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SECOND REGULAR SESSION-2020

Legislative Document

No. 2104

H.P. 1500

House of Representatives, February 13, 2020

An Act To Support and Increase the Recycling of Packaging

Reported by Representative TUCKER of Brunswick for the Joint Standing Committee on Environment and Natural Resources pursuant to Resolve 2019, chapter 42, section 2.

Reference to the Committee on Environment and Natural Resources suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 38 MRSA §2146** is enacted to read:

3 **§2146. Stewardship program for packaging**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Alternative collection program" means a program for the management of
7 packaging material that is operated by an individual producer or group of producers
8 and that has been approved by the department in accordance with subsection 9.

9 B. "Brand" has the same meaning as in section 1771, subsection 1.

10 C. "Franchisee" means a person that is granted a license by a franchisor to use the
11 franchisor's trade name, service mark or related characteristic and to share in the
12 franchisor's proprietary knowledge or processes pursuant to an oral or written
13 arrangement for a definite or indefinite period.

14 D. "Franchisor" means a person that grants to a franchisee a license to use the
15 person's trade name, service mark or related characteristic and to share in the person's
16 proprietary knowledge or processes pursuant to an oral or written arrangement for a
17 definite or indefinite period.

18 E. "Municipality" means a city, town, township, village or plantation.

19 F. "Packaging material" means a discrete type of material, or a category of material
20 that includes multiple discrete types of material with similar management
21 requirements and similar commodity values, used for the containment, protection,
22 delivery, presentation or distribution of a product at the time that the product leaves a
23 point of sale with the end user of the product. "Packaging material" does not include:

24 (1) A discrete type of material, or a category of material that includes multiple
25 discrete types of material, intended to be used for the long-term storage or
26 protection of a durable product and that can be expected to be usable for that
27 purpose for a period of at least 5 years; or

28 (2) A discrete type of material, or a category of material that includes multiple
29 discrete types of material, that is a beverage container, as defined in section 3102,
30 subsection 2, subject to the requirements of chapter 33.

31 G. "Packaging stewardship fund" or "fund" means a privately held account
32 established and managed by the stewardship organization pursuant to subsection 11.

33 H. "Packaging stewardship organization" or "stewardship organization" means the
34 entity contracted by the department under subsection 2 to operate the packaging
35 stewardship program.

36 I. "Packaging stewardship plan" or "plan" means the plan submitted to the
37 department for approval pursuant to subsection 3 to be implemented by the
38 stewardship organization.

1 J. "Packaging stewardship program" or "program" means the program implemented
2 under this section by the stewardship organization to assess and collect payments
3 from producers based on the weight of packaging material sold, offered for sale or
4 distributed for sale in the State by each producer and to reimburse participating
5 municipalities for certain incurred municipal recycling and waste management costs.

6 K. "Participating municipality" means a municipality that has complied with the
7 requirements of subsection 10 and is eligible for reimbursement of certain costs in
8 accordance with subsection 11.

9 L. "Producer" means a person that:

10 (1) Has legal ownership of the brand of a product sold, offered for sale or
11 distributed for sale in the State contained, protected, delivered, presented or
12 distributed in or using packaging material;

13 (2) Imports into the State for sale or distribution in the State a product contained,
14 protected, delivered, presented or distributed in or using packaging material that
15 is branded by a person that meets the requirements of subparagraph (1) and has
16 no physical presence in the United States; or

17 (3) Sells, offers for sale or distributes for sale in the State, at wholesale or retail,
18 a product contained, protected, delivered, presented or distributed in or using
19 packaging material; that does not have legal ownership of the brand of the
20 product; and that elects to fulfill the responsibilities of the producer under this
21 section for that product.

22 "Producer" includes a franchisor of a franchise located in the State, but does not
23 include the franchisee operating that franchise.

24 M. "Proprietary information" has the same meaning as in section 1771, subsection
25 6-A.

26 N. "Readily recyclable" means, with respect to a type of packaging material, that the
27 type of packaging material, as annually determined by the department pursuant to
28 subsection 12, paragraph C:

29 (1) Can be sorted by entities that process recyclable material generated in the
30 State; and

31 (2) Has a consistent market for purchase, as based on data from the prior 2
32 calendar years. For the purposes of this subparagraph, "consistent market for
33 purchase" means, with respect to a type of packaging material, that entities
34 processing recyclable material are willing to purchase full bales of that type of
35 fully sorted packaging material in quantities equal to or in excess of the supply of
36 that fully sorted packaging material.

37 "Readily recyclable" does not include types of packaging material that entities that
38 process recyclable material generally accept only in small quantities or that such
39 entities typically sort out from other recyclable material during processing.

40 O. "Recycling" has the same meaning as in section 1771, subsection 7.

1 P. "Similar municipalities" means 2 or more municipalities that, as annually
2 determined by the department pursuant to subsection 12, paragraph D, have similar
3 population sizes and similar geographic locations.

4 Q. "Toxicity" means, with respect to packaging material, the presence in packaging
5 material of prohibited chemicals, food contact chemicals of high concern or priority
6 food contact chemicals regulated pursuant to Title 32, chapter 26-B.

7 **2. Selection of stewardship organization; contract.** Consistent with the
8 requirements of this subsection, the department shall select and enter into a contract with
9 a packaging stewardship organization to operate the packaging stewardship program
10 under this section.

