

April 10, 2024

Dear Members of the Senate Environment Committee:

RE: Beverage Industry Concerns on SF3561-3 - Packaging Waste and Cost Reduction Act

The beverage industry has supported well-designed EPR legislation for packaging and paper in several states and has advocated for these programs as broad-based, proven policy solutions to advancing a circular economy and helping to achieve beverage industry goals of its “Every Bottle Back” program. Unfortunately, this bill continues to have significant flaws that move us to oppose the bill in its current form.

We appreciate amendments incorporated into the third engrossment of the Senate bill to address several of the key concerns we highlighted in our March 11 memo. We have revised this document accordingly to highlight the top issues that remain.

The excess level of control and authority granted to the Commissioner and MPCA is a common theme throughout our comments. This limits producers’ ability to develop effective and efficient mechanisms to fund improvements to recycling and threatens to turn a producer responsibility organization into simply a producer paying organization.

Unrealistic Goals

- The goals remain problematic. While the unrealistic goals were removed from the bill language, the establishment of the goals remains the responsibility of the Agency with a long list of criteria to be fulfilled in establishing them. The PRO is merely consulted. This leaves far too much discretion to the Commissioner, especially where many of the criteria are qualitative and subjective (e.g., “would reduce impacts to human health and the environment.”)
- The source reduction definition and goals remain based on unmeasurable factors. We recommend a quantifiable basis for this type of metric, such as reductions in virgin material usage. Washington State’s “target study” did not find

a valid basis for establishing source reduction goals or metrics given uncertainty around this issue.

- The bill gives the Commissioner wide latitude for banning packages and products based on criteria (e.g., “recyclable,” leads to “environmental and human health impacts,” are “detrimental” to recycling”) that are not spelled out in the legislation or are ambiguous.
 - That authority would create an unacceptable level of uncertainty for companies doing business in Minnesota and hands too much discretion to MPCA. Adding extensions to eventual bans on the sale of certain products and materials is not a solution.
 - This state authority disarms the PRO from using incentives and fee structures to accomplish similar results without having the state dictate what can and cannot be sold.
- Revised goal statements in Section 12, Sub.7 call for “an overall percentage [of postconsumer recycled content] for all covered materials.” This is an impractical goal since it is dependent on the mix of materials used by thousands of producers and cannot be managed in any way. The PRO’s plan should propose content targets only on a material-specific basis.

Program Scope

- Prescriptive new language on reimbursement rates in Section 12, Sub.3 (9) is unnecessarily complex.
 - The bill should simply delineate the scope of services (collection, transportation, and processing of covered materials; sale of commodities net of scrap value; and disposal of collected covered material residuals.
 - The reimbursement process should be established by the PRO in the plan – not prescribed in the legislation.
 - Finally, the PRO’s responsibility for collection and processing of compostables needs to be clarified. Only the portion of these programs’ costs attributable to covered materials should be funded by the PRO.
- The PRO is charged with improving the design of producers’ products, providing technical support to producers, and improving product labels – all of these are far beyond the appropriate role for the organization, which cannot dictate decisions to member producers from all over the world.

Other Issues: Needs Assessment, Investments

- The scope of the needs assessment remains overly broad. New language in Section 11 Sub.1 allowing the Commissioner to adjust the required elements in response to a request from the PRO does not go far enough.
 - We believe the learnings from the initial needs assessment completed in Colorado (*i.e.*, excessive detail, much of it not useful for plan development) should be incorporated into this bill and the scope of the study pared back significantly.
 - We have provided sample language for a simpler “baseline assessment” at the end of this document as an illustration. We would encourage advocates to contact Circular Action Alliance, the umbrella PRO engaged with the EPR programs in Colorado, Maryland, and Oregon.
- The state should not have authority to approve or deny individual investments by producers.

Below please find sample language for a Baseline Assessment to Replace the Overly Detailed Needs Assessment

(1) On or before xx/xx/xxxx, the organization shall hire an independent third party approved by the commissioner to develop a baseline of the state’s recycling system. The organization shall develop a request for proposals for the baseline assessment and shall consult with the advisory board on the scope of the assessment prior to finalizing the scope and putting the work out to bid.

(2) The baseline assessment is a compilation of information collected from service providers in the state, both public and private, that currently provide recycling services. As this information is critical to developing a plan, service providers must respond to data requests from the third party organization contracted for this work or be subject to enforcement action. The third party, organization, commissioner, and advisory board must keep confidential any proprietary information from a service provider.

(3) Collection service. The scope of the baseline data collection shall include, but not be limited to:

(a) Recycling access information for residential customers of the service providers including households served, type of service provided (*e.g.*, single-stream curbside, dropoff), materials accepted, frequency of service provided where relevant;

(b) Weight of material collected per time period and the capacity of the current collection method; and

(c) Contracted rates for service (e.g., dollars per household) and the services covered by the rates.

(4) Processing. The scope of the baseline data collection shall include, but not be limited to:

(a) The material throughput at a processing facility providing recycling services to covered entities and the facility's capacity for processing material

(b) The design and capabilities of the facility (e.g., single vs dual stream, use of optical sorters)

(c) Tip fees charged for processing; and

(d) Data on contamination.

(5) Additional data. The scope of the baseline assessment may include:

(a) The market conditions and opportunities for the use of recycled covered materials in the state and region and issues with access to markets for recycled covered materials;

(b) The availability and scope of any reuse or refill systems in the state affecting the use of covered materials;

(c) Access to, capacity, and characteristics of compost facilities to process and recover compostable covered materials.

(6) On or before xx/xx/xxxx, the organization shall report the results of the baseline assessment to the advisory board and the commissioner. The director shall post the results of the baseline assessment on the agency's website and provide public notice and an opportunity to comment on the results of the baseline assessment. In finalizing the baseline assessment, the commissioner, with the assistance of the organization, shall prepare a summary of any comments received and identify any significant changes made to the baseline assessment based on those comments.

We ask legislators to oppose the bill at this time as there are just too many areas in the bill that need substantial work to advance the bill this session. We would like to continue to work with the advocates over the interim to work out the needed changes to make this legislation successful.

Sincerely,



Tim Wilkin
President