

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2515**

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 17, 2021

The Senate Budget and Appropriations Committee reports favorably the Senate Committee Substitute for Senate Bill No. 2515, with committee amendments.

This bill, as amended, would establish postconsumer recycled content requirements for rigid plastic containers, glass containers, paper and plastic carryout bags, and plastic trash bags, and prohibit the sale of polystyrene loose fill packaging.

Specifically, beginning two years after the bill's effective date, all rigid plastic containers sold, offered for sale, or used in association with the sale or offer for sale of a product in the State by a manufacturer would be required to contain, on average, at least 25 percent postconsumer recycled content. Beginning five years after the effective date, and every three years thereafter, the percentage of postconsumer recycled content required for rigid plastic containers would increase by five percent, until reaching 50 percent. The bill provides exemptions from the postconsumer recycled content requirements for several types of rigid plastic containers.

Under the bill, separate requirements would apply to plastic beverage containers. Specifically, beginning two years after the bill's effective date, all plastic beverage containers sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 15 percent postconsumer recycled content. Beginning five years after the bill's effective date, and every three years thereafter, the percentage of postconsumer recycled content required would increase by five percent until reaching 50 percent. The recycled content requirements for plastic beverage containers would not apply to refillable beverage containers.

Beginning two years after the bill's effective date, all glass containers sold or offered for sale in the State would be required to contain, on average, at least 35 percent postconsumer recycled content. However, if a manufacturer certifies to the Department of Environmental Protection (DEP) that its use of postconsumer recycled content is made up of at least 50 percent mixed-color cullet, then the

manufacturer's glass containers would only be required to contain, on average, 25 percent postconsumer recycled content.

Beginning two years after the bill's effective date, paper carryout bags sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 40 percent postconsumer recycled content, except that paper carryout bags that hold eight pounds or less would only be required to contain, on average, at least 20 percent postconsumer recycled content. All plastic carryout bags sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 20 percent postconsumer recycled content beginning two years after the bill's effective date, and 40 percent postconsumer recycled content beginning five years after the bill's effective date. Beginning two years after the bill's effective date, all plastic trash bags sold or offered for sale in the State would be required to contain, on average, at least 10 percent postconsumer recycled content, and this requirement would increase to 20 percent five years after the bill's effective date. The requirement would not apply to plastic trash bags designed to hold, store, or transport hazardous waste or medical waste.

Packages that contain milk products, medical food, or infant formula would be exempt from the postconsumer recycled content requirements of the bill. In addition, packages or containers that contain food, except for plastic beverage containers or glass beverage containers, would be exempt from the postconsumer recycled content requirements of the bill for a period of five years.

Beginning two years after the bill's effective date, manufacturers would be required to label each product covered under the bill with the name of the manufacturer and the city, state, and country where the manufacturer is located, or with a uniform resource locator (URL) or quick response (QR) code that leads to this information. In the case of plastic trash bags, the labeling requirement would apply to the container of the plastic trash bags.

A manufacturer would be required to achieve compliance with the postconsumer recycled content requirements of the bill based on the average amount of postconsumer recycled content, by weight, contained in its products. A manufacturer would be required to calculate its average using data specific to its products sold or offered for sale in New Jersey, unless the manufacturer can demonstrate to the DEP that those data are unavailable and infeasible to generate, in which case the manufacture could use nationwide data.

Under the bill, the DEP would be authorized to review and adjust any of the postconsumer recycled content requirements established in the bill through rule or regulation. In making an adjustment, the DEP would be required to consider various factors, including changes in market conditions, recycling rates, the availability of recycled material, the capacity of recycling or processing infrastructure, and progress made by the manufacturers in meeting the postconsumer recycled content requirements.

The bill provides that a manufacturer may apply to the DEP for a waiver from the postconsumer recycled content requirements. The DEP would be authorized to grant a waiver if the manufacturer demonstrates, and the DEP finds, in writing, that: (1) the manufacturer cannot achieve the postconsumer recycled content requirements and remain in compliance with another State or federal law, rule, or regulation; (2) it is not technologically feasible for the manufacturer to achieve the requirements; (3) the manufacturer cannot comply with the postconsumer recycled content requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material; or (4) the manufacturer cannot comply for another reason as determined by the DEP pursuant to rule or regulation. In order to qualify for a waiver, a manufacturer would be required to submit documentation from a federal or State agency or certified third-party expert, as appropriate, demonstrating that the manufacturer cannot comply with the requirements for one of the reasons set forth above.

Under the bill, the DEP would be authorized to require a manufacturer that is temporarily exempt from the postconsumer recycled content requirements, or that has submitted a request for a waiver, to prepare and submit to the DEP an alternative compliance plan that demonstrates that the manufacturer is taking, and will continue to take, all feasible actions to ensure the reduction, collection, recycling, and reuse of packaging materials, and to ensure the use of postconsumer recycled content. The DEP would be required to adopt rules and regulations setting forth the substantive requirements for the alternative compliance plan, which could include sustainable materials management protocols, light weighting, lifecycle analyses, and other measures. The DEP would have the authority to approve or disapprove an alternative compliance plan, and to require a manufacturer to make any revisions or modifications to its plan as the DEP deems necessary, consistent with the bill and the DEP's rules and regulations.

Failure by a manufacturer to comply with an approved alternative compliance plan would constitute a violation of the provisions in the bill. The bill would authorize the DEP to enter into a contract or other legally binding agreement with one or more trade associations representing manufacturers, which would allow the trade association, in lieu of the manufacturers, to prepare and submit an alternative compliance plan, and to undertake the actions described in the plan.