11 A. Consistent with applicable competitive bidding requirements under state
12 purchasing laws, on or before April 1, 2021, the department shall issue a request for
13 proposals for the operation of the packaging stewardship program by a packaging
14 stewardship organization. The proposals must be required to cover a 10-year
15 operation of the packaging stewardship program by the successful applicant and must
16 be required to include, at a minimum:

17 (1) A description of how the applicant will administer the stewardship
18 organization, including evidence that the individuals who will administer the
19 stewardship organization have adequate training and qualifications for such
20 administration;

21 (2) A description of how the applicant intends to solicit and consider input from
22 interested persons regarding the development of the applicant's packaging
23 stewardship plan and regarding the applicant's operation of the packaging
24 stewardship program, if selected;

25 (3) A description of how the applicant intends to establish and manage the
26 packaging stewardship fund consistent with the requirements of subsection 11,
27 including, but not limited to:

28 (a) The staffing the applicant intends to use for management of the fund, for
29 providing technical support to producers and municipalities regarding
30 program requirements and for administering payments to and
31 reimbursements from the fund; and

32 (b) The intended allocation and disbursement of funds for education and
33 infrastructure purposes consistent with subsection 11, paragraph F,
34 subparagraph (3), including identification of strategies for improving
35 recycling infrastructure in the State, a description of how the applicant will
36 solicit and consider input from interested persons regarding the prioritization
37 of such allocations and disbursements and a description of how the allocation
38 and disbursement process will use a grant system that allows municipalities,
39 producers and alternative collection program operators to receive the
40 allocations and disbursements;

41 (4) A proposed financial assurance plan that ensures all funds held in the
42 packaging stewardship fund are immediately and exclusively forfeited and
43 transferred to or otherwise made immediately available to the department when

1 the stewardship organization's contract with the department is terminated by the
2 department or expires, unless the stewardship organization enters into a new
3 contract with the department in accordance with paragraph B prior to the
4 expiration of the stewardship organization's existing contract;

5 (5) A proposed budget outlining the anticipated costs of operating the packaging
6 stewardship program, including identification of any start-up costs that will not
7 be ongoing and a description of the method by which the applicant intends to
8 determine and collect producer payments during the first year of program
9 operation to fund the program's operational costs during that first year and to
10 reimburse or require additional payments by those producers subsequent to that
11 first year based on producer reporting of the actual amount of packaging material
12 sold, offered for sale or distributed for sale in the State by each producer during
13 that first year. The proposed budget under this subparagraph may overestimate
14 the cost of operating the program during its first year of operation but must
15 describe the method and basis for any overestimate;

16 (6) A certification that the applicant will not share, except with the department,
17 information provided to the applicant by a producer that is proprietary
18 information and that is identified by the producer as proprietary information. The
19 certification must include a description of the methods by which the applicant
20 intends to ensure the confidentiality of such information; and

21 (7) Any additional information required by the department.

22 B. In accordance with applicable requirements of state purchasing laws, the
23 department shall enter into a contract with an applicant that has submitted a proposal
24 in accordance with the requirements of this subsection, the term of which must cover
25 10 years of operation of the packaging stewardship program by the stewardship
26 organization. The contract must, at a minimum, include:

27 (1) Provisions requiring the stewardship organization to operate the program
28 pursuant to that contract until the contract expires, the stewardship organization is
29 unable to continue to perform its duties under the contract or the department
30 terminates the contract as described in subparagraph (2). These provisions must
31 include, but are not limited to:

32 (a) A requirement that the stewardship organization submit a packaging
33 stewardship plan to the department for review and approval in accordance
34 with subsection 3 within a specified time frame, implement that plan in
35 accordance with subsection 5 within a specified time frame if approved and,
36 as necessary and in accordance with subsection 4, implement amendments to
37 the plan or corrective actions to the program;

38 (b) A requirement that the stewardship organization operate the packaging
39 stewardship program under this section in a manner consistent with the
40 approved plan and applicable provisions of the contract;

41 (c) A requirement that the stewardship organization establish and manage a
42 packaging stewardship fund in accordance with subsection 11; and

1 (d) A requirement that the stewardship organization report annually to the
2 department in accordance with subsection 6;

3 (2) Provisions ensuring the ability of the department to terminate the contract if
4 the stewardship organization fails to comply with all provisions of the contract
5 and with the provisions of the packaging stewardship plan, to be approved by the
6 department under subsection 4, or if the department, pursuant to subsection 4,
7 requires the stewardship organization to implement an amendment to the
8 approved plan or a corrective action and the stewardship organization fails to
9 implement the amendment or corrective action within the required time frame;
10 and

11 (3) Provisions requiring all funds held in the packaging stewardship fund to be
12 immediately and exclusively forfeited and transferred to or otherwise made
13 immediately available to the department at the time that the stewardship
14 organization's contract with the department expires or is terminated by the
15 department in accordance with the financial assurance plan as described in
16 paragraph A, subparagraph (4).

17 If, at the close of the competitive bidding process under this subsection, the department
18 determines that no applicant has submitted, in accordance with this subsection, a proposal
19 that meets the requirements of this subsection, the department may reopen a new
20 competitive bidding process under this subsection.

