with so many different types of packaging. The second amendment excludes beverage containers covered by a deposit system from the definition of beverage container and adds a new section to the bill mandating that if both programs are approved, they must be harmonized.

⁸ Eunomia. *The 50 States of Recycling* 2024.

The language is pulled from the recently approved Minnesota packaging bill. A deposit bill has been introduced this session in Maryland.⁹

With these two amendments, we respectfully request a favorable report on SB901, and look forward to providing additional feedback to the sponsor.

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Attachment: Proposed Amendments

⁹ Maryland Beverage Container Recycling Refund and Litter Reduction Program (HB232, SB346)

Proposed Amendments

Amendment 1: Objectives and definitions

Replace §9-2502 with the following:

(1) It is the intent of the General Assembly that this subtitle provide a framework for:

- (I) Minimizing the environmental and human health impacts of packaging;
- (II) Conserving resources;
- (III) Stimulating responsible end markets for packaging materials; and
- (IV) Shifting the cost of managing packaging waste from consumers to producers.

(2) Within the framework, these objectives will be achieved by:

- (I) Reducing plastic packaging sold in the state
- (II) Redesigning packaging to be recyclable, compostable, or reusable
- (III) Reducing packaging waste
- (IV) Reducing the toxicity of packaging
- (V) Increasing recycled content of packaging
- (VI) Modernizing and improving waste and recycling systems in the state
- (VII) Improving access to and the efficiency of recycling, composting, and reuse infrastructure, with special emphasis on underserved communities
- (VIII) Improving the labeling of packaging with respect to recyclability, compostability, and disposal
- (IX) Making producers financially responsible for investing in the needed infrastructure and reimbursing local governments for costs associated with transporting, collecting, and processing packaging materials

Insert on Page 9, insert after lines 1:

(D) "Environmental impact" means the impact of a covered material on human health and the environment, from extraction and processing of the raw materials composing the material through manufacturing, distribution, use, recovery for reuse, recycling, or composting and final disposal.¹⁰

Insert on page 12, after line 2:

(M) (1) "Recycle" or "recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise ultimately be disposed of, and returning them to, or maintaining them with, the economic mainstream in the form of recovered material for new, reused, or reconstituted products, that meet the quality standards necessary to be used in the marketplace.

(2) "Recycle " or "recycling" does not include:

- (i) Landfilling
- (ii) Combustion
- (iii) Incineration
- (iv) Energy generation
- (v) Fuel production; or
- (vi) Other forms of disposal including placement within the footprint of a landfill.

¹⁰ The definition of "environmental impact" is from the Minnesota law.

(3) To be considered recycled, covered material shall be sent to a responsible end market.¹¹
(N) (1) "Responsible end market" means a materials market in which the recycling and recovery of materials or the disposal of contaminants is conducted in a way that:

- (i) benefits the environment; and
- (ii) minimizes risks to public health and worker health and safety.

(2) The Department may adopt regulations to identify responsible end markets and to establish criteria regarding benefits to the environment and minimizing risks to public health and worker health and safety.¹²

Amendment 2: Beverage Containers

Page, line 1:

- (3) THE VOLUME OF WHICH IS NOT MORE THAN 5 LITERS; AND
- (4) IS NOT COVERED BY A BEVERAGE CONTAINER DEPOSIT PROGRAM.

Page 28, insert after line 9, a new section and renumber subsequent sections:

9-2508¹³

IF A BEVERAGE CONTAINER DEPOSIT-RETURN SYSTEM IS ENACTED, THE TWO PROGRAMS MUST BE HARMONIZED IN A MANNER THAT ENSURES THAT:

- (1) MATERIALS COVERED IN THE DEPOSIT-RETURN SYSTEM ARE EXEMPT FROM THIS PROGRAM OR RELATED FINANCIAL OBLIGATIONS ARE REDUCED;
- (2) COLOCATION OF DROP-OFF COLLECTION SITES IS MAXIMIZED; AND
- (3) EDUCATION AND OUTREACH ARE COORDINATED BETWEEN THE TWO PROGRAMS.

~~9-2508~~ 9-2509

~~9-2509~~ 9-2510

~~9-2510~~ 9-2511

¹¹ The definition of "recycle" or "recycling" is from the California law, with the addition of "within the footprint of a landfill."

¹² The definition of "responsible end market" is from the California law and nearly identical to Oregon's law.

¹³ The language of this section is from the Minnesota bill.