Each year, manufacturers of products covered under the bill would be required to register with the DEP and pay an annual registration fee of \$1,000. A manufacturer that fails to register with the DEP would first receive a written warning and thereafter be subject to the penalties established pursuant to the bill. Each year, manufacturers would also be required to certify, in writing, to the DEP whether or not their products comply with the postconsumer recycled content requirements of the bill or are otherwise exempt or have been approved for a waiver. If the manufacturer claims an exemption, the manufacturer would be

required to set forth the specific basis upon which the exemption is claimed, and submit such proof as the DEP determined necessary. The DEP would also be authorized to require that a manufacturer submit an independent, third-party verification of the compliance certification.

Under the bill, each manufacturer would be required to maintain records that demonstrate, for all applicable products generated or produced by the manufacturer, whether and how the manufacturer has complied with the postconsumer recycled content requirements. The DEP would be authorized to establish specific requirements for the record and to request the records from a manufacturer at any time. The DEP would also be authorized to audit or investigate a manufacturer, at any time, to assess the manufacturer's compliance with the bill. The DEP would be required to publish a list of registered manufacturers, their compliance status, and other information the DEP deems appropriate, annually, on its Internet website.

Beginning two years after the bill's effective date, a person would be prohibited from selling or offering for sale in the State any polystyrene loose fill packaging, commonly known as packing peanuts.

A person who violates the provisions of the bill would be subject to a civil administrative penalty of between \$1,000 and \$25,000 for each violation, and each day during which the violation continues would constitute an additional, separate, and distinct offense. The amount of any civil administrative penalty would be assessed pursuant to rules and regulations adopted by the DEP for violations of similar type, seriousness, and duration. With respect to violations related to the amount of recycled content contained in a manufacturer's products, in lieu of the penalties described above, the DEP would assess a civil administrative penalty on a per-pound basis for each pound of virgin material that is used where recycled material is required. A person who violates the provisions of the bill, and any order issues pursuant thereto, or who fails to pay in full a civil administrative penalty, would be subject, upon order of a court, to a civil penalty not to exceed \$50,000, and each day during which the violation continues would constitute an additional, separate, and distinct offense. In addition to these penalties, a person who knowingly, purposely, or recklessly makes a false or misleading statement to the DEP on any certification or registration would be guilty of a crime of the third degree and subject to a fine of up to \$50,000 and restitution. The bill also establishes other remedies and enforcement mechanisms.

Under the bill, any proprietary information or trade secrets included in any registration, certification, or other document submitted to the DEP would not be made available to the general public under the open public records act.

The bill would require the DEP, in consultation with the Association of New Jersey Recyclers and the Clean Communities Program, to develop and implement a Statewide public information and education

program to encourage, support, and increase the recycling of certain packaging products and containers.

Finally, the bill would preempt any municipal rule, regulation, code, or ordinance regulating postconsumer recycled content of certain packaging products and containers.

COMMITTEE AMENDMENTS:

The committee amendments to the bill would:

- (1) clarify the definition of "manufacturer;"
- (2) require manufacturers to use State-specific data to calculate the average amount of recycled content in their products, unless such data is unavailable, in which case manufacturers may use nationwide data;
- (3) provide that manufacturers may satisfy the labeling requirements of the bill by using a URL or QR code;
- (4) increase the recycled content requirements for plastic trash bags to 20 percent, beginning five years after the bill's effective date, and remove composting bags from the definition of "plastic trash bag";
- (5) make the bill's exemption for medical food, infant formula, and milk products permanent, rather than temporary;
- (6) provide that the bill's requirements would not apply to food containers and packages (except for beverage containers made of plastic or glass) until five years after the bill's effective date;
- (7) provide that manufacturers may apply to the DEP for a waiver from the bill's provisions due to an inadequate availability of recycled material;
- (8) provide that the DEP may issue a waiver from the bill's provisions for a period not to exceed two years, rather than an unspecified period;
- (9) require the DEP to publish final alternative compliance plans it approves on its Internet website;
- (10) clarify that manufactures that produce products that are not covered by the bill would only be required to register once with the DEP and would be exempt from the registration fee;
- (11) provide that the DEP may, rather than shall, audit, or cause to be audited, a random sample of manufacturers in order to determine compliance with the provisions of the bill;
- (12) authorize the DEP to require that a manufacturer submit an independent, third-party verification of the compliance certification required by the bill;
- (13) reduce the maximum civil and civil administrative penalties authorized by the bill to \$50,000 and \$25,000, respectively;
- (14) provide that, for manufacturers that fail to use enough recycled content but otherwise comply with the bill's provisions, the DEP would assess a civil administrative penalty that is proportional to the amount of excess virgin material used;

(15) authorize the DEP, as one of its enforcement mechanisms, to notify the public of any manufacturer that is out of compliance with the bill's provisions;

(16) add a timeframe for the DEP to adopt rules and regulations no later than two years after the bill is enacted into law;

(17) require the DEP, rather than the Advisory Council on Solid Waste Management, to prepare the report required pursuant to section 23 of the bill; and

(18) make other clarifying and technical changes to the bill.

FISCAL IMPACT:

The Office of Legislative Services (OLS) determines that there will be a marginal expenditure increase from the State General Fund by the DEP to implement the bill's postconsumer recycling content requirements. The OLS determines that the requirements of this bill would require hiring additional personnel. The DEP assumes that the cost of hiring one additional person to fulfil the requirements of the bill would be \$80,000 annually.

The OLS notes that there may also be a marginal increase in State revenues from registration fees and civil penalties established pursuant to the bill. The precise revenue increase cannot be determined as it depends on the number of manufacturers that will be required to pay the registration fee and on the number of manufacturers that violate the provisions of the bill and are assessed penalties.