

## Extended Producer Responsibility For Plastics Packaging: Opportunities In the Chesapeake Bay Watershed

**T**HE 64,000-SQUARE-MILE CHESAPEAKE BAY WATERSHED IS HOME TO MORE than 18 million people, 3,600 species of plants and animals, robust fisheries and farms, and memorable recreational opportunities. The watershed has played a pivotal role in supporting indigenous populations and the development of our nation. The Chesapeake continues to inspire people today, from its headwaters in upstate New York to its mouth at the Atlantic Ocean in Virginia. Despite the Chesapeake's unique nature and heritage, and the work that advocates do on behalf of its health and restoration, it cannot escape the impacts of its human population. The focus of pollution reduction has been on nutrients and sediment. But there is another pervasive and growing issue: plastics pollution. This paper examines steps that can be taken at the state and regional level to shift responsibility for proper packaging disposal back to the producers of that packaging, creating better and more effective recycling systems while lessening the burden of plastic pollution in our water.

### The Plastic Problem

**P**LASTIC PRODUCTS HAVE GAINED RAPID POPULARITY BECAUSE THEY ARE EASY TO use and seemingly easy to dispose of. Worldwide plastic production and disposal has increased exponentially over the last 60 years and is expected to continue to rise.<sup>1</sup> In the United States alone, we create over 35 million pounds of plastic waste per year, and recycle less than 10 percent.<sup>2</sup> The impacts of this waste are being felt across our natural environment. Plastic is on our land, in our waters, and inside wildlife we depend on for food.

Concerned that plastic in our waters could mean problems for the Chesapeake Bay and its watershed, the Chesapeake Bay Program Scientific and Technical Advisory Committee (STAC) reviewed studies and gathered experts for a 2019 workshop on microplastics. The workshop participants concluded that microplastics pose a potentially serious risk to successful restoration of the Chesapeake Bay watershed.<sup>3</sup>

1. W.C. Li, Plastic waste in the marine environment: A review of sources, occurrence, and effects, 556-557 SCI. OF THE TOTAL ENV'T. 333, 349 (2016).

2. U.S. Env'tl. Prot. Agency, Facts and Figures about Materials, Waste and Recycling, (last updated Sept. 30, 2021), <https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/plastics-material-specific-data>.

3. R. Murphy, M. Robinson, B. Landry, et.al., Microplastics in the Chesapeake Bay and its Watershed: State of Knowledge, Data Gaps, and Relationship to Management Goals, (Oct. 2019), <https://www.chesapeake.org/stac/document-library/microplastics-in-the-chesapeake-bay-and-its-watershed-state-of-the-knowledge-data-gaps-and-relationship-to-management-goals/>.

In fact, the Chesapeake may be even more vulnerable to plastics pollution than many other watersheds. Scientific studies have found that most of the plastics that enter the Chesapeake's waterways are not flushed out into the ocean. Instead, scientists have found that the vast majority of plastics (approximately 94 percent) that make their way into the Chesapeake watershed's rivers and streams do not leave the watershed.<sup>4</sup> With a population of 18 million and as a center for commerce, government, and tourism, the potential for plastics accumulation is significant.

Given these unique and critical circumstances, it is vital that management measures are put into place to reduce the amount of plastics entering our environment. Bay jurisdictions have addressed certain products legislatively (e.g., a local option for plastic bag taxes has been approved in Virginia, Maryland has a ban on expanded polystyrene foam food containers, the District of Columbia has a ban on plastic straws), but a comprehensive approach to plastics waste has yet to be successful.

## What is Extended Producer Responsibility?

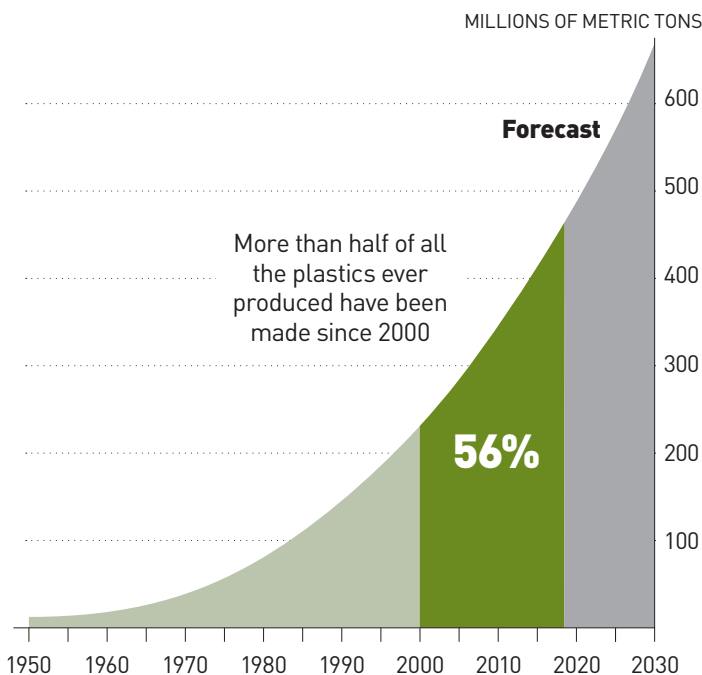
**E**XTENDED PRODUCER RESPONSIBILITY (EPR) presents an opportunity for a comprehensive statewide or regional approach to waste resulting from packaging. EPR shifts the responsibility for the end of a product's life back to the producer of that product — operationally, financially, or both — while also encouraging producers to introduce fewer products and more recyclable materials into the market to begin with. In the case of EPR for plastics packaging, which represents 40 percent of all plastic waste,<sup>5</sup> effective programs can shift the cost and/or operational burden of collecting, sorting, recycling, and processing plastic packaging from local governments and taxpayers to producers. The benefit of these programs is two-fold: they offset the costs to the taxpayers and the localities that now must pay for the collection, hauling, and processing of trash and recycling; and they incentivize producers to use less packaging as well as more recyclable packaging. EPR in the Bay watershed can lower and stabilize local recycling costs, while helping to keep waste out of the Bay.

4. Alexander Lopez, Estuaries as Filters for Riverine Microplastics: Simulations in a Large, Coastal-Plain Estuary, Va. Inst. of Marine Sci. (Aug. 2021).

5. Laura Parker, Fast facts about plastics pollution, NAT'L GEOGRAPHIC: PLANET OR PLASTIC, (Dec. 20, 2018), <https://www.nationalgeographic.com/science/article/plastics-facts-infographics-ocean-pollution>.

## FIGURE 1 Global Production of Plastic

Global production of plastics has doubled since 2000 and is expected to continue this rapid rise.



