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**STATE OF MAINE
ONE HUNDRED AND THIRTIETH LEGISLATURE
COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES**

TO: Senator Anne Carney, Chair
Representative Thom Harnett, Chair
Joint Standing Committee on Judiciary

FROM: Senator Stacy Brenner, Chair ^{SB per}
Representative Ralph Tucker, Chair ^{RT per}
Joint Standing Committee on Environment and Natural Resources

DATE: June 1st, 2021

RE: Public records exception review of LD 1541

The Joint Standing Committee on Environment and Natural Resources is requesting the Judiciary Committee's review of a portion of the majority report amendment¹ to LD 1541, *An Act To Support and Improve Municipal Recycling Programs and Save Taxpayer Money* (Representative Grohoski, sponsor) pursuant to Title 1, section 434. For reference, attached to this memorandum is a copy of the original version of the bill as well as a proposed amendment submitted by the Department of Environmental Protection ("the department") that was in large part incorporated as the majority report amendment.

We do not at this time have available a copy of the final majority report amendment to LD 1541, however, the majority report does not make any changes to the specific provisions in the original bill or in the department's proposed amendment for which this review is requested.

LD 1541 establishes a stewardship program in the State for packaging material. Under that program, producers of products that are sold, offered for sale or distributed for sale in or into the State contained, protected, delivered, presented or distributed in or using "packaging material" are required to annually report to a stewardship organization, contracted by the department to operate the packaging stewardship program in Maine, regarding the total amount of each type of packaging material sold, offered for sale or distributed for sale in or into the State in the prior calendar year.

¹ There are 9 members on the majority OTP-AM report (Senators Brenner, Bennett and Carney; Representatives Tucker, Bell, Blume, Doudera, Gramlich and Zeigler). There are 3 members on one minority ONTP report (Representatives Hanley, Johansen and O'Connor) and 1 member on another minority OTP-AM report (Representative Tuell). The minority OTP-AM report incorporates the original version of LD 1471, another bill in ENR that would establish a similar packaging stewardship program.

Based on methods to be adopted by the department by rule, those producers are required to annually pay to the stewardship organization a fee associated with the amount of packaging material the producer sold, offered for sale or distributed for sale in or into the State in the prior calendar year, with payment to be differentiated based on a number of factors and adjustments, including whether the packaging material is considered "readily recyclable" in Maine. The stewardship organization is directed to use those such producer payments to reimburse "participating municipalities" for certain incurred municipal costs associated with the management of packaging material.

As part of the stewardship program, certain producer information submitted to the stewardship organization must in turn be submitted to the department. Additionally, the law authorizes "alternative collection programs," which may be implemented by a producer or producers to manage a certain type of packaging material and may require submission of certain producer information to the department. Some of that information submitted to the department may constitute proprietary information. Section 1 of the bill, in new 38 MRSA §2146, subsection 15, provides:

15. Proprietary information. Proprietary information submitted to the department pursuant to the requirements of this section or the rules adopted pursuant to 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.

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"Proprietary information" as defined in section 1 of the bill, in new 38 MRSA §2146, subsection 1, paragraph O, cross-references that term's definition in 38 MRSA §1771, subsection 6-A, which reads:

6-A. Proprietary information. "Proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available.

38 MRSA §1310-B, which is referenced in the above language, contains the standard process for management of confidential material within Title 38 (a copy of that section of law is attached). That process, as described in statute, is generally as follows:

- If a submitter designates certain information submitted to the department as confidential, that information has to be segregated from other public department records;
- The department's public records must indicate that such information has been submitted and designated as confidential and must describe the general nature of the information;
- If any entity submits a request to the department for that designated information, the department must notify the submitter of the request. The submitter must respond within 15 days of the receipt of such notice to demonstrate to the department's satisfaction that the information is proprietary information and thus should not be disclosed.
- The department subsequently will determine whether the information is proprietary information and whether the information should be disclosed. The statute includes additional provisions regarding an appeal of the department's decision on disclosure.

