

Testimony in OPPOSITION
to
House Bill 1488
in
Washington House Environment and Energy Committee
on
February 11, 2021

The Flexible Packaging Association (FPA) is submitting testimony in opposition to HB1488, “Relating to the management of plastic packaging materials,” which sets arbitrary rates and dates for all plastic packaging in Washington to have post-consumer recycled content (PRC) incorporated and assess fees for non-compliance that would go to the State for the purposes of litter control, improvement of capabilities to manage plastic packaging waste, and investments to improve recycling infrastructure for plastic packaging, none of which are outlined with any detail.

I am Alison Keane, President and CEO of FPA, which represents flexible packaging manufacturers and suppliers to the industry in the U.S. Flexible packaging represents \$33.6 billion in annual sales; is the second largest, and fastest growing segment of the packaging industry; and employs approximately 80,000 workers in the United States. Flexible packaging is produced from paper, plastic, film, aluminum foil, or any combination of these materials, and includes bags, pouches, labels, liners, wraps, rollstock, and other flexible products.

These are products that you and I use every day – including hermetically sealed food and beverage products such as cereal, bread, frozen meals, infant formula, and juice; as well as sterile health and beauty items and pharmaceuticals, such as aspirin, shampoo, feminine hygiene products, and disinfecting wipes. Even packaging for pet food uses flexible packaging to deliver fresh and healthy meals to a variety of animals. Flexible packaging is also used for medical device packaging to ensure that the products packaged, diagnostic tests, IV solutions and sets, syringes, catheters, intubation tubes, isolation gowns, and other personal protective equipment maintain their sterility and efficacy at the time of use. Trash and medical waste receptacles use can liners to manage business, institutional, medical, and household waste. Carry-out and take-

out food containers and e-commerce delivery, which are increasingly important during this national emergency, are also heavily supported by the flexible packaging industry.

Thus, FPA and its members are particularly interested in solving the plastic pollution issue and increasing the recycling of solid waste from packaging. We do not believe that HB1488 will help to do that. Flexible packaging is in a unique situation as it is one of the most environmentally sustainable packaging types from a water and energy consumption, product-to-package ratio, transportation efficiency, food waste, and greenhouse gas emissions reduction standpoint, but circularity options are limited. There is no single solution that can be applied to all communities when it comes to the best way to collect, sort, and process flexible packaging waste. Viability is influenced by existing equipment and infrastructure; material collection methods and rates; volume and mix; and demand for the recovered material. Single material flexible packaging, which is approximately half of the flexible packaging waste generated, can be mechanically recycled through store drop-off programs, however, end-markets are scarce. The other half can be used to generate new feedstock, whether through pyrolysis, gasification, or fuel blending, but again, if there are no end markets for the product, these efforts will be stranded.

Developing end-of-life solutions for flexible packaging is a work in progress and FPA is partnering with other manufacturers, recyclers, retailers, waste management companies, brand owners, and other organizations to continue making strides toward total packaging recovery. Some examples include The Recycling Partnership; the Materials Recovery for the Future (MRFF) project; the Hefty® EnergyBag® Program; and the University of Florida's Advanced Recycling Program. All of these programs seek to increase the recycled content of new products that will not only create markets for the products but will serve as a policy driver for the creation of the collection, sortation, and processing of the valuable materials that make up flexible packaging. To increase recycled content in new products, reliable high-quality supply must be available.

FPA believes that a suite of options is needed to address the lack of infrastructure for non-readily recyclable packaging materials, and promotion and support of market development for recycled products is an important lever to build that infrastructure. We do not believe, however, that assigning arbitrary rates and dates for PRC is that lever. Not all plastics are created equal and not all plastic packaging can be managed in the same way or use PRC to the same extent, if at all.

HB1488 treats all plastic packaging the same, only distinguishing based on resin code and without regard to package structure or product protection. Nor does HB1488 take into consideration the highly engineered and complex structure of plastic packaging. Further, while the bill contemplates the formation of an advisory committee that may look at exemptions and alternative compliance options, such as food and medical grade packaging and unintended consequences of PRC, such as food waste and packaging performance, it has no industry representation from producers, converters, or suppliers to the industry that would have the knowledge and expertise to help make those determinations. And while, harder to recycle with current infrastructure resins are given additional time to comply, the rates and dates are still arbitrary, if not more so, since as discussed later in this testimony, funding is geared to current and not future infrastructure.

FPA suggests that instead of posing these arbitrary rates and dates to all plastic packaging, without distinguishing the purpose or performance of the various plastic packaging types; distinguishing between different products and necessary product protection, and admittedly not already having the requisite criteria with which to make these determinations and avoid unintended consequences, the Department undertake a feasibility study. This study should be conducted in consultation with actual packaging professionals and product manufacturers as well as other experts in the supply chain that are currently not included in any meaningful way in HB1488, to determine truly viable PRC rates by achievable dates.

Similarly, the funding mechanisms appear to be geared towards achieving arbitrary rates by arbitrary dates. Set amounts are to be raised “at no less than” amounts regardless of whether or not the PRC rates and dates are achieved or not. While this may raise revenue for the Department, it is not a policy driver for innovation or use of PRC and there is no provision to use this money for market development. Instead, the bill outlines with little to no specificity that the great deal of money raised – \$150 Million over just 8 years – will be spent on litter control and upgrades to current infrastructure for the collection, sorting, and recycling of plastic packaging waste. This does not comport with the stated purposes of the bill of developing domestic markets for plastic materials. And again, the Department will develop rules that presumably may speak to actual market development; however, they will do so in conjunction with an advisory committee with only solid waste and health officials and no input from the impacted industries.

In summary, HB1488 collects fees for the purpose of developing domestic markets for plastic packaging in order to drive the use of PRC instead of virgin plastics, but instead uses the funding for the current collection and recycling infrastructure, which does not support the use of PRC for the myriad of plastic packaging the bill would cover. Fees are set at a minimum regardless of whether or not the rates and dates for PRC are actually met in any or all cases, so there is no incentive to actually meet them for either the producer or the Department. And, the bill sets up not one, but two advisory committees to determine if both the bill's major provisions, the PRC rates and dates, and funding mechanism are achievable, which further indicates that the rates and dates in the bill are arbitrary and not based on sound science.

FPA does not believe this bill has been appropriately thought out, nor do we believe it will achieve its stated goals. Thus, FPA opposes the bill and again suggests that a study be undertaken to research all the issues that the bill now only proposes that advisory committees will research and address after the fact. Viable policy drivers for recycled plastics market development and feasible post-consumer recycled content in packaging must be defensible before being statutorily mandated.

In advance, thank you for your consideration. If we can provide further information or answer any questions, please do not hesitate to contact me at 410-694-0800 or akeane@flexpack.org