21 **3. Submission of plan.** In accordance with the time frame for submission of a plan
22 included within the stewardship organization's contract with the department pursuant to
23 subsection 2, paragraph B, the stewardship organization shall submit a plan for the
24 establishment of the packaging stewardship program to the department for approval. The
25 plan must include, at a minimum:

26 A. The information described in subsection 2, paragraph A, updated as necessary and
27 as may be required by the department;

28 B. A proposed schedule for implementation of the plan, which must incorporate
29 input solicited from interested persons by the stewardship organization;

30 C. A proposed schedule of adjustments to be used in determining the amount of
31 producer payments under subsection 7, paragraph A, subparagraph (3) that reflects a
32 producer's use of recycled content in packaging material or the toxicity of a
33 producer's packaging material and other incentives consistent with generally accepted
34 industry standards. The schedule must:

35 (1) Reward changes to recycled content at multiple levels with benefits of
36 sufficient magnitude to incentivize implementation of those changes, as
37 supported by evidence from past fee adjustments or similar incentives employed
38 in other jurisdictions;

39 (2) Incentivize reductions in or other modifications to the toxicity of packaging
40 material; and

41 (3) Provide for input from interested parties regarding the inclusion of additional
42 adjustments consistent with generally accepted industry standards;

1 D. Information regarding the determination and collection of producer payments,
2 including:

3 (1) A description of the information to be collected from producers to determine
4 those payments;

5 (2) An analysis of the extent to which producer reporting of such information is
6 consistent with similar reporting requirements in other jurisdictions;

7 (3) A description of how such information will be provided to the stewardship
8 organization, which must include a mechanism or process, developed with input
9 from producers, by which producers may request and receive assistance from the
10 stewardship organization in the reporting of such information; and

11 (4) A description of the time frame, developed with input from producers, for
12 gathering and analyzing such information and requiring and receiving such
13 payments;

14 E. A description of how the stewardship organization, using the information reported
15 by municipalities pursuant to subsection 10, will determine:

16 (1) A collection cost for each type of packaging material that is readily
17 recyclable and is collected by a municipality through a curbside collection
18 process;

19 (2) A collection cost and an on-site processing cost for each type of packaging
20 material that is readily recyclable and is collected by a municipality using a drop-
21 off site for source-separated packaging material that is processed on site and for
22 packaging material sent to an off-site facility for processing as part of a recycling
23 stream that contains multiple types of packaging material;

24 (3) A transportation cost for the recycling of each type of packaging material that
25 is readily recyclable and is collected by a municipality; and

26 (4) A collection cost and a transportation cost for each type of packaging
27 material that is not readily recyclable and is collected by a municipality as
28 municipal solid waste.

29 The method of determining costs under this paragraph that is used by the stewardship
30 organization must, to the extent feasible, reflect best available data with input from
31 interested persons and may not require the collection of information from
32 municipalities in the State that such municipalities are generally unable to provide;

33 F. Information regarding the determination and payment of reimbursements to
34 municipalities in accordance with subsection 11, including:

35 (1) A copy of a form, developed with input from municipalities, that the
36 stewardship organization intends to use to facilitate the collection of the
37 information needed to calculate the costs described in paragraph E, which must
38 be designed to collect all municipal information necessary to ensure accurate
39 producer payments;

40 (2) A description of how the stewardship organization intends to engage
41 municipalities in providing such information, which must include a mechanism

1 or process, developed with input from municipalities, by which municipalities
2 may request and receive assistance from the stewardship organization in the
3 reporting of such information;

4 (3) A description of the time frame, developed with input from municipalities,
5 for gathering and analyzing this information from municipalities; and

6 (4) A description of the time frame and process for reimbursing municipalities in
7 accordance with subsection 11, including a copy of a form that will accompany
8 reimbursement payments from the stewardship organization to a municipality
9 that describes the method by which the stewardship organization determined the
10 amount of the reimbursement;

11 G. A description of how the stewardship organization will facilitate representative
12 3rd-party audits of baled recyclable material processed and sold by facilities that
13 process recyclable material generated in the State, which must include:

14 (1) Information regarding the proposed frequency of, coordination of, funding
15 for and sampling techniques to be used in the audits, which must include random
16 sampling;

17 (2) Information regarding how the audits, at a minimum, will be designed to
18 solicit information regarding the extent to which baled recyclable material
19 processed and sold by the facilities may be deemed to represent the tons of each
20 type of packaging material recycled in the State and regarding the ultimate
21 destination of and intended use for that material;

22 (3) A description of how the audits will be designed so that information obtained
23 through the audit of one facility will not be used to infer information about a
24 different facility that uses different processing equipment, different sorting
25 processes or different staffing levels to conduct such processing;

26 (4) A description of how a facility that has not been audited will be allowed to
27 request and receive an audit if it can credibly demonstrate that an audit result
28 being applied to its material output is not representative of its current operations;
29 and

30 (5) A description of how the audits, with input from facilities that may be subject
31 to audit, will be designed to limit the disruptiveness of the audits; and

32 H. Any additional information required by the department.

33 **4. Approval of plan; plan amendments; corrective actions; contract**
34 **termination.** In accordance with the applicable provisions of this subsection, the
35 department shall review all packaging stewardship plans and amendments to such plans
36 submitted by the stewardship organization, shall require the implementation of corrective
37 actions by the stewardship organization to the packaging stewardship program and may
38 terminate its contract with the stewardship organization.