The confidentiality language and definition of "proprietary information" in LD 1541 are extremely similar or identical to other confidentiality provisions in Title 38, all of which reference the section

1310-B process for the handling of confidential records (see, e.g., 38 MRSA §§1609(15), 1610(6-A)(F), 1661-A(4), 1776(10), 2144(5)(F) and 2324(3)).

Reviewing the statutory criteria for the proposed exception to public records in the committee amendment to LD 1541, we would comment as follows:

A. Need to collect the information. Under the proposal, a producer is required to submit to the stewardship organization certain information that could include confidential proprietary information and that may in turn be shared with the department. As part of an alternative collection program, a producer would also be required to submit directly to the department certain information that could include confidential proprietary information.

B. Value in maintaining the information. Maintenance of the information received by the department from producers or the stewardship organization is important in the determination of whether a packaging stewardship program or an alternative collection program meets or is operating in compliance with the requirements of the law or department-adopted rules for those programs.

C. Federal law. We are unaware of any federal law requiring this information to be confidential.

D. Balancing the individual's privacy rights and the public interest. Review of the balancing of interests under this proposed exception is perhaps better considered under criteria E.

E. Balancing the effect of disclosure on business competition against the public interest. Public disclosure of this proprietary information may place the submitter at a competitive disadvantage and does not appear to serve a significant public interest.

F. Interfering in public negotiations. We are unaware of any connection between this information and negotiations involving a public body.

G. Balancing the public interest and potential jeopardy to public safety or a member of the public. We are unaware of any connection between the public interest in disclosure of this information and the safety of a member of the public or the public in general.

H. Narrowness of the exception. This exception only applies to certain information submitted to the department by the stewardship organization or a producer that is designated as confidential, is not otherwise publicly available and the disclosure of which would impair the competitive position of the submitter.

I. Any other criteria.

Thank you for reviewing this proposed public records exception. Please let us know if you require any additional information.

cc: Members, Environment and Natural Resources Committee

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130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document

No. 1541

H.P. 1146

House of Representatives, April 22, 2021

An Act To Support and Improve Municipal Recycling Programs and Save Taxpayer Money

Received by the Clerk of the House on April 20, 2021. Referred to the Committee on Environment and Natural Resources pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Robert B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative GROHOSKI of Ellsworth.
Cosponsored by Senator BENNETT of Oxford and
Representatives: HANLEY of Pittston, KESSLER of South Portland, PLUECKER of Warren,
SKOLFIELD of Weld, ZEIGLER of Montville, Senators: BREEN of Cumberland, BRENNER
of Cumberland, CARNEY of Cumberland.

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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 8.

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

C. "Collection" means the gathering of waste, including the preliminary sorting and storage of waste for the purposes of transport to a recycling establishment.

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

E. "Franchisor" means a person that grants to a franchisee a franchise authorizing the use of the person's trade name, service mark or related characteristic and the sharing of the person's proprietary knowledge or processes pursuant to an oral or written arrangement for a definite or indefinite period.

F. "Low-volume producer" means a producer that sold, offered for sale or distributed for sale in or into the State during the prior calendar year products contained, protected, delivered, presented or distributed in or using more than one ton but less than 15 tons of packaging material in total.

G. "Municipality" means a city, town, county, township, village or plantation; a refuse disposal district under chapter 17; or a regional association.

H. "Packaging material" means a discrete type of material, or a category of material that includes multiple discrete types of material with similar management requirements and similar commodity values, used for the containment, protection, delivery, presentation or distribution of a product, including a product sold over the Internet, at the time that the product leaves a point of sale with or is received by the consumer of the product. "Packaging material" does not include a discrete type of material, or a category of material that includes multiple discrete types of material, that is:

(1) 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;

(2) A beverage container, as defined in section 3102, subsection 2, subject to the requirements of chapter 33; or

(3) A container for architectural paint, as defined in section 2144, subsection 1, paragraph A, that is collected through a paint stewardship program that is in operation and that has been approved by the department pursuant to section 2144, as long as the stewardship organization operating that program:

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(a) Has demonstrated to the department's satisfaction that it recycles at least 90% of the containers of architectural paint collected under the program; or

(b) Subject to the approval of the department, if unable to satisfy the requirements of division (a), has demonstrated to the department's satisfaction that it recycles at least 80% of the containers of architectural paint collected under the program.

