



Testimony to

Senate Standing Committee on Environmental Conservation

Assembly Standing Committee on Environmental Conservation

SUBJECT: Joint Public Hearing to examine effective legislative solutions to reduce packaging

Presented by

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Vice President
October 23, 2023

The Business Council is New York's leading statewide employer association, representing nearly 3,200 businesses and business organizations. We are a large, diverse employer association, with our member companies engaged in most sectors that would be impacted by "expanded producer responsibility" (EPR) legislation, including manufacturers of material feedstocks, packaging, and packaged goods; material and product transportation; wholesale and retail trade; and waste processing and disposal.

There is broad business interest in seeing the adoption of an effective, workable packaging-focused "expanded producer responsibility" statute in New York State.

In addition to directly representing our membership, The Business Council is helping lead an informal coalition of more than one hundred businesses and business organizations from across the U.S., who are also working toward that goal. (While our comments today are informed by input from those coalition members, our testimony is on behalf of The Business Council and its member companies.)

To date, four states have passed broad EPR legislation, with significant differences in their programs' format and focus, which will likely result in inconsistent product and marketing mandates for businesses operating in these states (New Jersey has also recently adopted packaging recycled content legislation.)

New York has an opportunity to adopt legislation that incorporates a collaborative approach among state agencies, producer, retailers, municipalities, private material handling companies and other stakeholders, that results in a workable, affordable approach that will be based on real world experience and capabilities, while promoting continuous improvement in material use and post-consumer material handling, and that could be a guide for other states to take action.

Even so, The Business Council and many entities in our business coalition share a strong opposition to S.4246-A (Harckham)/A. 5322-A (Glick), the amended version of which represented a sharp departure from their initial proposal. Our memo in opposition is attached. Major issues of concern include:

- It could result in the creation of new state or state-contracted entities rather, with limited or no input from producer in program implementation,
- It focuses on restricting the sale of plastic packaging and one-use products, rather than promoting recovery and recycling of packaging materials,
- It establishes mandatory source reduction levels, including those singling out plastic packaging, and recycling rate goals that are not consistent with other states and not based on any real-world data,
- It imposes packaging reuse requirements that would be costly and even more resource-intensive, and
- It imposes absolute bans on twelve chemicals and three plastic types in packaging and single-use plastic products and creates a task force to make recommendations on additional substance bans, with the Department of Environmental Conservation mandated to adopt such recommendations by rule. Moreover, unlike existing New York State restriction on chemicals in packaging, this bill provides no *de minimis* exemption, meaning any level of detection constitutes a violation, regardless of any potential public health impact.

Instead of the proposed Harckham/Glick approach, we support a legislative approach that applies collaboratively established material-specific objectives for material recovery, recycled content, and source reduction. We also believe that a packaging focused EPR program can and should be supported by and integrated into other existing state programs.

Importantly, New York was a national leader in solid waste management, with its adoption of the “Solid Waste Management Act of 1988” (Chapter 70, Laws of 1988), which, among its provisions, established the state’s solid waste management hierarchy, launched the municipal solid waste management planning process, **mandated** that municipalities adopt (by September 1, 1992) requirements for source separating of collected solid wastes “for which economic markets for alternative uses exist,” and directed both the Department of Environmental Conservation and Empire State Development to establish and implement programs to provide technical and financial assistance to public and private entities to promote recycling and secondary markets.

However, in the decades since, post-consumer recycling has seemed to have fallen on the state’s environmental priorities list. For example,

- An Empire State Development Program (Economic Development Law Article 14) to promote the development of markets for secondary materials has, to our understanding, gone unstaffed and unfunded by the legislature.
- While progress is being made, there are still a number of counties with expired (nine) or outdated (eleven) local solid waste management plans, while DEC reports that 41 municipalities statewide are not part of any local plan (even though DEC regulations – Part 360.19(c)(2) – prohibit solid waste management facilities from accepting waste from a municipality that is not included in a department-approved LSWMP.)
- While the state collects annual data from permitted and registered solid waste management entities, it fails to collect data that provides a clear picture of current post-consumer materials management practices, e.g., how much source separated material is collected by material type, how much is sold to the market for reprocessing at what price, and how much is disposed of at what costs.

Our point is that implementation of effective post-consumer material management will require a collaborative approach, including private sector producers and waste management companies, the state and local governments.