SOURCE: Plastic Atlas, 2019 from R. Geyer, J. R. Jambeck, K. L. Law, Production, use, and fate of all plastics ever made. *Sci. Adv.* 3, e1700782, 2017. <https://www.science.org/doi/epdf/10.1126/sciadv.1700782>

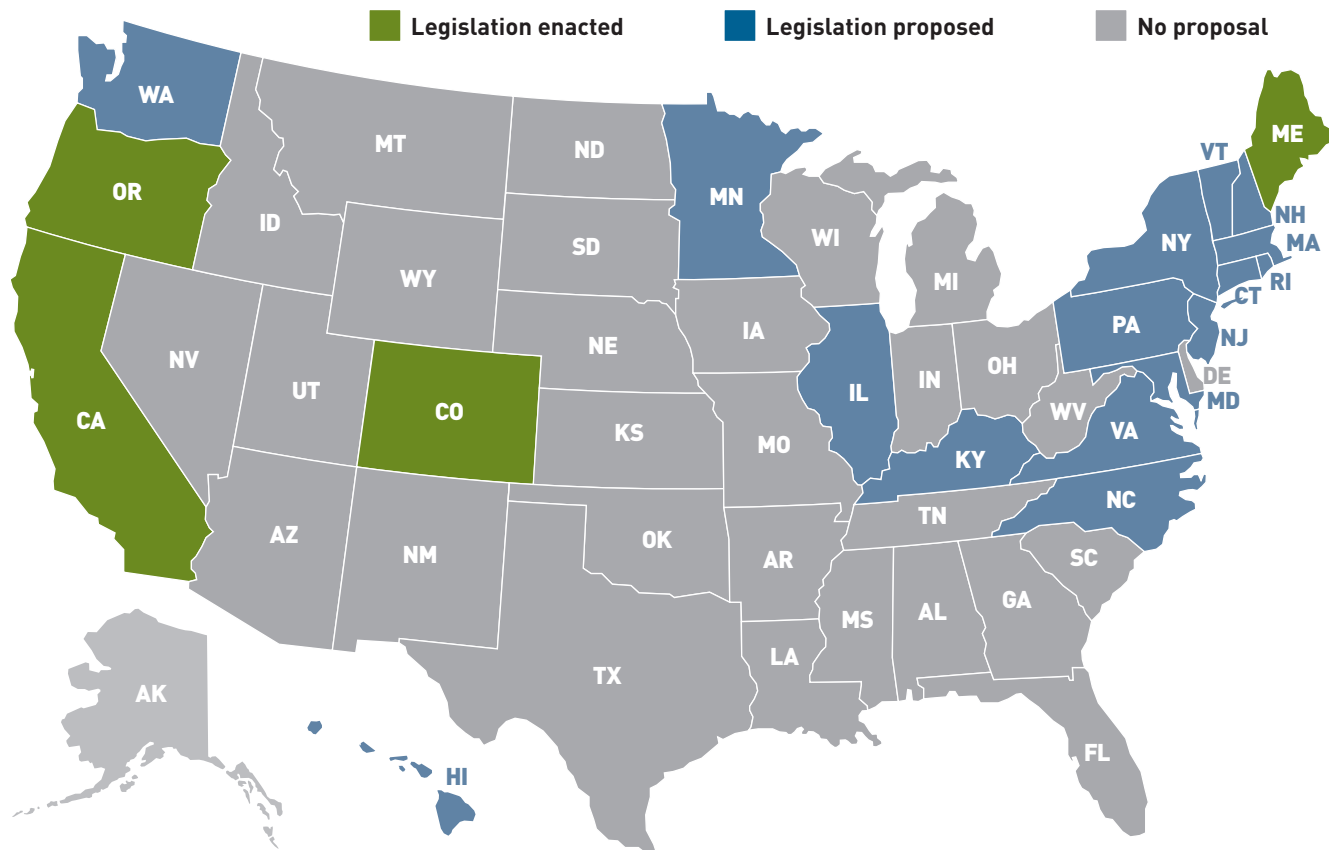
In recognition of the serious and detrimental impacts of plastics pollution, as well as the added challenge of limits on used plastic importation by foreign markets, holding the producers of plastic packaging accountable for its end-of-life management is an increasingly popular policy globally<sup>6</sup> and has recently gained traction at the national level. We see many other forms of EPR across the United States and the world, including container deposit systems, battery return programs, and paint stewardship programs, to name a few.

6. Countries that have EPR programs for packaging include almost all European Union member states, as well as many Asian countries including, but not limited to, Japan, South Korea and Taiwan, five provinces in Canada, with a sixth province-specific program to be implemented by the spring of 2023, as well as programs in countries in South America and Africa. See Explainer: How Extended Producer Responsibility for Packaging Will Benefit Maine, NAT. RES. COUNCIL OF ME., <https://www.nrcm.org/sustainability/how-extended-producer-responsibility-for-packaging-will-benefit-maine/> (last visited Sept. 20, 2022); see also New Brunswick EPR for paper and packaging to be first in Atlantic Canada, RECYCLING PROD. NEWS, <https://www.recyclingproductnews.com/article/37508/new-brunswick-epr-for-paper-and-packaging-to-be-first-in-atlantic-canada> (last visited Sept. 20, 2022).

**FIGURE 2**

**Legislative Interest in Extended Producer Responsibility for Packaging**

With interest in Extended Producer Responsibility spreading, four states have adopted programs while 16 additional states considered them in 2022.



**States With  
EPR for Packaging Programs**

**A**S OF OCTOBER 2022, NEARLY TWENTY STATES have considered EPR for packaging in their General Assemblies in one or multiple years. Thus far, four states have successfully passed EPR legislation addressing packaging: Maine, Oregon, Colorado, and California. While each law addresses the same subject, each is also unique and tailored specifically to the programmatic needs of that state and its residents.

**Maine**

**ME** Faced with increasing costs of recycling programs to local governments and therefore taxpayers, Maine was the first state to sign an Extended Producer Responsibility for Packaging statute into law in the United States in 2021.<sup>7</sup> Maine's law was the result

**Four states have successfully passed EPR legislation addressing packaging: Maine, Oregon, Colorado, and California**

of years of collaborative efforts and communication among stakeholders, including local governments, producers, government agencies, local businesses, and environmental advocates. The legislation establishes an EPR stewardship program, funded by producers of paper and plastic packaging materials, that will reimburse local governments the cost of collection and recycling of those materials. Producers pay into the program based on the amount and recycling potential

7. Me. Rev. Stat. Ann. tit. 38, § 2146 (2021).



of their products,<sup>8</sup> with an exemption for small producers.<sup>9</sup> Proceeds are used to reimburse local governments' costs up to 100 percent for managing qualifying materials, as well as help support and develop program infrastructure, and educate consumers.<sup>10</sup>

### Fast Facts

- **Products Covered:** All packaging materials; excludes long-term storage packaging, architectural paint containers, beverage containers (covered by existing bottle deposit law)
- **Producer Exclusions:** Small business, some producers of perishable items
- **Structure:** Financial only
- **Dates:**
  - 2026 — Selection and start of work by Packaging Stewardship Organization (PSO)
  - 1st producer payments to PSO within 180 days of selection of PSO
  - 2027 — 1st local government reimbursements
  - February 2028 — Report/review of rules and proposed changes to rules and law to legislature
- **Fees:** Eco-modulated (see text box)

## Oregon

**OR** Oregon was the second state to enact EPR legislation for plastics packaging, paper, and food serviceware, also in 2021.<sup>11</sup> Previously heavily reliant on exports to manage recycling, like Maine, Oregon felt early impacts of changing international recycling collection policies.<sup>12</sup> Limits to what recyclables Oregon could export and the effects on the state's recycling systems led to a multi-year stakeholder engagement process, resulting in the successful EPR legislation. The new law establishes a stewardship program. Producers must join a Producer Responsibility Organization (PRO), overseen by Oregon's Department of Environmental Quality (DEQ). Producers pay fees into the PRO based on the amount and types of qualifying materials they sell or distribute into the state.<sup>13</sup> In contrast to Maine's program, which refunds local governments up to 100 percent of system costs, Oregon's EPR program focuses on funding

8. Id. at § 2146(6).

9. Id. at § 2146(2).

10. Id. at §§ 2416(10)-(12).

11. S.B. 582, 2021 Leg., 2021 Sess. [Or. 2021].

12. Kathleen Boutin-Pasterz, Recap: National Sword Impacts on Regional and National Recycling Systems AOR Fall Forum, ASS'N OF OR. RECYCLERS, (Nov. 20, 2017), <https://oregonrecyclers.org/blog/recap-national-sword-impacts-regional-and-national-recycling-systems-aor-fall-forum>.