I. "Packaging stewardship fund" or "fund" means a privately held account established and managed by the stewardship organization pursuant to subsection 12.

J. "Packaging stewardship organization" or "stewardship organization" means the entity contracted by the department under subsection 3 to operate the packaging stewardship program.

K. "Packaging stewardship program" or "program" means the program implemented under this section by the 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 or into the State by each producer and to reimburse participating municipalities for certain municipal recycling and waste management costs.

L. "Participating municipality" means a municipality that has complied with the requirements of subsection 9 and is eligible for reimbursement of certain costs in accordance with subsection 10.

M. "Post-consumer recycled material" means new material produced using material resulting from the recovery, separation, collection and reprocessing of material that would otherwise be disposed of or processed as waste and that was originally sold for consumption. "Post-consumer recycled material" does not include post-industrial material or pre-consumer material.

N. "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) 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 franchisor 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, Section 501(c)(3).

O. "Proprietary information" has the same meaning as in section 1771, subsection 6-A.

P. "Readily recyclable" means, with respect to a type of packaging material, that the type of packaging material, as determined by the department by rule:

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

1 (2) Has a consistent market for purchase. For the purposes of this subparagraph,
2 "consistent market for purchase" means, with respect to a type of packaging
3 material, that entities processing recyclable material are willing to purchase full
4 bales of that type of fully sorted packaging material in quantities equal to or in
5 excess of the supply of that fully sorted packaging material.

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

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

10 R. "Reuse" has the same meaning as in section 1771, subsection 8.

11 S. "Similar municipalities" means 2 or more municipalities that, as determined by
12 department rule in accordance with rules adopted pursuant to subsection 13, paragraph
13 A, subparagraph (3), have similar population sizes, geographic locations, proximity to
14 resources and regional recycling capacity and other factors determined by the
15 department to affect the costs associated with the collection, processing, transportation
16 and recycling or disposal of packaging material by municipalities.

17 T. "Toxicity" means, with respect to packaging material, the presence in packaging
18 material or the use in the manufacturing, recycling or disposal of packaging material
19 of intentionally introduced metals or chemicals regulated pursuant to Title 32, chapter
20 26-A; food contact chemicals of high concern or priority food contact chemicals
21 regulated pursuant to Title 32, chapter 26-B; or chemicals of concern, chemicals of
22 high concern or priority chemicals identified pursuant to chapter 16-D.

23 2. Producer exemptions. Notwithstanding any provision of this section to the
24 contrary, a producer is exempt from the requirements and prohibitions of this section in
25 any calendar year in which:

26 A. The producer realized less than \$2,000,000 in total gross revenue during the prior
27 calendar year;

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

31 C. The producer realized more than 50% of its total gross revenue in the prior calendar
32 year from the sale of goods it acquired through insurance salvages, closeouts,
33 bankruptcies and liquidations.

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

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

42 A. No later than May 1, 2022, and consistent with applicable competitive bidding
43 requirements under state purchasing laws, the department shall issue a request for

1 proposals for the operation of the packaging stewardship program by a packaging
2 stewardship organization. The proposals must be required to cover a 10-year operation
3 of the packaging stewardship program by the successful bidder and must be required
4 to include, at a minimum:

5 (1) A description of how the bidder will administer the stewardship organization,
6 including:

7 (a) The mechanism or process, to be developed with input from producers, by
8 which a producer may request and receive assistance from the stewardship
9 organization in the reporting of required information and regarding methods
10 by which the packaging material used by a producer may be modified so as to
11 reduce the producer's payment obligations under subsection 6; and

12 (b) The mechanism or process, to be developed with input from municipalities,
13 by which a participating municipality may request and receive assistance from
14 the stewardship organization in the reporting of required information and
15 regarding methods by which a municipality's recycling program may be
16 modified so as to increase access to and participation in the program;

