

Legislative Snapshot

Maine’s LD 1541 establishes a stewardship program for packaging materials. The program is to be administered by a Product Stewardship Organization (PSO), contracted by the Department of Environmental Protection (DEP), for a 10-year term through a Request for Proposal (RFP) process. The program and associated costs, including municipal reimbursement, are to be funded by eco-modulated fees collected from producers by the PSO. The PSO will also have the authority to conduct assessments and make recommendations for improvements. LD 1541 establishes several additional requirements such as annual reporting, penalties, education/awareness funding, etc. Many of the operational aspects of the program are yet undetermined and will be established via a rulemaking process in the future.

Definition of “Producer”

“Producer” means a person that:

- (1) Has legal ownership of the brand of a product sold, offered for sale, or distributed for sale in or into the State contained, protected, delivered, presented or distributed in or using packaging material; or
- (2) Is the sole entity that imports into the State for sale, offer for sale, or distribution for sale in or into 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.

“Producer” includes a low-volume producer and a franchiser of a franchise located in the State, but does not include the franchisee operating that franchise. “Producer” does not include a nonprofit organization exempt from taxation under the United States Internal Revenue Code of 1986, Section 501(c)(3).

Elements at Issue

Advisory Board

Stakeholder input and engagement are critical to the success of a stewardship program and LD 1541 merely requires a PSO's annual plan to "consider" input from external stakeholders and producers. Even the PSO need not be made up of actual producers. There is no advisory board to either the PSO or Maine DEP and rules require only DEP, not legislative, approval. The complete absence of any producer or advisory board input significantly diminishes the voice of outside stakeholders and discourages active participation at several key levels of the stewardship program.

Collection Costs

LD 1541 requires that the PSO cover 100% of collection costs under the program. Maine's unique topography, climate, and population distribution pose several obstacles for the stewardship program to overcome, which are bound to be costly. Unfortunately, apart from collecting large sums of money from producers (which will inevitably be passed on to Maine Consumers), this bill does little to change the reality that Maine's recycling and reuse infrastructure is costly and inefficient.

"Readily Recyclable"

Under the current definition, in order to be deemed "recyclable" the product must have "a consistent market for purchase" in "full bales". Not only does this discourage innovation by excluding any new or innovative materials but this definition does not align with any currently established standards. Additionally, excluding new materials that may be able to be recycled but do not yet have a market for purchase is impracticable as they would be unlikely to generate a market before achieving a certain level of recycling. DEP is also required to determine, update, and report on an annual basis which materials are to be considered "readily recyclable". As markets exist in a constant state of flux, it may well be impossible to determine which, if any, packaging materials would qualify, and that list would certainly shift from year to year.

Timeline and Phases of Implementation

2022	July <ul style="list-style-type: none"> Funding for program administration and staff available Stakeholder outreach for rule development begins
2023	December 31 <ul style="list-style-type: none"> DEP must begin rulemaking
2024	Summer <ul style="list-style-type: none"> Anticipated adoption of rules by Board of Environmental Protection
2025	January <ul style="list-style-type: none"> DEP must submit substantive rules for legislative approval February 15 <ul style="list-style-type: none"> DEP must begin submitting an annual report to the legislature Spring/Summer <ul style="list-style-type: none"> Anticipated final adoption of rules by the Board Fall <ul style="list-style-type: none"> Issue RFP for stewardship organization
2026	<ul style="list-style-type: none"> Selection of stewardship organization First producer payments – 180 days after stewardship organization's effective date
2027	<ul style="list-style-type: none"> First payments to municipalities
2028	February 15 <ul style="list-style-type: none"> DEP must include a comprehensive review of the rules adopted and submit recommendations for any changes every 5 years
2035	<ul style="list-style-type: none"> Reissue RFP for stewardship organization

Extended Producer Responsibility (EPR)

Packaging Extended Producer Responsibility (EPR) is a policy that proposes making manufacturers/producers financially and managerially responsible for what happens to packaging material after it is sold and used. To fund it, consumer brands and users of packaging pay fees that go to a designated nonprofit Stewardship Organization (SO). Ideally, the SO is entrusted to maintain and develop the modern recycling infrastructure we need for today's packaging.

Good EPR legislation provides for a comprehensive EPR program that is based on a collaborative approach where everyone in the recycling system has a seat at the table to develop a workable program; incentivizes increased recycling and composting and discourages landfilling; and can adapt annually based on recycling market conditions and new infrastructure investment without the need for new rulemakings. A true EPR Program ensures that producers have more than just financial responsibility: that they can control how funding is used and invested to ensure the goals of the program fosters a modernized approach to recycling and promotes a more circular economy.

Maine's EPR Law is NOT EPR

As written, LD 1541 is merely a tax under the guise of EPR. LD 1541's nod to real EPR under the alternative collection program is overshadowed by its primary purpose, a state-wide packaging fee to pay for municipal solid waste programs. With that myopic focus, Maine misses the opportunity to look to the future and increase the collection, recycling, and reprocessing of packaging waste. LD 1541 is a blatant attempt by the legislature to shift the full costs of Maine's recycling system for packaging onto a PRO. In forcing through a well intentioned but underdeveloped proposal, Maine's non-EPR bill falls short, merely reimbursing municipal governments and propping up the outdated recycling systems currently in place. Ultimately LD 1541 does little to address the packaging waste issue in the state, discourages innovation, and will not increase packaging recycling.