13. S.B. 582, 2021 Leg., 2021 Sess. [Or. 2021].

## Eco-Modulated Fees

Traditional "modulated" fees incorporated into an EPR system establish a fee structure based on the amount and weight of covered product a producer introduces into the market, as well as the cost to recycle and remaining value of that product. In comparison, eco-modulated EPR-associated fees are those that vary depending on criteria considered to be environmentally beneficial. Examples include whether the product was renewably sourced, if it is reusable, the amount of recycled content included, amount of packaging material used per unit of product, toxicity levels, and associated greenhouse gas emissions, among others. Eco-modulation can incentivize producers to make packaging design changes before a product enters the market that will reduce the amount and impact of the waste.

improvements to Oregon's recycling system, covering approximately one quarter of the associated recycling costs.<sup>14</sup> The law expands access to recycling programs and establishes a uniform statewide collection list of recyclable materials. It also sets statewide recycling goals for plastic packaging and food serviceware at 50 percent by 2040, and 70 percent by 2050.<sup>15</sup>

### Fast Facts

- **Products Covered:** Packaging materials including paper, plastic, glass, or metal and food serviceware; excludes bound books, paper intended for cleaning or absorption of liquids, beverage containers (covered by existing bottle deposit law)
- **Producer Exclusions:** Small business, government, nonprofit organizations, small retailers
- **Structure:** Financial and operational
- **Dates:**
  - March 2024 — PROs must submit a plan to DEQ
  - July 2025 — Implementation of producer responsibility program
- **Fees:** Eco-modulated

## Colorado

**CO** In 2022, Colorado became the third state to pass EPR legislation related to packaging, including plastics and paper. As of 2021, the state's recycling rate

14. Colin Staub, Oregon governor signs EPR bill, RESOURCE RECYCLING (Aug. 10, 2021), <https://resource-recycling.com/recycling/2021/08/10/oregon-governor-signs-packaging-epr-bill/>.

15. S.B. 582, 2021 Leg., 2021 Sess. [Or. 2021].



was 15 percent,<sup>16</sup> which is less than half the national recycling rate of 32.1 percent in 2018.<sup>17</sup> Unlike Maine and Oregon’s laws, Colorado’s legislation establishes a state-wide recycling system fully funded and managed by producers (with exemptions based on revenue, amount of product produced, and type of organization). The producer-run program includes systems evaluation, operating, and improvement costs,<sup>18</sup> as well as education about and promotion of the program,<sup>19</sup> and the establishment of a state-wide list of recyclable products.<sup>20</sup> Similar to Maine and Oregon, the amount that producers pay into the program is dependent on the amount and type of packaging they use.<sup>21</sup>

## Fast Facts

- **Products Covered:** All packaging types, including paper and single-use food and beverage containers; excludes long-term storage packaging, bound books, architectural paint containers, paper products used for primary source news and current events
- **Producer Exclusions:** Small businesses, state and local governments, non-profits, certain retailers
- **Structure:** Financial and operational
- **Dates:**
  - June 2023 — Producers must establish a PRO
  - February 2025 — PRO must submit a plan proposal to advisory committee
  - July 2025 — Implementation (or January 2029 as set forth in final plan)
- **Fees:** Eco-modulated

## California

**CA** Also in 2022, California became the fourth state to pass EPR legislation for printed paper and plastics packaging, including single-use plastic food serviceware. Under the program, qualifying producers participate in a PRO established for the collection and processing of covered materials, with fees based on the type and amount of materials produced and overseen by the California Department of Resources, Recycling, and Recovery (CalRecycle). The PRO is required to

16. The State of Recycling and Composting in Colorado 2021 (Nov. 15, 2021), <https://pirg.org/colorado/resources/the-state-of-recycling-and-composting-in-colorado-2021/>.

17. U.S. Env’tl. Prot. Agency, National Overview: Facts and Figures about Materials, Waste, and Recycling, (last updated July 31, 2022), <https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/national-overview-facts-and-figures-materials>.

18. H.B. 22-1355 § 25-17-705, 2022 Gen. Assemb., 2022 Sess. (Co. 2022).

19. Id. at § 25-17-707.

20. Id. at § 25-17-706.

21. Id. at § 25-17-705(III).

## Labeling and Education

Obstacles to effective and efficient recycling systems include public confusion over what can and cannot be recycled, as well as the end-of-life cycle impact of each product. These uncertainties can result from misleading or confusing marketing claims on packaging and products, misunderstandings as to what different recycling symbols mean, and a lack of understanding about what can and cannot be recycled and how. Confusion over labeling can be addressed through legislative efforts, often called “Truth in Labeling,” to mandate certain requirements into labeling and marketing practices, either through EPR for packaging or separately. EPR for packaging legislation may also contain priorities and requirements for education programs to help alleviate consumer confusion.

fund the program, and pay \$500 million per year for ten years, beginning in 2027 into a plastic pollution mitigation fund. Moreover, all covered material sold or imported into the state must be recyclable or compostable by 2032, along with a 65 percent recycling goal of plastic covered materials by the same deadline, and a source reduction of 25 percent.<sup>22</sup> The passage of this law in California was the culmination of a four-year legislative effort by stakeholders including industry leaders, environmental advocacy groups, and government leadership.

## Fast Facts

- **Products Covered:** All packaging and single-use plastic food service ware; excludes long-term storage packaging, architectural paint containers, beverage containers (covered under previous law)
- **Producer Exclusions:** Small businesses, producers who produce, harvest, and package agricultural commodities where they are grown or raised
- **Structure:** Financial and operational
- **Dates:**
  - January 2024 — Producers establish and join a PRO
  - January 2027 — PRO to remit a \$500,000,000 surcharge (annually until January 1, 2037)
  - January 2027 — Date of implementation (or sooner if a PRO plan is submitted and approved by an earlier date)
- **Fees:** Eco-modulated

22. S.B. 54, 2022 Leg., 2022 Sess. (Cal. 2022).

## Trends Identified

THE PASSAGE OF THESE FOUR LAWS DEPENDED ON very individual political climates and situations in each state. Some of the trends identified include:

1. Noticeable impact on the state's recycling economy by changing international markets, including China's National Sword Policy (see text box), enacted in early 2018, which severely limited the import of plastic waste into China from other countries.<sup>23</sup> This ban affected the cost and risk of exporting plastics, and thus local markets. West coast states such as Oregon and California have been historically heavily dependent on China's recycling market,<sup>24</sup> and therefore would have felt immediate economic impacts of this change in policy;
2. Significant coalition building prior to the introduction of the bill;
3. Passed with bipartisan support;
4. Strong support for EPR policies from local municipalities;
5. Industry groups were more supportive of legislation offering more producer control of PRO systems, while environmental advocacy groups advocated for less producer control and more state oversight of programs; and
6. Fee structures that include exemptions for small business, as well as a sliding scale based on the amount and type of packaging — incentives for producers to use less and more easily recyclable packaging.

## Opportunities for the Chesapeake Bay Region

THE FOUR STATES THAT HAVE PASSED EPR PACKAGING programs into law likely represent the beginning of a national trend incorporating EPR for packaging into recycling systems at the state level. In 2022 alone, 16 states introduced EPR for packaging legislation,<sup>25</sup>

### National Sword Policy

One example of shifting international markets for recycled materials that has affected local recycling markets in the United States is China's National Sword Policy. Implemented in January of 2018, the new policy placed drastic limits on the types of recyclables the country would allow for import, as well as the amount of contamination levels it would accept in imported plastics and paper products, effectively eliminating itself as a destination for recycled materials exported from other countries. This change to China's importing policies has greatly affected recycling systems in the United States that had traditionally relied on China as a destination for recycled materials.

and the 2023 legislative season promises to reflect a similar movement, especially up and down the East and West coasts. With national momentum swinging in support of EPR programs for packaging, it is an opportune time to explore the possibilities of similar legislation in the Chesapeake Bay Commission member states of Maryland, Pennsylvania, and Virginia.

