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Auth.: ENR Committee bill pursuant to Resolve 2019, chapter 42, section 2

Drafted by: DCT

Date: 1/30/2020

File Name:

Title: An Act To Support and Increase the Recycling of Packaging

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

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

§2146. Stewardship program for packaging

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

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

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

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

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

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

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

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

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

G. “Packaging stewardship fund” or “fund” means a privately-held account established and managed by the stewardship organization pursuant to subsection 11.

H. “Packaging stewardship organization” or “stewardship organization” means the entity contracted by the department under subsection 2 to operate the packaging stewardship program under this section.

I. “Packaging stewardship plan” or “plan” means the plan submitted to the department for approval pursuant to subsection 3 to be implemented by the stewardship organization pursuant to subsection 5 following approval by the department under subsection 4.

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

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

L. “Producer” means a person that:

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

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

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

“Producer” includes a franchisor of a franchise located in the State, but does not include the franchisee operating that franchise.

M. “Proprietary information” has the same meaning as in section 1771, subsection 6-A.

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

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

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

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

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

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

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

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

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

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

(2) A description of how the applicant stewardship organization intends to solicit and consider input from interested persons regarding the development of the

organization's packaging stewardship plan and regarding the organization's operation of the packaging stewardship program, if selected;

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

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

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

(4) A proposed financial assurance plan that ensures all funds held in the packaging stewardship fund are immediately and exclusively forfeited, transferred to or otherwise made immediately available to the department at the time that the stewardship organization's contract with the department is terminated by the department or expires, except where the organization enters into a new contract with the department in accordance with paragraph B prior to the expiration of the organization's existing contract;

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

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

(7) Any additional information required by the department.

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

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

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

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

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

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

(2) Provisions ensuring the ability of the department to terminate the contract should the applicant stewardship organization fail to comply with all provisions of the contract and with the provisions of the packaging stewardship plan, to be approved by the department under subsection 4, or where the department, pursuant to subsection 4, requires the organization to implement an amendment to the approved plan or a corrective action and the organization fails to implement such amendment or corrective action within the required time frame; and

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

If, at the close of the competitive bidding process under this subsection, the department determines that no applicant stewardship organization has submitted a proposal in accordance with and that meets the requirements of this subsection, the department may reopen a new competitive bidding process under this subsection to which the provisions of this subsection shall apply.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) A copy of a form, developed with input from municipalities, that the stewardship organization intends to use to facilitate the collection of the information needed to calculate the costs described in paragraph E, which must be

designed to collect all municipal information necessary to ensure accurate producer payments;

(2) A description of how the stewardship organization intends to engage municipalities in providing such information, which must include a mechanism or process, developed with input from municipalities, by which municipalities may request and receive assistance from the organization in the reporting of such information;

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

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

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

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

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

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

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

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

H. Any additional information required by the department.

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

A. The department shall review a packaging stewardship plan submitted by a stewardship organization pursuant to subsection 3 and approve or deny the plan within 120 days of receipt. The department shall approve the plan if the department determines that the plan meets the requirements of subsection 3 and is otherwise consistent with all applicable requirements of this section and applicable provisions of the organization's contract with the department. If the department approves the plan, the department shall transmit written notice of that approval to the stewardship organization. Any approval under this subsection must terminate 5 years from the date of that approval but may be extended for an additional 5-year period following the submission by the stewardship organization of an updated plan consistent with subsection 3 that is approved by the department consistent with this subsection. A stewardship organization that has had a plan approved under this subsection, and that intends to submit an updated plan under this subsection before the expiration of its current approved plan, must submit that updated plan no later than 120 days prior to the date its current plan expires.

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

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

D. An amendment to an approved plan proposed by the stewardship organization must be submitted to the department for review and approval prior to the implementation of that change. The department shall review and approve or deny plan amendments in accordance with paragraphs A and B. The department may waive payment of any fees associated with review and approval of an amendment to an approved plan.

E. If based on its review of the stewardship organization's annual report required under subsection 6 or on a different basis, the department determines that the organization is not operating the packaging stewardship program in a manner consistent with its approved

plan, its contract with the department or the provisions of this section, the department may require the organization to implement amendments to the plan or corrective actions to the program. If the stewardship organization fails to implement a department-required amendment to the plan or corrective action to the program within the time frame for implementation required by the department and the department determines that termination of the contract is warranted due to that failure, the department shall terminate the contract.