39 A. The department shall review a packaging stewardship plan submitted by a
40 stewardship organization pursuant to subsection 3 and approve or deny the plan
41 within 120 days of receipt. The department shall approve the plan if the department
42 determines that the plan meets the requirements of subsection 3 and is otherwise

1 consistent with all applicable requirements of this section and applicable provisions
2 of the stewardship organization's contract with the department. If the department
3 approves the plan, the department shall transmit written notice of that approval to the
4 stewardship organization. An approval under this subsection must terminate 5 years
5 from the date of that approval but may be extended for an additional 5-year period
6 following the submission by the stewardship organization of an updated plan
7 consistent with subsection 3 that is approved by the department consistent with this
8 subsection. A stewardship organization that has had a plan approved under this
9 subsection and that intends to submit an updated plan under this subsection before the
10 expiration of its current approved plan must submit that updated plan no later than
11 120 days prior to the date its current plan expires.

12 B. If the department determines that a submitted plan fails to meet all applicable
13 requirements of this section and applicable provisions of the stewardship
14 organization's contract with the department, the department shall provide written
15 notice to the stewardship organization describing the reasons for rejecting the plan.
16 No later than 45 days after receiving written notice rejecting a submitted plan, the
17 stewardship organization may revise and resubmit the plan to the department. The
18 department shall review the revised plan, decide whether to approve it and provide
19 written notice of the department's decision within 45 days of receipt of the revised
20 plan.

21 C. If the department rejects a submitted plan and the stewardship organization fails
22 to submit a revised plan to the department that the department approves in accordance
23 with paragraph B, the department shall terminate the contract with the stewardship
24 organization entered into pursuant to subsection 2 and may reopen a new competitive
25 bidding process pursuant to subsection 2.

26 D. An amendment to an approved plan proposed by the stewardship organization
27 must be submitted to the department for review and approval prior to the
28 implementation of that change. The department shall review and approve or deny
29 plan amendments in the same manner as it reviews and approves or denies a plan
30 under paragraphs A and B. The department may waive payment of any fees
31 associated with review and approval of an amendment to an approved plan.

32 E. If, based on its review of the stewardship organization's annual report required
33 under subsection 6 or on a different basis, the department determines that the
34 stewardship organization is not operating the packaging stewardship program in a
35 manner consistent with its approved plan, its contract with the department or the
36 provisions of this section, the department may require the stewardship organization to
37 implement amendments to the plan or corrective actions to the program. If the
38 stewardship organization fails to implement a department-required amendment to the
39 plan or corrective action to the program within the time frame for implementation
40 required by the department and the department determines that termination of the
41 contract is warranted due to that failure, the department shall terminate the contract.

42 F. If the department for any reason terminates the stewardship organization's contract
43 after the stewardship organization has implemented an approved plan under
44 subsection 5 but prior to the expiration of that contract, until such time as a successor

1 stewardship organization is contracted by the department following a competitive
2 bidding process conducted in accordance with subsection 2, the department may:

3 (1) Take all necessary steps to ensure that the stewardship organization
4 immediately transfers to the department all remaining funds in the packaging
5 stewardship fund consistent with the financial assurance plan described in
6 subsection 2, paragraph A, subparagraph (4), as incorporated into the stewardship
7 organization's contract with the department and the approved plan;

8 (2) Deposit the transferred funds into an appropriate departmental account; and

9 (3) Manage or expend the transferred funds in a manner consistent with the
10 provisions of this section.

11 **5. Implementation of plan; prohibition; producer compliance information.** In
12 accordance with the schedule for implementation included in the stewardship
13 organization's plan under subsection 3, paragraph B and any applicable terms of its
14 contract with the department, the stewardship organization shall implement the plan
15 following department approval under subsection 4.

16 A. Following implementation of the plan under this subsection:

17 (1) A producer not in compliance with all applicable requirements of this section
18 may not sell, offer for sale or distribute for sale in the State a product contained,
19 protected, delivered, presented or distributed in or using packaging material and
20 must provide all necessary support to retailers in the State to ensure that such
21 products are not sold, offered for sale or distributed for sale in the State; and

22 (2) A retailer in the State may not sell, offer for sale or distribute for sale in the
23 State a product contained, protected, delivered, presented or distributed in or
24 using packaging material if, based on the information made available by the
25 department pursuant to paragraph C, the producer of that product is not in
26 compliance with all applicable requirements of this section.

27 B. Following implementation of the plan under this subsection, the stewardship
28 organization shall provide to the department a list of producers that are participating
29 in the program and are compliant with the program's requirements and, if known to
30 the stewardship organization, a list of producers that are not participating in the
31 program and are not compliant with the program's requirements. The stewardship
32 organization shall in a timely manner provide to the department any updated
33 information regarding producer compliance when such information becomes known
34 to the stewardship organization.

35 C. Based on the information provided to the department under paragraph B and any
36 other information considered by the department, the department shall make available
37 on its publicly accessible website a list of producers that the department has
38 determined are compliant with all applicable requirements of this section and a list of
39 producers that the department has determined are not compliant with all applicable
40 requirements of this section. The department shall periodically update that
41 information based on additional information provided by the stewardship
42 organization or any other information available to the department. The department

1 shall conduct outreach to retailers to ensure that retailers are aware of the information
2 made available under this paragraph and any changes to that information.