### What do states consider when crafting EPR for packaging legislation?

When considering how to craft potential EPR for packaging bills, it is informative to reflect on past efforts, build broad stakeholder support, and evaluate how the following considerations can be built into a state-specific or regional EPR for packaging program to best meet the goals of the program, including:

- What packaging products the legislation will cover, and what it will specifically exclude;
- Who is considered a producer under the program and who is not;
- How a producer responsibility organization is designed and run, including its fee structure and its responsibilities;
- Whether producer members carry cost and/or operational system responsibilities;
- Whether fees will be eco-modulated to incentivize upstream changes in packaging content;
- Whether or not to include recycling and/or waste reduction targets, infrastructure requirements, and education programming requirements;
- A timeline for implementation; and

23. Cole Rosengren et al., How recycling has changed in all 50 states, WASTE DIVE (Nov. 15, 2019) <https://www.wastedive.com/news/what-chinese-import-policies-mean-for-all-50-states/510751/>.

24. William Weaver, A Double-Edged Sword: China's "National Sword" Policy Has Caused Disruptions And Opportunities In the U.S. Recycling Market, NEW HEIGHTS RSCH. (Sept. 4, 2019), <https://nh-r.com/a-double-edged-sword-chinas-national-sword-policy-has-caused-major-disruptions-in-the-u-s-recycling-market-but-should-present-opportunities-for-investors/>.

25. For a summary of each state's proposed 2022 legislation, please see the Appendix to this document.

## More Information

For more information on EPR for bills proposed, but not passed, in 2022, as well as additional information regarding key arguments for and against the legislation that was signed into law in Maine, Oregon, Colorado, and California, please see the Appendix to this document.

### ■ The role of state and local government in administration and enforcement of the program.

While comprehensive considerations will necessarily be tailored to the needs of stakeholders in each separate state, the above list offers important elements for both state and regional program development.

## What has been previously proposed in Maryland, Pennsylvania, and Virginia?

In Maryland, EPR for packaging-related bills were introduced during both the 2021 and 2022 legislative sessions. The 2022 proposed legislation, cross-filed in the House and Senate, applied to “packaging materials,” including primary, secondary, and tertiary packaging intended for the consumer market, service packaging designed and intended to be filled at the point of sale (e.g. carry-out bags), and beverage containers. The legislation would have required producers of the above packaging materials to join a PRO, adopt a producer responsibility plan outlining goals for reductions of packaging waste, including public outreach and education, and meet at least a 25 percent reduction for that waste within 5 years of a plan’s approval, with plan oversight by the Maryland Department of the Environment (MDE).<sup>26</sup> The legislation also proposed a state-wide recycling needs assessment (conducted by MDE every 10 years) establishing performance goals for each type of packaging material included. Local governments would have been eligible for reimbursement of costs associated with collection, transportation, processing, and recycling. The fee structure for producers would be based on costs associated with the type of materials, and eco-modulated based on the amount of recyclable content.<sup>27</sup> Notably, the bills gained the support of industry, including the Consumer Brands Association,

Ameripen, and the Flexible Packaging Association,<sup>28</sup> while simultaneously drawing criticism from some environmental advocates who argued that the proposed legislation gave too much control over the program to industry, including control over establishing program fees.<sup>29</sup> The bills were not reported out of committee.

A bill for EPR for plastic packaging was likewise introduced in the Pennsylvania House of Representatives in 2021 (during the first year of a biennial session).<sup>30</sup> The proposal applied to single or short-term use packaging: plastic, paper, glass, and metal, excluding paper products that would become unsanitary through use, bound books, and beverage containers. Manufacturers of the covered products would be responsible for the collection, transportation, and recycling of covered materials equal to what they introduce into Pennsylvania’s market (their market share). Manufacturers and retailers of the covered materials would also register with the Department of Environmental Protection (DEP) and pay an annual \$5,000 fee for participation in the program.<sup>31</sup> This bill did not make it out of committee. EPR for packaging legislation in Pennsylvania would be a critical component of a regional approach to plastic recycling, and lessons learned from the current electronics recycling program are likely to inform the discussion.<sup>32</sup>

EPR for packaging was also the focus of a 2022 legislative effort in Virginia.<sup>33</sup> The legislation would have established an EPR for packaging program and fund, requiring larger producers to pay an annual fee based on weight, volume, and recyclability of materials, to the Virginia Department of Environmental Quality (DEQ). Fees collected would go to reimbursing local governments for recycling program costs. Alternatively, producers could develop a collection program to manage the recycling of packaging materials on their own. The legislation covered a broad range of packaging materials, both plastic and paper, specifically excluding long-term storage packaging, beverage containers, and architectural paint containers.<sup>34</sup> While the proposals stalled in subcommittee, the legislation was referred to the Waste Diversion and Recycling Task Force, which has not achieved consensus on

28. Catherine Boudreau & Debra Kahn, Businesses back plans to bill them for recycling, drawing skepticism, POLITICO, [Feb. 22, 2022, 11:00 AM], <https://www.politico.com/news/2022/02/22/businesses-recycling-00010440>.

29. See id.

30. H.B. 1873, 2021-2022 Gen. Assemb., 2021 Sess. [Pa. 2021].

31. Id.

32. See Covered Device Recycling Act (P.L. 1083, No. 108).

33. H.B. 647, 2022 Gen. Assemb., 2022 Sess. (Va. 2022); H.B. 918, 2022 Gen. Assemb., 2022 Sess. (Va. 2022); H.B. 709, 2022 Gen. Assemb., 2022 Sess. (Va. 2022).

34. Id.

26. S.B. 292, 2022 Gen. Assemb., 2022 Sess. (Md. 2022); H.B. 307, 2022 Gen. Assemb., 2022 Sess. (Md. 2022).

27. Id.



EPR Program recommendations at this time. Also noteworthy, Virginia's Plastic Waste Prevention Advisory Council has been created but has not made recommendations for a Virginia-specific EPR program. The proposed bills received push-back from industry, notably from forest products businesses, which argued that paper products are already being recycled effectively in Virginia without new legislation.<sup>35</sup> Other industry advocates argued that the proposed legislation would inappropriately shift costs to consumers, while doing nothing to improve the effectiveness of the state's current recycling systems.<sup>36</sup>

### **How can future EPR for packaging legislative proposals succeed in the Chesapeake Bay Region?**

Like the four states that have been successful in passing EPR for packaging legislation, the Maryland, Pennsylvania, and Virginia proposed bills described above are necessarily distinct from one another in order to meet the needs of each state. Future proposals should be specifically tailored to that jurisdiction's recycling economy and needs. Like the states who have already passed these laws, it will be necessary to

continue the coalition-building process already begun in each jurisdiction's previous efforts. Without support and buy-in from industry, local governments, and environmental advocates, EPR legislation for packaging will have a difficult time passing, and may not achieve the desired positive economic and environmental outcomes. Due to the previous hard work of state legislators, Maryland, Pennsylvania, and Virginia each have an established start.

Moreover, while state-specific considerations are important, coordination of EPR programs between Chesapeake Bay Commission member jurisdictions at the regional level may act as incentive for industry support and participation in future legislation. Regional consistency between programs and policies would offer producers stable and uniform requirements, costs, and expectations. A regional approach may also encourage and support economies of scale in terms of program development and administration. It also encourages the use of environmentally friendly, easily recyclable materials, helps consumers understand what and how to recycle plastic packaging, and offers local governments and taxpayers relief from the financial burden of unstable recycling markets. Continuing efforts to pass EPR for plastics packaging in Maryland, Pennsylvania, and Virginia will help the Chesapeake Bay region stay on the forefront of innovative environmental laws and policies that help protect and restore the Bay watershed and its communities.