17 (2) A description of how the bidder intends to solicit and consider input from
18 interested persons, including, but not limited to, producers, municipalities,
19 environmental organizations and waste management and recycling establishments,
20 regarding the bidder's operation of the packaging stewardship program, if selected;

21 (3) A description of how the bidder intends to establish and manage the packaging
22 stewardship fund consistent with subsection 12, including, but not limited to: the
23 staffing the bidder intends to use for management of the fund; a plan to ensure
24 equity of access to the fund for financially challenged or otherwise disadvantaged
25 municipalities or communities; a plan for providing technical support to producers
26 and municipalities regarding program requirements; and a plan for administering
27 payments to and reimbursements from the fund and the financial mechanisms,
28 including investment types, if any, the bidder intends to use in managing the fund;

29 (4) A proposed financial assurance plan that ensures all funds held in the
30 packaging stewardship fund are immediately and exclusively forfeited and
31 transferred to or otherwise made immediately available to the department to
32 support waste diversion, reuse or recycling programs when the stewardship
33 organization's contract with the department is terminated by the department or
34 expires, unless the stewardship organization enters into a new contract with the
35 department in accordance with paragraph B prior to the expiration of the
36 stewardship organization's existing contract;

37 (5) A proposed budget outlining the anticipated costs of operating the packaging
38 stewardship program, including identification of any start-up costs that will not be
39 ongoing and a description of the method by which the bidder intends to determine
40 and collect producer payments during the initial start-up period of program
41 operation to fund the program's operational costs during that initial start-up period
42 and to reimburse or require additional payments by those producers subsequent to
43 that initial start-up period based on producer reporting of the actual amount of
44 packaging material sold, offered for sale or distributed for sale in or into the State
45 by each producer during that initial start-up period. The proposed budget under this

- 1 subparagraph may overestimate the cost of operating the program during its initial
2 start-up period of operation but must describe the method and basis for any
3 overestimate;
- 4 (6) A certification that the bidder will not share, except with the department,
5 information provided to the bidder by a producer that is proprietary information
6 and that is identified by the producer as proprietary information. The certification
7 must include a description of the methods by which the bidder intends to ensure
8 the confidentiality of such information;
- 9 (7) A description of how the bidder will conduct representative audits of recyclable
10 material processed and sold by facilities that process recyclable material generated
11 in the State, which must include, but is not limited to:
- 12 (a) A description of the sampling techniques to be used in those audits, which
13 must include random sampling;
- 14 (b) A description of how those audits, at a minimum, will be designed to solicit
15 information regarding the extent to which recyclable material processed and
16 sold by those facilities reflects the tons of each type of packaging material
17 collected in the State for recycling and the tons of each type of packaging
18 material recycled in the State, as well as the ultimate destination of and
19 intended use for that recycled material;
- 20 (c) A description of how those audits will be designed so that information
21 obtained through the audit of one facility will not be used to infer information
22 about a different facility that uses different processing equipment, different
23 sorting processes or different staffing levels to conduct such processing; and
- 24 (d) A description of the process by which a facility will be allowed to request
25 and receive an audit if it can credibly demonstrate that an audit result being
26 applied to its material output is not representative of its current operations;
- 27 (8) A description of how the bidder will conduct representative audits of municipal
28 solid waste disposed of in the State and representative audits of waste littered in
29 the State, which must include, but is not limited to:
- 30 (a) A description of the sampling techniques to be used in those audits, which
31 must include random sampling;
- 32 (b) For waste disposal audits, a description of the types and weight of
33 packaging material in the waste stream and the percentage by weight and
34 volume of the waste stream that is composed of packaging material; and
- 35 (c) For litter audits, a description of packaging material type by weight in the
36 sampled litter, identification of the producer or producers of the packaging
37 material in the sampled litter, if identifiable, and an evaluation based on those
38 audits regarding the areas of the State in which litter accumulation is greatest;
39 and
- 40 (9) Any additional information required by the department.
- 41 B. In accordance with applicable requirements of state purchasing laws, the
42 department shall enter into a contract with a bidder that has submitted a proposal in
43 accordance with the requirements of this subsection, the term of which must cover 10

1 years of operation of the packaging stewardship program by the stewardship
2 organization. The contract must, at a minimum, include provisions to ensure that the
3 stewardship organization will operate the program in accordance with all applicable
4 statutory requirements and the rules adopted by the department under this section.