F. If the department for any reason terminates the stewardship organization's contract after the organization has implemented an approved plan under subsection 5 but prior to the expiration of that contract, until such time as a successor stewardship organization is contracted by the department following a competitive bidding process conducted in accordance with subsection 2, the department is authorized to:

- (1) Take all necessary steps to ensure that the stewardship organization immediately transfers to the department all remaining funds in the packaging stewardship fund consistent with the financial assurance plan described in subsection 2, paragraph A, subparagraph (4), as incorporated into organization's contract with the department and the approved plan;
- (2) Deposit those transferred funds into an appropriate departmental account; and
- (3) Manage or expend those transferred funds in a manner consistent with the provisions of this section.

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

A. Following implementation of the plan under this subsection:

- (1) A producer not in compliance with all applicable requirements of this section may not sell, offer for sale or distribute for sale in the State a product contained, protected, delivered, presented or distributed in or using packaging material and must provide all necessary support to retailers in the State to ensure that such products are not sold, offered for sale or distributed for sale in the State; and
- (2) A retailer in the State may not sell, offer for sale or distribute for sale in the State a product contained, protected, delivered, presented or distributed in or using packaging material if, based on the information made available by the department pursuant to paragraph C, the producer of that product is not in compliance with all applicable requirements of this section.

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

C. Based on the information provided to the department under paragraph B, and any other information considered by the department, the department shall make available on its publicly accessible website a list of those producers that the department has determined are compliant with all applicable requirements of this section and a list of those producers that the department has determined are not compliant with all applicable requirements of this section. The department shall periodically update that information based on additional information provided by the stewardship organization or any other information available to the department. The department shall conduct outreach to retailers to ensure that retailers are aware of the information made available under this paragraph and any changes to that information.

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

A. Contact information for the stewardship organization;

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

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

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

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

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

G. An analysis of education and infrastructure investments made by the stewardship organization in prior calendar years, including information on the results of those investments and proposals for investments to be made in the current calendar year

consistent with subsection 11, paragraph F, subparagraph (3); and

H. Any additional information required by the department.

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

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

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

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

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

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

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

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

(7) The organization shall multiply the figures determined under subparagraphs 5 and 6; and

(8) The organization shall multiply the figures determined under subparagraphs (1) and (7).

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

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

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

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

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

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

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

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

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

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

A. A producer or group of producers seeking to implement an alternative collection program must submit a proposal for the establishment of that program to the department for approval. The department shall review the proposal and shall approve or deny the proposal within 120 days of receipt. Any approval under this subsection must terminate 5 years from the date of that approval but may be extended for additional 5-year periods

following the submission by the producer or producers of an updated proposal that is approved by the department consistent with this subsection. A producer or group of producers that has a proposal approved under this subsection and that intends to submit an updated proposal under this subsection before the expiration of its current approved proposal must submit that updated proposal no later than 120 days prior to the date its current proposal expires.

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

- (1) Whether the alternative collection program will provide convenient, free, statewide collection opportunities for the types of packaging material to be collected under that program;
- (2) To what extent the alternative collection program intends to manage those types of packaging material to be collected under the program through reuse for an original purpose, through recycling or through disposal by incineration at an incineration facility. The department may not approve an alternative collection program that proposes management of a packaging material type through disposal by incineration at an incineration facility unless that packaging material is not readily recyclable and the program proposes a process to begin reuse or recycling of that type of packaging material within a period of 5 years or less;
- (3) Whether the education and outreach strategies proposed for the alternative collection program can be expected to increase consumer awareness of the program throughout the State; and
- (4) How the alternative collection program intends to accurately measure the amount of each packaging material type collected, reused, recycled, incinerated or otherwise managed under the program.

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

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

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

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

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

(4) Any additional information required by the department.