---

35. Sarah Vogelsong, House panel scraps proposals to impose packaging fee on manufacturers, VA. MERCURY, (Jan. 31, 2022, 12:03 AM), <https://www.virginiamercury.com/2022/01/31/house-panel-scraps-proposals-to-impose-packaging-fee-on-manufacturers/>.

36. Id.

# Appendix

**T**HIS DOCUMENT PROVIDES SUPPLEMENTAL information to *Extended Producer Responsibility for Plastics Packaging: Opportunities in the Chesapeake Bay Watershed*, co-produced by the Chesapeake Bay Commission and the Chesapeake Legal Alliance. It contains brief descriptions of EPR for packaging bills that were proposed in 2022 (Section I), as well as additional information regarding key arguments for and against the legislation that was signed into law in Maine, Oregon, Colorado, and California (Section II).

## Introduction

Extended Producer Responsibility (EPR) stems from the theory “that manufacturers should be forced to internalize disposal costs and environmental externalities associated with their products,” and can be viewed as an extension of the polluter pays principle.<sup>1</sup> A commonly accepted doctrine of environmental law, the polluter pays principle “stems from the fundamental, logical, and fair proposition that those who generate pollution, not the government, should bear pollution costs.”<sup>2</sup>

EPR presents an opportunity for a comprehensive statewide and regional approach to waste resulting from packaging. EPR shifts the responsibility for the end of a product’s life back to the producer of that product – operationally, financially, or both. In the case of EPR for plastics packaging, which represents 40 percent of all plastic waste,<sup>3</sup> effective programs can shift the cost and/or operational burden of collecting, sorting, recycling, and processing plastic packaging off of local municipal governments and taxpayers.

While certain EPR programs have long existed in the United States for a broad variety of products,<sup>4</sup> it is

only recently that EPR for packaging including plastics, popular in many other countries, has gained any traction here. While not the first time it was proposed at the state level, 2021 saw the first successful EPR for plastics packaging legislation signed into law in Maine, followed shortly by Oregon. Colorado and California passed similarly focused legislation during their 2022 legislative sessions, while many other states proposed bills to implement EPR programs around packaging with varying levels of support. As Maine, Oregon, Colorado, and California’s programs are tested and refined, and based on the current legislative trends at the state level, it is safe to assume that state EPR programs regarding packaging, including plastics, will become more common over the next few years.<sup>5</sup>

## SECTION I Additional States That Proposed But Did Not Pass EPR Legislation Regarding Plastics in 2022

**T**HE SUCCESS OF EPR LEGISLATION IN MAINE, Oregon, Colorado, and California is only part of a widespread state-led effort in the U.S. to reduce plastic pollution and stabilize recycling markets through EPR programs. In 2022, 16 states considered legislation to establish and/or study EPR policies. Many of these states (and others) also introduced similar legislation in 2021 without success.<sup>6</sup> Below is a brief description of each state’s proposed legislation. For a thorough overview and breakdown of each, please see the Sustainable Packaging Coalition’s (SPC) Guide to EPR Proposals: <https://epr.sustainablepackaging.org/>. Each bill in this appendix has a corresponding

1. Noah Sachs, Planning the Funeral at the Birth: Extended Producer Responsibility in the European Union and the United States, 30 HARV. ENV’T L. REV. 51, 62 (2006).

2. Jonathan Remy Nash, Too Much Market? Conflict Between Tradable Pollution Allowances and the “Polluter Pays” Principle, 24 HARV. ENV’T L. REV. 465, 466 (2000).

3. Laura Parker, Fast facts about plastics pollution, NAT’L. GEOGRAPHIC: PLANET OR PLASTIC, [Dec. 20, 2018], <https://www.nationalgeographic.com/science/article/plastics-facts-infographics-ocean-pollution>.

4. For a map of, and links to, national EPR laws, see Product Stewardship Council’s U.S. State EPR Law Map, located here: [https://www.productstewardship.us/page/State\\_EPR\\_Laws\\_Map](https://www.productstewardship.us/page/State_EPR_Laws_Map). “Since 2000, PSI [Product Stewardship Institute] has helped enact 129 extended producer responsibility (EPR) laws across 16 product categories in 33 states...” Id.

5. There have been unsuccessful attempts at the Federal level to establish EPR programs for plastics. See H.R. 5845, 116th Cong. [2020]; S. 3263, 116th Cong. [2020]; H.R. 2238, 117th Cong. [2021]. One concern voiced by industry over state-established EPR packaging legislation is that it will create an impossible patchwork of rules and regulations for producers. While national legislation might address this concern, it also risks curtailing states’ abilities to establish EPR programs specific to their own local markets, environments, and needs.

6. Many states proposed but did not pass EPR packaging legislation in 2021 as well. This memo does not address those proposed bills.

link to the SPC website for access to additional information. The SPC Guide also allows the reader to directly compare similarities and differences across bill components.

**CT** Connecticut’s proposed legislation would have established a state stewardship program for the collection and recycling of consumer paper and packaging (not beverage containers).<sup>7</sup> The bill faced heavy opposition from industry who successfully argued that it would have led to an increase in cost to consumers at the expense of an already successful recycling management program.<sup>8</sup>

### CT Bill(s)

■ [https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill\\_num=SB00115&which\\_year=2022#](https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=SB00115&which_year=2022#)

### SPC Link

■ <https://epr.sustainablepackaging.org/policies/SB115>

**HI** Hawaii’s proposed EPR packaging legislation was unique in that it would require major producers to pay into a temporary fund for county-level waste reduction and reuse projects.<sup>9</sup> Applying to “[a]ny part of a package or container...” and “[p]rimary, secondary, and tertiary packaging intended for the consumer market; service packaging designed and intended to be filled at the point of sale including carry-out bags and bulk goods bags; and beverage containers,” the program would sunset after 5 years and does not establish a PRO, giving Hawaii’s proposed legislation a focus on local, county-based control of strategies.<sup>10</sup> Some producers believe that the bill does not offer enough compliance guidance.<sup>11</sup> The measure passed both houses of the legislature, but failed to pass reconciliation before this year’s session adjourned. Analysts expect the bill to return in 2023.

### HI Bill(s)

■ [https://www.capitol.hawaii.gov/measure\\_indiv.aspx?bill\\_type=HB&billnumber=2399&year=2022](https://www.capitol.hawaii.gov/measure_indiv.aspx?bill_type=HB&billnumber=2399&year=2022)

7. S.B. 115, 2022 Gen. Assemb., 2022 Sess. (Conn. 2022).

8. NWRA’s Conn. Chapter Defeats EPR Legis., NAT’L WASTE & RECYCLING ASS’N: PRESS RELEASES, (June 16, 2022), [https://wasterecycling.org/press\\_releases/nwra-connecticut-chapter-defeats-epr-legislation/](https://wasterecycling.org/press_releases/nwra-connecticut-chapter-defeats-epr-legislation/).

9. H.B. 2399, 31st Leg., 2022 Sess. (Haw. 2022).

10. Id.

11. Megan Quinn, Hawaii’s EPR for packaging bill fails to pass before end of legis. sess., WASTE DIVE (May 11, 2022), <https://www.wastedive.com/news/hawaii-epr-packaging-bill-reuse-governor/622040/>.