3 **6. Annual reporting by stewardship organization.** On or before October 1st of the
4 calendar year following the calendar year in which an approved plan is implemented
5 under subsection 5, and annually thereafter, the stewardship organization shall submit a
6 report to the department that includes, at a minimum, the following information:

7 A. Contact information for the stewardship organization;

8 B. A list of participating producers and the brands of products associated with those
9 producers;

10 C. The total amounts of each type of packaging material sold, offered for sale or
11 distributed for sale in the State by each participating producer;

12 D. As applicable, the total amount of each type of packaging material collected and
13 managed by each participating producer through alternative collection programs
14 approved by the department under subsection 9;

15 E. A complete accounting of payments made to and by the stewardship organization
16 during the prior calendar year, including information on how the stewardship
17 organization determined the amount of such payments;

18 F. A list of producers not participating in the program that are required to participate
19 in the program, if known by the stewardship organization;

20 G. An analysis of education and infrastructure investments made by the stewardship
21 organization in prior calendar years, including information on the results of those
22 investments and proposals for investments to be made in the current calendar year
23 consistent with subsection 11, paragraph F, subparagraph (3); and

24 H. Any additional information required by the department.

25 **7. Producer payments.** In accordance with the provisions of this subsection and the
26 stewardship organization's approved plan, a producer shall make payments to the
27 stewardship organization, to be deposited into the packaging stewardship fund under
28 subsection 11, based on the amount of each type of packaging material sold, offered for
29 sale or distributed for sale in the State by the producer and not managed under an
30 approved alternative collection program.

31 A. For a packaging material type that is readily recyclable, the stewardship
32 organization shall annually determine the amount that a producer is required to pay to
33 the stewardship organization as follows:

34 (1) The stewardship organization shall determine the statewide cost per ton paid
35 by participating municipalities to recycle that type of packaging material in the
36 prior calendar year;

37 (2) The stewardship organization shall determine the total amount in tons of the
38 type of packaging material in question that the producer sold, offered for sale or
39 distributed for sale in the State in the prior calendar year;

1 (3) The stewardship organization shall adjust the figure determined under
2 subparagraph (2) to account for the use of recycled content in and the toxicity of
3 that type of packaging material that was sold, offered for sale or distributed for
4 sale in the State by the producer in the prior calendar year and shall further adjust
5 the figure based on other incentives consistent with generally accepted industry
6 standards, as provided in the stewardship organization's approved plan;

7 (4) The stewardship organization shall total all of the figures determined in
8 accordance with subparagraph (3) for every producer that sold, offered for sale or
9 distributed for sale in the State the packaging material type in question in the
10 prior calendar year and that is required to make payments under this subsection;

11 (5) The stewardship organization shall divide the figure determined under
12 subparagraph (3) by the figure determined under subparagraph (4);

13 (6) From the figure determined under subparagraph (2), the stewardship
14 organization shall subtract the total amount in tons of the type of packaging
15 material in question that the producer managed under an approved alternative
16 collection program;

17 (7) The stewardship organization shall multiply the figure determined under
18 subparagraph (5) by the figure determined under subparagraph (6); and

19 (8) The stewardship organization shall multiply the figure determined under
20 subparagraph (1) by the figure determined under subparagraph (7).

21 B. For a packaging material type that is not readily recyclable, the stewardship
22 organization shall annually determine the amount that a producer is required to pay to
23 the stewardship organization as follows:

24 (1) The stewardship organization shall determine the total costs paid by all
25 participating municipalities in the prior calendar year to dispose of municipal
26 solid waste;

27 (2) The stewardship organization shall determine the total tons of municipal
28 solid waste disposed of by all participating municipalities in the prior calendar
29 year;

30 (3) The stewardship organization shall divide the figure determined under
31 subparagraph (1) by the figure determined under subparagraph (2);

32 (4) The stewardship organization shall determine the total amount in tons of the
33 type of packaging material in question that the producer sold, offered for sale or
34 distributed for sale in the State in the prior calendar year; and

35 (5) The stewardship organization shall multiply the figure determined under
36 subparagraph (4) by the greater of:

37 (a) Two times the statewide cost per ton paid by participating municipalities
38 in the prior calendar year to recycle the readily recyclable packaging material
39 with the greatest statewide per ton recycling cost; and

40 (b) Two times the figure determined under subparagraph (3).

1 **8. Annual reporting by producers.** In accordance with the requirements of the
2 stewardship organization's approved plan, a producer shall annually report to the
3 stewardship organization the total tons of each type of packaging material sold, offered
4 for sale or distributed for sale in the State by the producer in the prior calendar year; the
5 characteristics of that packaging material that are relevant to the fee adjustment criteria
6 contained in the approved plan; and a list of all of the producer's brands associated with
7 that packaging material.

8 **9. Alternative collection programs.** In accordance with the requirements of this
9 subsection, a producer or group of producers may develop and operate an alternative
10 collection program to collect and manage a type or types of packaging material sold,
11 offered for sale or distributed for sale in the State by the producer or producers. A
12 producer that manages a type of packaging material under an approved alternative
13 collection program may wholly or partially offset the producer's payment obligations
14 under the packaging stewardship program with respect to that same type of packaging
15 material only.