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

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

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

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

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

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

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

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

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

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

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

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

B. The stewardship organization shall use the information described in paragraph A to determine the total tons of recyclable material recycled by all municipalities at each recycling establishment and the percentage of those total tons attributable to each participating municipality. In the case of two or more municipalities that jointly send recyclable material to a recycling establishment, the stewardship organization shall assume that an equal amount of the jointly sent material is attributable to each resident of each municipality unless those municipalities by agreement identify a non-equal per capita division of that jointly sent material for the purposes of this subsection.

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

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

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

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

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

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

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

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

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

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

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

(1) For a municipality that disposes of its municipal solid waste through landfilling and is located more than 100 miles from an incineration facility with available capacity or for a municipality that disposes of its municipal solid waste by incineration at an incineration facility, the stewardship organization shall:

(a) Divide the total cost in tipping fees paid by all such municipalities described in subparagraph (1) for the disposal of municipal solid waste during the prior calendar year by the total tons of municipal solid waste disposed of by all such municipalities in the prior calendar year;

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

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

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

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

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

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

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

(a) Divide the total cost in tipping fees paid by all such municipalities described in subparagraph (2) for the disposal of municipal solid waste during the prior calendar year by the total tons of municipal solid waste disposed of by all such municipalities in the prior calendar year;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

G. Notwithstanding any provision of this subsection to the contrary, the stewardship organization is required to provide reimbursements to participating municipalities in accordance with this subsection only to the extent that there are sufficient funds within the fund to provide such reimbursements.

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

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

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

C. The department shall annually solicit input from recycling establishments and facilities that process recyclable material generated in the State regarding the identification of the types of packaging material managed in the State and whether such packaging material is readily recyclable. Based on this information and any other information considered by the department, the department shall annually determine what

types of packaging material are to be considered readily recyclable for the purposes of subsection 1, paragraph N.

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

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

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

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

C. The producer conducted all of the producer's sales in the State during the prior calendar year at a single point of retail sale.

A producer claiming an exemption under this subsection must provide to the department sufficient information to demonstrate that the producer meets the requirements for an exemption under this subsection within 30 days of receiving a request from the department to provide such information.

14. Antitrust exclusions. A producer or stewardship organization, including a producer's or stewardship organization's officers, members, employees and agents that organize a packaging stewardship program or an alternative collection program under this section, is immune from liability for the producer's or stewardship organization's conduct under state laws relating to antitrust, restraint of trade, unfair trade practices and other regulation of trade or commerce only to the extent necessary to plan and implement the producer's or stewardship organization's packaging stewardship program or alternative collection program consistent with the provisions of this section.

15. Proprietary information. Proprietary information submitted to the department in a packaging stewardship plan or in a proposal to establish an alternative collection program, in an amendment to an approved plan or a proposed change to an approved alternative collection program or pursuant to the reporting requirements of this section that is identified by the submitter as proprietary information is confidential and must be handled by the department in the same manner as confidential information is handled under section 1310-B.

SUMMARY

This bill, which is reported out by the Joint Standing Committee on Environment and Natural Resources pursuant to Resolves 2019, chapter 42, section 2, establishes a stewardship program for packaging to be operated by a stewardship organization contracted by the Department of Environmental Protection following a competitive bidding process. Under that program, producers of packaging pay into a fund based on the amount by weight of packaging material they sell, offer for sale or distribute for sale in the State. Producers can wholly or partially offset this payment obligation by implementing independent programs to recycle packaging of the same material type for which they have a payment obligation and can further reduce their payment obligation by reducing the amount of packaging they sell, offer for sale or distribute for sale in the State, redesigning that packaging to make it more valuable as a recyclable or by meeting other program incentive requirements.

Producer payments received by the stewardship organization are used to reimburse eligible municipalities for certain incurred recycling and waste management costs. To be eligible for such reimbursements, a municipality must share with the stewardship organization certain data regarding its incurred recycling and waste management costs. Recycling-related reimbursements to municipalities will be based on the median recycling costs incurred by similarly situated municipalities, while disposal-related reimbursements will be based on per capita disposal costs. The stewardship organization is authorized to use producer payments remaining after all reimbursements are paid to cover operational costs for the program, department fees, investments by the organization in education and infrastructure aimed at improving recycling outcomes in the State and funding for the Maine Solid Waste Diversion Grant Program established under the Maine Revised Statutes, Title 38, section 2201-B.

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