### SPC Link

■ <https://epr.sustainablepackaging.org/policies/HD2399%20SDI>

**IL** Illinois’ proposed House Bill would amend the state’s existing Environmental Protection Act and require the state’s Environmental Protection Agency to work with a packaging stewardship organization to develop and operate a statewide packaging EPR program that producers (of all packaging materials except long-term storage packaging, beverage containers, paint containers, and those excluded by Agency rule) would need to participate in.<sup>12</sup> Funds would be disbursed to participating municipalities in reimbursement for their costs of managing qualifying packaging materials.<sup>13</sup> Illinois’ proposed Senate Bill would create the Plastic Pollution and Recycling Modernization Act which would require that producers of specified covered products register and become a member of a PRO that administers a producer responsibility program.<sup>14</sup> PROs would be responsible to work with recycling system participants to make sure that covered products collected by the recycling service are recycled by responsible end markets applying to the specified covered products.<sup>15</sup> The Senate Bill would also require PROs to submit to the Environmental Protection Agency a plan for the development and implementation of a producer responsibility program.<sup>16</sup>

### IL Bill(s)

■ **Senate:** <https://www.ilga.gov/legislation/billstatus.asp?DocNum=3953&GAID=16&GA=102&DocTypeID=SB&LegID=139111&SessionID=110>

■ **House:** <https://ilga.gov/legislation/BillStatus.asp?DocNum=4258&GAID=16&DocTypeID=HB&LegID=137292&SessionID=110&GA=102>

### SPC Link

■ **Senate:** <https://epr.sustainablepackaging.org/policies/SB%203953>

■ **House:** <https://epr.sustainablepackaging.org/policies/HB4258>

**KY** Kentucky’s proposed legislation would create a state Packaging Stewardship Program, making producers (those who dispose of more than 15 tons of

12. H.B. 4258, 102nd Gen. Assemb., 2021-2022 Sess. (Ill. 2022).

13. Id.

14. S.B. 3953, 102nd Gen. Assemb., 2022 Sess. (Ill. 2022).

15. Id.

16. Id.



packaging material annually and have legal ownership over the brand of product or imports a product contained in packaging material branded by them) responsible for the management of certain packaging waste (“non-biodegradable material... used to construct a single use container for a product... which incases the product...”), including the costs of recycling or other disposal methods.<sup>17</sup> The bill also calls for education around EPR and other waste-management issues.<sup>18</sup>

### KY Bill(s)

■ <https://apps.legislature.ky.gov/record/22RS/hb108.html#>

### SPC Link

■ <https://epr.sustainablepackaging.org/policies/HB108>

**MD Maryland.** See *Extended Producer Responsibility for Plastics Packaging: Opportunities in the Chesapeake Bay Watershed*

### MD Bill(s)

■ **Senate:** <https://mgaleg.maryland.gov/2022RS/bills/sb/sb0292f.pdf>

■ **House:** <https://mgaleg.maryland.gov/2022RS/bills/hb/hb0307f.pdf>

### SPC Link

■ **Senate:** <https://epr.sustainablepackaging.org/policies/SB0292>

■ **House:** <https://epr.sustainablepackaging.org/policies/HB0307>

**MA Massachusetts’** proposed legislation would establish a requirement that producers join a PRO which will establish an EPR program overseen by the Massachusetts Department of Environmental Protection.<sup>19</sup> Covered materials include any packaging or paper products, excluding beverage containers. These bills were both reported favorably from the Committee on Environment, Natural Resources and Agriculture and had been referred to the House and Senate Ways and Means Committees respectively, but did not become law this year.<sup>20</sup>

17. H.B. 108, 2022 Gen. Assemb., 2022 Reg. Sess. (Ky. 2022).

18. Id.

19. S. 2923, 192nd Gen. Ct., 2021-2022 Sess. (Mass. 2022); H. 4851, 192nd Gen. Ct., 2021-2022 Sess. (Mass. 2022).

20. The Massachusetts legislature sits in a biennial session, beginning on the first Wednesday of January in odd numbered years, so these bills were technically introduced in 2021, and will need to be reintroduced in 2023 for consideration.

### MA Bill(s)

■ <https://malegislature.gov/Bills/192/H878>

### SPC Link

■ <https://epr.sustainablepackaging.org/policies/HD1553>

**MN Minnesota’s** proposed legislation would establish an EPR program for single-use paper and plastic packaging, excluding long-term storage materials and beverage containers.<sup>21</sup> Producers would be required to join a product stewardship organization, paying fees based on the amount and type of product they are introducing into the state, including an eco-modulated fee structure. Money collected would go to administration of the program as well as recycling and reuse infrastructure and education grants, and to support recycling programs in Tribal Communities.<sup>22</sup> The bill also contained mandatory goals for recyclable material included in packaging, including a 50 percent reduction in non-recyclable materials after 10 years.<sup>23</sup>

### MN Bill(s)

■ [https://www.revisor.mn.gov/bills/text.php?number=HF4132&version=latest&session=92&session\\_number=0&session\\_year=2021](https://www.revisor.mn.gov/bills/text.php?number=HF4132&version=latest&session=92&session_number=0&session_year=2021)

### SPC Link

■ <https://epr.sustainablepackaging.org/policies/HF%204132>

**NH New Hampshire’s** proposed bill would establish a commission to study EPR.<sup>24</sup> The commission, comprised of members of the legislature, the Department of Environmental Services Waste Management Council, the Northeast Resource Recovery Association, the NH Municipal Association, and the Northeast Recycling Council, would be responsible for examining and suggesting legislation to help update and/or meet current state waste reduction goals (RSA 149-M), “with emphasis on the improvement of municipal recycling, reducing solid waste flow and reducing taxpayer costs in support of municipal transfer stations through extended producer responsibility.”<sup>25</sup> The bill was referred to Interim Study by the NH House of Representatives.

21. H.F. 4132, 92nd Leg., 2021-2022 Sess. (Minn. 2022).

22. Id.

23. Id.

24. H.B. 1111, 2022 Gen. Ct., 2022 Sess. (N.H. 2022).

25. Id.

## NH Bill(s)

■ <https://legiscan.com/NH/bill/HB1111/2022>

## SPC Link

■ n/a

**NJ** New Jersey's<sup>26</sup> parallel proposed legislation, Gen. Assemb. B. 1444 and S.B. 426, would require producers of packaging products, including “any product or material that is designed and used for the containment, protection, handling, delivery, or presentation of another product, including, but not limited to, a food or beverage item,” sold in the state to adopt and implement a packaging stewardship plan with the purpose of ensuring “that all participating producers remain responsible for managing and facilitating the collection, transportation, reuse, and recycling or disposal of all discarded packaging products in the State, in accordance with environmentally sound management practices.”<sup>27</sup> The legislation also contains a goal of 75 percent postconsumer content in all single-use plastic packaging by 2027, with all readily recyclable or compostable by 2030, among other things.<sup>28</sup>

## NJ Bill(s)

- **General Assembly:** <https://www.njleg.state.nj.us/bill-search/2022/A1444>
- **Senate:** <https://www.njleg.state.nj.us/bill-search/2022/S426>

## SPC Link

- **General Assembly:** <https://epr.sustainablepackaging.org/policies/AB1444>
- **Senate:** <https://epr.sustainablepackaging.org/policies/SB426>

**NY** Instead of initially pursuing EPR through specific legislation, **New York's** governor included an EPR program in her proposed executive budget for 2022. The program proposed by Governor Hochul included requirements for producers to comply individually or join a PRO, created an advisory committee of stakeholders, and called for eliminating PFAS in food

packaging by the end of this calendar year. After the program was cut from the state's final budget, an EPR bill was submitted late in the state's session.<sup>29</sup> The proposed bill, more extensive than the Governor's proposed policy, applies to paper, plastics, glass, and metal packaging, with exclusions, including beverage containers. The law would require a statewide needs assessment, and producers to establish a packaging responsibility fund under which they would be responsible for reducing packaging waste, paying fees based on the amount of packaging material produced, and provide “consumer access to widespread, convenient, and equitable access to collection opportunities” for NY residents.<sup>30</sup> It would establish packaging reduction goals by 50 percent over 10 years, and set packaging recyclable goals to 90 percent (recyclable, compostable, or recycled content) over 12 years.<sup>31</sup> Advocates are optimistic about EPR packaging legislation being successful next year. One article opined that NY's election schedule may have influenced the bills that were passed this year due to legislators' attention on primaries.