16 A. A producer or group of producers seeking to implement an alternative collection
17 program shall submit a proposal for the establishment of that program to the
18 department for approval. The department shall review the proposal and shall approve
19 or deny the proposal within 120 days of receipt. Any approval under this subsection
20 must terminate 5 years from the date of that approval but may be extended for
21 additional 5-year periods following the submission by the producer or producers of
22 an updated proposal that is approved by the department consistent with this
23 subsection. A producer or group of producers that has a proposal approved under this
24 subsection and that intends to submit an updated proposal under this subsection
25 before the expiration of its current approved proposal shall submit that updated
26 proposal no later than 120 days prior to the date its current proposal expires.

27 B. In determining whether to approve a proposal for the establishment of an
28 alternative collection program, the department shall consider:

29 (1) Whether the alternative collection program will provide convenient, free,
30 statewide collection opportunities for the types of packaging material to be
31 collected under that program;

32 (2) To what extent the alternative collection program intends to manage those
33 types of packaging material to be collected under the program through reuse for
34 an original purpose, through recycling or through disposal by incineration at an
35 incineration facility. The department may not approve an alternative collection
36 program that proposes management of a packaging material type through
37 disposal by incineration at an incineration facility unless that packaging material
38 is not readily recyclable and the program proposes a process to begin reuse or
39 recycling of that type of packaging material within a period of 5 years or less;

40 (3) Whether the education and outreach strategies proposed for the alternative
41 collection program can be expected to increase consumer awareness of the
42 program throughout the State; and

1 (4) How the alternative collection program intends to accurately measure the
2 amount of each packaging material type collected, reused, recycled, incinerated
3 or otherwise managed under the program.

4 C. A change to an approved alternative collection program must be submitted to the
5 department for review and approval prior to implementation of that change. The
6 department may waive payment of any fees associated with review and approval of a
7 proposed change to an approved program.

8 D. The producer or producers managing an approved alternative collection program
9 shall report annually to the stewardship organization and to the department the
10 following information:

11 (1) The total tons of each type of packaging material collected, reused, recycled,
12 incinerated at an incineration facility or otherwise managed under the alternative
13 collection program in the prior calendar year, including a breakdown of the total
14 tons of each type of material by participating producers;

15 (2) A list of the collection opportunities in the State for the types of packaging
16 material managed under the alternative collection program that were made
17 available in the prior calendar year;

18 (3) A description of the education and outreach strategies implemented by the
19 alternative collection program in the prior calendar year to increase consumer
20 awareness of the program throughout the State; and

21 (4) Any additional information required by the department.

22 E. If, based on its review of the annual report required under paragraph D or on a
23 different basis, the department determines that an approved alternative collection
24 program is not operating in a manner consistent with the proposal approved under
25 this subsection or the provisions of this subsection, the department may require the
26 producer or producers operating the program to implement corrective actions. If the
27 producer or producers fail to implement a department-required corrective action
28 within the time frame for implementation required by the department, the department
29 may determine that the producer or producers are no longer eligible to offset payment
30 obligations under the packaging stewardship program based on the management of
31 packaging material under the alternative collection program and shall communicate
32 that determination to the stewardship organization.

33 **10. Annual reporting by municipalities.** In accordance with the provisions of this
34 subsection, a municipality may elect to, but is not required to, participate in the packaging
35 stewardship program under this section.

36 A. To be eligible for reimbursement of costs under subsection 11 as a participating
37 municipality, a municipality must annually report to the stewardship organization all
38 information necessary for the stewardship organization to determine the
39 municipality's incurred costs for the recycling of recyclable material and for the
40 disposal of municipal solid waste, which must include, but is not limited to:

1 (1) Any costs incurred by the municipality in collecting, processing on site and
2 transporting recyclable material and the revenue realized by the municipality in
3 selling any recyclable material collected; and

4 (2) Any costs incurred by the municipality in disposing of municipal solid waste,
5 including tipping fees paid, the tons of such waste disposed of, the costs incurred
6 in transporting such waste for disposal and the costs incurred in the collection
7 and processing on site of such waste.

8 B. A municipality shall report the information described in paragraph A on a form
9 provided by the stewardship organization, as approved by the department consistent
10 with subsection 3, paragraph F, subparagraph (1).

11 C. Two or more municipalities may elect to jointly report to the stewardship
12 organization the information described in paragraph A based on aggregated data from
13 the municipalities.

14 **11. Packaging stewardship fund; municipal reimbursements; additional**
15 **authorized expenditures.** In accordance with the provisions of this subsection, the
16 stewardship organization shall establish and manage a packaging stewardship fund. The
17 stewardship organization shall deposit into the fund all payments received from producers
18 in accordance with subsection 7. Based on the information in paragraph A and the
19 determinations in paragraph B and in accordance with the determinations in paragraphs C
20 and D, the stewardship organization shall disburse from the fund payments to
21 participating municipalities to reimburse those municipalities for certain costs incurred in
22 the recycling of recyclable material and the disposal of municipal solid waste.

23 A. The stewardship organization shall determine the amount of reimbursements to
24 participating municipalities under this subsection based on the following information:

25 (1) The information provided by participating municipalities in accordance with
26 subsection 10 regarding the costs incurred by those municipalities in recycling
27 recyclable material, the costs incurred in disposing of municipal solid waste and
28 the tons of municipal solid waste disposed of;

29 (2) The information provided to the department by recycling establishments
30 pursuant to section 2145, including the tons of recyclable material received by
31 each recycling establishment from each participating municipality and the tons of
32 processed recyclable material sold by each recycling establishment; and

33 (3) The information obtained by the stewardship organization from 3rd-party
34 audits conducted consistent with subsection 3, paragraph G identifying the
35 amount of each type of packaging material in the average bale processed at
36 facilities that process recyclable material generated in the State.