In particular, the state needs to be fully engaged in promoting the expansion of markets for and manufacturing capacity to utilize additional material recovered under an EPR mandate. Given the significant amount of consumer products (and their related packaging) sold into New York from out-of-state locations, it is almost certain that any new EPR law will be forced to deal with a significant disconnect between the volume of materials to be collected in-state, and the capacity of in-state (or even multi-state regional) markets to take in and remanufacture that material. (Similarly, any EPR law will subject entities selling into New York State to product-content mandates that may not be supportable in their home jurisdictions.)

Further, even without agreement on a full EPR law, the state legislature has had several opportunities to fund a detailed needs assessment that would guide the creation new recycling and source reduction efforts, by evaluating waste streams, current recovery and processing capabilities and gaps, current markets for secondary materials, and other critical information that would inform discussion of EPR and related legislation. Fortunately, a needs assessment (or at least its initial phase) is now underway through SUNY Environmental Science and Forestry, under a contract with DEC, although it is unclear how much information it will be able to produce before the 2024 legislative session gets underway. Any needs assessment – whether a freestanding bill or language embedded in an EPR bill -- should evaluate the performance and shortcomings of current New York

State efforts, the impact of the state's existing statutory and regulatory waste management and recycling structures, in order to evaluate what mechanisms are effective, and which were not given sufficient support. The needs assessment should also examine in detail the factors that must be addressed in putting together an EPR plan, such as the existing cost and performance of municipal and private sector material collection and processing activities.

The overall cost of EPR mandates also need to be a concern from a consumer perspective, especially as major market states including California and New York move toward as implementation, as the costs imposed on producers of consumer goods ultimately will be reflected in consumer prices. We also need to recognize the significant public and consumer benefits derived from advances in packaging applications, in terms of increasing customer choice, convenience and cost-savings (e.g., due to reduced waste from better preserved foods.) New approaches, like EPR mandates should avoid significant adverse impacts on consumers, including significant limitations on consumer choices. New approaches should also include public/private cost-sharing of both capital investment and operating costs. We believe this makes sense for a number of reasons. First, as municipal recycling programs include more than packaging (including non-packaging paper, metal, and plastics products), business supporting a packaging focused EPR program should not be obligated to finance or reimburse municipalities for the full cost of their material recovery and processing efforts. Second, we believe that municipal and private entities participating in, and reimbursed through, an EPR program need to retain some financial stake in the program's financing to help assure cost-effective implementation.

As a final point, we would add that any evaluation of legislation to expand the scope of the bottle bill should be done in context of possible packaging EPR legislation, and an assessment of what constitutes the most workable, practicable, cost-effective, and consumer-friendly approach to collecting specific categories of packaging.

In the next several weeks, we will be sharing our proposed EPR language with the Legislature and Administration. Among its key features, our proposal will:

- Provide for creation of business-led producer responsibility organizations (PRO), and the adoption of broad packaging-focused EPR plans based on input from a multi-stakeholder advisory committee and subject to approval by the DEC.
- Require municipalities and private waste management companies to provide material and financial information to PROs on a timely basis to support the development of data-based recycling plans, creates a timetable for municipal opt-out of EPR plans, and requires a fair cost sharing between packaging producers and municipalities.
- Include initial numeric targets for material recovery, overall recycling, and material-specific recycled content rates, and require a PRO to propose periodic increase in target numbers, again subject to public review and DEC approval.
- Harmonize the new EPR law with existing provisions of state Environmental Conservation, Economic Development and General Municipal Law to ensure that existing mandates and programs will support these new packaging material-focused mandates.

We have met several times with both the Senate and Assembly Committee chairs on EPR, and while the "A-print" of their EPR bill addresses some key concerns raised by business (e.g., it now focuses on packaging rather than paper products), in our assessment the current proposal would create a more costly, less workable program based on its new focus on material bans and likely unattainable material mandates. Its aggressive, two-year ban on specific components and categories of packaging materials will likely result in significant reduction in available products and consumer choice.

We believe the state can develop and adopt an effective, cost-effective EPR law, and look forward to working with members of the Legislature and the Administration toward that goal.

In closing, we appreciate the opportunity to address Environment Committee members on this important topic, we look forward to addressing any questions you have today, as well as the opportunity to follow up with you individually on this and other issues of mutual concern.

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