## NY Bill(s)

- **Assembly Bill 10185:** [https://www.nyasembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A10185&term=0&Summary=Y&Actions=Y&Text=Y](https://www.nyasembly.gov/leg/?default_fld=&leg_video=&bn=A10185&term=0&Summary=Y&Actions=Y&Text=Y)
- **Assembly Bill 5801:** <https://www.nysenate.gov/legislation/bills/2021/A5801>
- **Senate Bill (amended):** <https://www.nysenate.gov/legislation/bills/2021/s1185>

## SPC Link

- **Assembly Bill 10185:** <https://epr.sustainablepackaging.org/policies/A10185>
- **Assembly Bill 5801:** <https://epr.sustainablepackaging.org/policies/A5801-2>
- **Senate Bill (amended):** <https://epr.sustainablepackaging.org/policies/S1185C-2>

**NC** North Carolina's proposed legislation applied to packaging including paper, plastic, glass, and metal, excluding long-term storage packaging, packaging for some medical products, and packaging for toxic substances.<sup>32</sup> Producers would be required to pay fees into a PRO based on the amount of materials they introduce into the state. Fees must reflect “the per

26. \*Noteworthy that New Jersey passed a different recycling-related bill in January of 2022 (although legislation was introduced in a previous session), establishing “postconsumer recycled content requirements for rigid plastic containers, glass containers, paper and plastic carryout bags, and plastic trash bags; prohibits sale of polystyrene loose fill packaging.” S.B. 2515, 219th Leg., 2021 Sess. (N.J. 2021).

27. Gen. Assemb. B. 1444(3)(a)(1), 220th Leg., 2022 Sess. (N.J. 2022); S.B. 426(3)(a)(1), 220th Leg., 2022 Sess. (N.J. 2022).

28. Id. at (3)(c)(4).

29. Assemb. B. 10185, 2022 Leg., 2022 Sess. (N.Y. 2022); Assmb. B. 5801, 2022 Leg., 2022 Sess. (N.Y. 2022); S.B. 1185C, 2022 Leg., 2022 Sess. (N.Y. 2022).

30. Id.

31. Id.

32. H.B. 1113, 2021-2022 Sess. (N.C. 2022).

ton costs associated with the collection, processing, transportation, and recycling and disposal of a producer’s packaging material,” and the fee structure must incentivize recyclable content, reuse of product, and recyclability.<sup>33</sup> Fees would be used to reimburse public and private solid waste management services for costs associated with collection and recycling of the packaging.<sup>34</sup> North Carolina’s legislation also included a ban on certain toxic substances in packaging materials, including, but not limited to, PFAS, formaldehyde, and lead.<sup>35</sup>

### **NC Bill(s)**

■ <https://www.ncleg.gov/BillLookup/2021/H1113>

### **SPC Link**

■ <https://epr.sustainablepackaging.org/policies/NCHB1113>

**PA Pennsylvania.** See *Extended Producer Responsibility for Plastics Packaging: Opportunities in the Chesapeake Bay Watershed*

### **PA Bill(s)**

■ <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=H&type=B&bn=1873>

### **SPC Link**

■ <https://epr.sustainablepackaging.org/policies/HB1873>

**RI** Under **Rhode Island’s** proposed legislation, H.B. 7279 and S.B. 2296, the state’s Department of Environmental Management (DEM) would conduct a needs assessment, followed by the establishment of a PRO.<sup>36</sup> The DEM would set fees for producers based on the types of packaging materials produced.<sup>37</sup> Qualifying packaging includes “any part of a package or container, including material that is used for the containment, protection, handling, delivery, transport, distribution, and presentation of a product,” including bags, excluding beverage containers.<sup>38</sup> Fees would go to paying for the system, as well as be distributed to local municipalities and Indigenous communities to help improve local waste management systems.<sup>39</sup> There is a 10-year goal of 50 percent recyclable packaging.<sup>40</sup>

33. Id.

34. Id.

35. Id.

36. S.B. 2296 § 23-97-4, 2022 Gen. Assemb., Jan. Sess. (R.I. 2022).

37. Id.

38. Id.

39. Id. at § 23-97-7.

40. Id. at § 23-97-17.

### **RI Bill(s)**

■ <http://webserver.rilin.state.ri.us/BillText/BillText22/HouseText22/H7279.pdf>

### **SPC Link**

■ <https://epr.sustainablepackaging.org/policies/HB7279>

**VT Vermont’s** proposed bill would require producers of packaging and paper products to participate in a stewardship organization, responsible for determining and implementing a producer responsibility program plan (reviewed and updated every 5 years).<sup>41</sup>

### **VT Bill(s)**

■ <https://legislature.vermont.gov/bill/status/2022/S.236>

### **SPC Link**

■ <https://epr.sustainablepackaging.org/policies/S236>

**VA Virginia.** See *Extended Producer Responsibility for Plastics Packaging: Opportunities in the Chesapeake Bay Watershed*

### **VA Bill(s)**

■ **House Bill 918:** <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+HB918>

■ **House Bill 647:** <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+HB647>

■ **House Bill 709:** <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+HB709>

### **SPC Link**

■ **House Bill 918:** <https://epr.sustainablepackaging.org/policies/HB918>

■ **House Bill 647:** <https://epr.sustainablepackaging.org/policies/HB647>

■ **House Bill 709:** <https://epr.sustainablepackaging.org/policies/HB709>

**WA Washington’s** proposed legislation, which applied to all material collected through its existing recycling system, would have required producers to join PROs.<sup>42</sup> It also would have set a goal of 90 percent recycling or reuse for consumer packaging by 2040 and included a truth in labeling section.<sup>43</sup> While the bill had momentum, Washington’s session was only 60 days this year (the state has alternating 60

41. S.B. 236 §§ 7183-84, 2022 Gen. Assemb., 2022 Sess. (Vt. 2022).

42. S.B. 5697, 67th Leg., 2022 Reg. Sess. (Wash. 2022); H.B. 2003, 67th Leg., 2022 Reg. Sess. (Wash. 2022).

43. Id.



and 105 day sessions), and there was simply not enough time to push it through. Analysts expect it to be back up for consideration during the state’s 2023 session.

### WA Bill(s)

- **Senate (amended):** <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/Senate%20Bills/5697-S.pdf?q=20220908110443>
- **House:** <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/House%20Bills/2003.pdf?q=20220908110624>

### SPC Link

- **Senate (amended):** <https://epr.sustainablepackaging.org/policies/SSB5697>
- **House:** <https://epr.sustainablepackaging.org/policies/HB2003>

## SECTION II

### Additional Details on States That Have Successfully Passed EPR Legislation Regarding Plastics Packaging

#### Maine

##### Key arguments in support of the legislation:

- Economic impacts — takes the financial burden of recycling these materials off of taxpayers (and local governments). Shifts financial burden to producers;
- Proven track record of EPR working to increase the collection and recycling of materials in Maine as well as in other countries;
- Maine views itself as a leader in materials management;
- Will stabilize the municipal recycling market.

##### Key arguments in opposition to the legislation:

- Becoming an outlier in state regulations. Creates inconsistency among states;
- Definitions are unclear and will lead to confusion;
- Does little to incentivize the creation of new markets for recyclables or improve consumer education of effective recycling practices;
- Does nothing to impact consumer behavior;
- Increases overall costs without improving recycling infrastructure;

- 4–6 percent increase in grocery bills for Maine families;<sup>44</sup>
- Stakeholder involvement and oversight needed.