37 B. The stewardship organization shall use the information described in paragraph A
38 to determine the total tons of recyclable material recycled by all municipalities at
39 each recycling establishment and the percentage of those total tons attributable to
40 each participating municipality. In the case of 2 or more municipalities that jointly
41 send recyclable material to a recycling establishment, the stewardship organization
42 shall assume that an equal amount of the jointly sent material is attributable to each
43 resident of each municipality unless those municipalities by agreement identify an

1 unequal per capita division of that jointly sent material for the purposes of this
2 subsection.

3 C. With respect to the recycling of a type of packaging material that is readily
4 recyclable, the stewardship organization shall annually determine the amount of a
5 participating municipality's reimbursement as follows:

6 (1) The stewardship organization shall determine the total cost incurred by all
7 similar municipalities in collecting that type of packaging material and in
8 processing the collected packaging material on site in the prior calendar year;

9 (2) To the figure determined under subparagraph (1), the stewardship
10 organization shall add the total cost incurred by all similar municipalities in
11 transporting the collected and processed packaging material to market for sale in
12 the prior calendar year;

13 (3) From the figure determined under subparagraph (2), the stewardship
14 organization shall subtract the total revenue realized by all similar municipalities
15 in selling that type of packaging material at market in the prior calendar year;

16 (4) The stewardship organization shall divide the figure determined under
17 subparagraph (3) by the total tons of the type of packaging material in question
18 collected, processed on site and transported to market for sale by all similar
19 municipalities in the prior calendar year; and

20 (5) The stewardship organization shall multiply the figure determined under
21 subparagraph (4) by the total tons of that type of packaging material actually
22 recycled by the participating municipality in the prior calendar year.

23 D. With respect to the recycling of a type of packaging material that is not readily
24 recyclable, the stewardship organization shall annually determine the amount of a
25 participating municipality's reimbursement as follows:

26 (1) The stewardship organization shall determine the cost per ton paid by
27 producers for that type of packaging material in accordance with subsection 7,
28 paragraph B; and

29 (2) The stewardship organization shall multiply the figure determined under
30 subparagraph (1) by the total tons of that type of packaging material actually
31 recycled by the participating municipality in the prior calendar year.

32 A participating municipality is not eligible for reimbursement under this paragraph if
33 it does not actually recycle packaging material that is not readily recyclable.

34 E. In addition to any reimbursements that may be paid to a participating municipality
35 pursuant to paragraphs C and D, the stewardship organization shall pay to each
36 participating municipality a per capita payment to offset the municipality's costs
37 incurred in collecting, transporting and disposing of types of packaging material that
38 are not readily recyclable. The stewardship organization shall annually determine the
39 per capita payment to a participating municipality as follows.

40 (1) For a municipality that disposes of its municipal solid waste through
41 landfilling and is located more than 100 miles from an incineration facility with

1 available capacity or for a municipality that disposes of its municipal solid waste
2 by incineration at an incineration facility, the stewardship organization shall:

3 (a) Divide the total cost in tipping fees paid by all such municipalities for the
4 disposal of municipal solid waste during the prior calendar year by the total
5 tons of municipal solid waste disposed of by all such municipalities in the
6 prior calendar year;

7 (b) Add to the figure determined under division (a) the median cost per ton
8 incurred by similar municipalities in collecting municipal solid waste for
9 disposal in the prior calendar year;

10 (c) Add to the figure determined under division (b) the median cost per ton
11 incurred by similar municipalities in transporting collected municipal solid
12 waste for disposal in the prior calendar year;

13 (d) Multiply the figure determined under division (c) by 0.5;

14 (e) Multiply the figure determined under division (d) by the total tons of all
15 types of packaging material that are not readily recyclable that were sold,
16 offered for sale or distributed for sale in the State and not managed under an
17 approved alternative collection program or under a municipally managed
18 recycling program during the prior calendar year;

19 (f) Divide the population of the municipality in question by the population of
20 the State, as based on population data from the most recent United States
21 census; and

22 (g) Multiply the figure determined under division (e) by the figure
23 determined under division (f).

24 (2) For a municipality that disposes of its municipal solid waste through
25 landfilling and is located 100 miles or less from an incineration facility with
26 available capacity, the stewardship organization shall:

27 (a) Divide the total cost in tipping fees paid by all such municipalities for the
28 disposal of municipal solid waste during the prior calendar year by the total
29 tons of municipal solid waste disposed of by all such municipalities in the
30 prior calendar year;

31 (b) Multiply the figure determined under division (a) by 0.5;

32 (c) Add to the figure determined under division (b) the median cost per ton
33 incurred by similar municipalities in collecting municipal solid waste for
34 disposal in the prior calendar year;

35 (d) Add to the figure determined under division (c) the median cost per ton
36 incurred by similar municipalities in transporting collected municipal solid
37 waste for disposal in the prior calendar year;

38 (e) Multiply the figure determined under division (d) by 0.5;

39 (f) Multiply the figure determined under division (e) by the total tons of all
40 types of packaging material that are not readily recyclable that were sold,
41 offered for sale or distributed for sale in the State and not managed under an

1 approved alternative collection program or under a municipally managed
2 recycling program during the prior calendar year;

3 (g) Divide the population of the municipality in question by the population
4 of the State, as based on population data from the most recent United States
5 census; and

6 (h) Multiply the figure determined under division (f) by the figure
7 determined under division (g).

8 F. In each calendar year, the stewardship organization shall expend any funds within
9 the fund that remain after payment of all reimbursements to participating
10 municipalities in the prior calendar year for the following purposes:

11 (1) The stewardship organization shall use those remaining funds to cover its
12 actual operating costs, except that such costs may not exceed the estimated
13 operating costs indicated in its contract with the department entered into pursuant
14 to subsection 2 and such costs must be verified through a 3rd-party audit;

15 (2) The stewardship organization shall use any remaining funds not expended
16 pursuant to subparagraph (1) to pay to the department all applicable fees due
17 pursuant to subsection 12, paragraph A;

18 (3) The stewardship organization shall use any remaining funds not expended
19 pursuant to subparagraphs (1) and (2) to propose and, with the approval of the
20 department in accordance with this subparagraph, implement investments in
21 education or infrastructure that support the recycling of packaging material in the
22 State.

23 (a) Investments in education or infrastructure under this subparagraph must
24 first be submitted by the stewardship organization to the department for
25 approval.

26 (b) The department may by rule adopt criteria to be used in determining
27 whether to approve investments in education or infrastructure proposed by
28 the stewardship organization under this subparagraph.

29 (c) The department shall approve or reject a proposal for investment in
30 education or infrastructure within 90 days of receipt of the proposal; and

31 (4) The stewardship organization shall pay to the department any remaining
32 funds not expended pursuant to subparagraphs (1), (2) and (3) and the department
33 shall deposit those funds into the Maine Solid Waste Management Fund
34 established under section 2201 and ensure that all such funds deposited are
35 designated for use in the Maine Solid Waste Diversion Grant Program
36 established under section 2201-B, except that any remaining funds identified
37 under this subparagraph that were received during the first year of program
38 operation that are necessary to cover the stewardship organization's anticipated
39 operating costs during the 2nd year of program operation must be retained by the
40 stewardship organization to cover those operating costs.

41 G. Notwithstanding any provision of this subsection to the contrary, the stewardship
42 organization is required to provide reimbursements to participating municipalities in

1 accordance with this subsection only to the extent that there are sufficient funds
2 within the fund to provide such reimbursements.

3 **12. Administration and enforcement; rulemaking; fees; additional agency**
4 **responsibilities.** The department shall administer and enforce this section and may adopt
5 rules as necessary to implement, administer and enforce this section. Rules adopted
6 pursuant to this section are routine technical rules as defined in Title 5, chapter 375,
7 subchapter 2-A.

8 A. The department shall require the stewardship organization, when submitting a
9 plan or amendments to that plan, to pay to the department a reasonable fee associated
10 with the department's review of the plan or amendments. The department shall
11 require the stewardship organization to pay to the department an annual fee, not to
12 exceed \$200,000, to cover the department's costs for review of the stewardship
13 organization's annual report and the oversight, administration and enforcement of the
14 packaging stewardship program.

15 B. The department shall require a producer or group of producers, when submitting a
16 proposal for the establishment of an alternative collection program or proposed
17 changes to an approved program, to pay to the department a reasonable fee associated
18 with the department's review of the proposal or proposed changes. The department
19 shall require a producer or group of producers operating an approved alternative
20 collection program to pay to the department an annual fee, not to exceed \$10,000 per
21 program, to cover the department's costs for review of the producer's or group's
22 annual report and the oversight, administration and enforcement of that program.

23 C. The department shall annually solicit input from recycling establishments and
24 facilities that process recyclable material generated in the State regarding the
25 identification of the types of packaging material managed in the State and whether
26 such packaging material is readily recyclable. Based on this information and any
27 other information considered by the department, the department shall annually
28 determine what types of packaging material are to be considered readily recyclable
29 for the purposes of subsection 1, paragraph N.

30 D. The department shall annually identify and group municipalities within the State
31 based on geography, population size and the location of recycling establishments and
32 facilities that process recyclable material generated in the State. Based on this
33 identification and grouping, the department shall annually determine which
34 municipalities are to be considered similar municipalities for the purposes of
35 subsection 1, paragraph P.

36 **13. Small producer exemption.** Notwithstanding any provision of this section to
37 the contrary, a producer is exempt from the requirements and prohibitions of this section
38 in any calendar year in which:

39 A. The producer realized less than \$1,000,000 in gross revenue during the prior
40 calendar year;

41 B. The producer sold, offered for sale or distributed for sale in the State during the
42 prior calendar year products contained, protected, delivered, presented or distributed
43 in or using less than one ton of packaging material in total; or

1 in education and infrastructure aimed at improving recycling outcomes in the State and
2 funding for the Maine Solid Waste Diversion Grant Program established under the Maine
3 Revised Statutes, Title 38, section 2201-B.

4 The committee has not taken a position on the substance of the bill and by reporting
5 this bill out the committee is not suggesting and does not intend to suggest that it agrees
6 or disagrees with any aspect of this bill. The committee is reporting the bill out for the
7 sole purpose of obtaining a printed bill that can be referred to the committee for a public
8 hearing and subsequent committee action in the normal course.