### Link to Maine Law

- <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1146&item=1&snum=130>

### SPC Link

- <https://epr.sustainablepackaging.org/policies/LD1541A>

#### Oregon

##### Key arguments in support of the legislation:

- Makes the recycling system in the state more equitable and reduces contamination (puts burden on producers who have the greatest control over the product);
- Stabilizes markets affected by National Sword policy.

##### Key arguments in opposition to the legislation:

- Lacks solutions for non-readily recyclable materials (fails to promote market development for recyclable products — so no lever to build infrastructure);
- Too broad and complex (addresses consumer products as well as commercial and industrial);
- Grants DEQ too much authority and the PRO not enough;
- Dates for implementation are too aggressive. The PRO will need to submit an EPR plan to Oregon’s Department of Environmental Quality (DEQ) by March 31, 2024 and begin implementing the plan by July 1, 2025;
- Would increase recycling costs disproportionately to increase in recycling rates (argument made by paper industry, which disagreed with the cost-to-increase in recycling rates analysis offered by DEQ during the legislative process);
- Is not a producer run system.

### Link to Oregon Law

- <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB582>

44. Testimony In Opposition to L.D. 1471, An Act to Support Municipal Recycling Programs and Save Taxpayer Money, Me. State Chamber of Com. (2021) (Statement of Ben Gilman, Maine State Chamber of Commerce). <http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=163052>; see also Study: New state-run recycling program could cost Mainers \$134 million a year, Maine State Chamber of Commerce (June 11, 2021), <https://www.mainechamber.org/mscc-blog/study-new-state-run-recycling-program-could-cost-mainers-134-million-a-year>.

## SPC Link

- <https://epr.sustainablepackaging.org/policies/SB582B>

## Colorado

### Key arguments in support of the legislation:

- Will increase recycling services in rural areas and multi-family households (60 percent of whom do not currently have recycling services). Will bring “convenient and equitable recycling access” to underserved communities;<sup>45</sup>
- Provides industry with a strong management role;<sup>46</sup>
- In 2020, Colorado’s recycling rate was 15 percent, well below the national average.<sup>47</sup>

### Key arguments in opposition to the legislation:

- Will raise prices for consumers;
- Will stress existing recycling system instead of supporting it;
- Overly complex — relies on non-existing infrastructure;

## Link to Colorado Law

- [https://leg.colorado.gov/sites/default/files/2022a\\_1355\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2022a_1355_signed.pdf)

## SPC Link

- <https://epr.sustainablepackaging.org/policies/COHB221355RR>

## California

This is the fourth year that California legislators have attempted to pass an EPR program for plastics, being unsuccessful in 2019, 2020, and 2021. Supporters cite years of consensus building as key to this year’s success.<sup>48</sup> This year, the legislation faced a competing ballot measure offering different approaches to

reducing plastics pollution requiring single-use plastic packaging to be recyclable, refillable, or compostable by 2030, as well as a 25 percent reduction in plastic packaging and foodware by 2030 and a ban on polystyrene food packaging, among other things (example of a tax proposal).<sup>49</sup> This competing measure was backed by many environmental groups, including The Nature Conservancy and the Natural Resources Defense Council, as more effective in reducing plastic pollution. Threat of this competing ballot measure, and the promise by its supporters to withdraw it if SB 54 passed, may have been the driving force behind stakeholders compromising and supporting the ultimately successful legislation.

### Key arguments in support of the legislation:

- Supports CA’s transition to a circular economy;
- Has buy-in from haulers and Material Recovery Facility (MRF) operators who maintain the ability to negotiate with the PRO over certain details.

### Key arguments in opposition to the legislation:

- Will not achieve the desired goal of reducing plastics pollution or mitigating climate and pollution impacts of single-use plastics;<sup>50</sup>
- Does not set a strong enough precedent for other states to follow;
- Gives too much power to producers;
- Will harm paper recycling rates.

## Link to California Law

- [https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill\\_id=202120220SB54&showamends=false](https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=202120220SB54&showamends=false)

## SPC Link

- <https://epr.sustainablepackaging.org/policies/SB54CH>

45. Micah Allen, et al., Local elected officials in support of H.B. 22-1355, [https://d12v9rtnomnebu.cloudfront.net/diveimages/ProducerResponsibility\\_LocalElectedLetter\\_2022.pdf](https://d12v9rtnomnebu.cloudfront.net/diveimages/ProducerResponsibility_LocalElectedLetter_2022.pdf).

46. Building a Circular Economy for Packaging: A View from the Consumer Goods Industry on Optimal Extended Producer Responsibility, THE CONSUMER GOODS F., (Aug. 2020), <https://www.theconsumergoodsforum.com/wp-content/uploads/Building-a-Circular-Economy-for-Packaging-July-15-2022.pdf>.

47. Clarissa Guy, Failure, triumph and opportunity for Colorado’s waste system, ROCKY MOUNTAIN PBS (Apr. 1, 2022), <https://www.rmpbs.org/blogs/rocky-mountain-pbs/colorado-recycling-issues-new-bill/#:~:text=The%20state%20of%20recycling%20in%20Colorado&text=In%202020%2C%20the%20organizations%20found,national%20average%2C%E2%80%9D%20said%20Bailey.>

48. Megan Quinn, California EPR bill passes state Assembly, final vote must happen immediately, WASTE DIVE (June 30, 2022), <https://www.wastedive.com/news/california-epr-bill-state-assembly-plastic/626371/>.

49. Cal. Plastic Waste Reduction Regulations Initiative (2022), BALLOTEDIA (Sept. 19, 2022), [https://ballotpedia.org/California\\_Plastic\\_Waste\\_Reduction\\_Regulations\\_Initiative\\_%282022%29](https://ballotpedia.org/California_Plastic_Waste_Reduction_Regulations_Initiative_%282022%29) (last visited July 8, 2022).

50. Nick Lapis et al., Re: SB 54 (Allen, Skinner, Stern, and Weiner) - Oppose, [https://d12v9rtnomnebu.cloudfront.net/diveimages/SB\\_54\\_-\\_CAW-NRDC-SCC\\_oppose\\_-\\_06-19-22\\_.pdf](https://d12v9rtnomnebu.cloudfront.net/diveimages/SB_54_-_CAW-NRDC-SCC_oppose_-_06-19-22_.pdf).



# About the Co-Producers

## The Chesapeake Bay Commission



The Chesapeake Bay Commission was created in the early 1980s through the establishment of state law in Maryland, Pennsylvania, and Virginia. Its goal then — and now — is to be a catalyst for the coordination and leadership of state legislative and policy action to restore the Bay watershed. As a formal signatory to every Bay agreement, the Commission serves as the legislative voice in the multi-jurisdictional Chesapeake Bay Program Partnership and as a liaison to the U.S. Congress on policy and budgetary matters. Learn more about the Chesapeake Bay Commission at [www.chesbay.us](http://www.chesbay.us).

## The Chesapeake Legal Alliance



The Chesapeake Legal Alliance (CLA) is the only regional organization solely dedicated to providing free legal services to protect the Chesapeake Bay watershed. CLA is a trusted source for innovative legal strategies to solve the Bay's most complex problems. Clients include individuals, community groups and environmental advocates working to protect the Bay's lands, waters, and communities. CLA also works with local, state, and federal regulators seeking unique solutions to Chesapeake Bay protection and restoration. The CBC and CLA have successfully partnered on many projects. Learn more about CLA at [www.chesapeakelegal.org](http://www.chesapeakelegal.org).