5 If, at the close of the competitive bidding process under this subsection, the department
6 determines that no bidder has submitted, in accordance with this subsection, a proposal that
7 meets the requirements of this subsection, the department may reopen a new competitive
8 bidding process under this subsection.

9 **4. Prohibition; producer compliance information.** This subsection governs the sale
10 or distribution in the State of products with packaging not in compliance with the
11 requirements of this section and sets forth requirements for the collection and publication
12 of compliance information.

13 A. Beginning one calendar year following the effective date of the contract entered
14 into by the department and the stewardship organization pursuant to subsection 3:

15 (1) A producer may not sell, offer for sale or distribute for sale in or into the State
16 a product contained, protected, delivered, presented or distributed in or using
17 packaging material for which the producer has not complied with all applicable
18 requirements of this section; and

19 (2) A retailer may not sell, offer for sale or distribute for sale in or into the State a
20 product contained, protected, delivered, presented or distributed in or using
21 packaging material if, based on the information made available by the department
22 pursuant to paragraph C, the product is contained, protected, delivered, presented
23 or distributed in or using packaging material for which its producer has not
24 complied with all applicable requirements of this section.

25 B. At the department's request, the stewardship organization shall provide to the
26 department a list of producers that are participating in the program and are compliant
27 with the program's requirements and, if known to the stewardship organization, a list
28 of producers that are not participating in the program and are not compliant with the
29 program's requirements.

30 C. Based on information provided to the department under paragraph B and any other
31 information considered by the department, the department shall make available on its
32 publicly accessible website a regularly updated list of producers that the department
33 has determined are compliant with all applicable requirements of this section and a list
34 of producers and, where applicable, specific products for which the department has
35 determined the producer has not complied with all applicable requirements of this
36 section. The department shall conduct outreach to retailers to provide notification of
37 the information made available under this paragraph and any changes to that
38 information.

39 **5. Annual reporting by stewardship organization.** Beginning one calendar year
40 following the effective date of the contract entered into by the department and the
41 stewardship organization pursuant to subsection 3, and annually thereafter, the stewardship
42 organization shall submit to the department and make available on its publicly accessible
43 website a report that includes, at a minimum, the following information:

44 A. Contact information for the stewardship organization;

- 1 B. A list of participating producers and the brands of products associated with those
- 2 producers;
- 3 C. The total weight of each type of packaging material sold, offered for sale or
- 4 distributed for sale in or into the State by each participating producer as reported in
- 5 accordance with subsection 7;
- 6 D. As applicable, the total weight of each type of packaging material collected and
- 7 managed by each participating producer through alternative collection programs
- 8 approved by the department under subsection 8;
- 9 E. A complete accounting of payments made to and by the stewardship organization
- 10 during the prior calendar year, including information on how the stewardship
- 11 organization determined the amount of such payments in accordance with subsections
- 12 6 and 10 and the rules adopted under subsection 13, paragraph A, subparagraphs (1)
- 13 and (4);
- 14 F. A list of producers that are not participating in the program that are required to
- 15 participate in the program and any product-specific noncompliance, if known by the
- 16 stewardship organization;
- 17 G. A description of education and infrastructure investments made by the stewardship
- 18 organization in prior calendar years and an evaluation of how those investments were
- 19 designed to increase access to recycling in the State and to encourage the reuse of
- 20 packaging material;
- 21 H. A description of the results of the representative audits required pursuant to
- 22 subsection 3, paragraph A, subparagraphs (7) and (8);
- 23 I. An assessment of the progress made toward the achievement of any program goals
- 24 required by the department by rule pursuant to subsection 13, paragraph D;
- 25 J. An assessment of whether the payment schedule for producer payments adopted by
- 26 the department by rule pursuant to subsection 13, paragraph A, subparagraph (1) has
- 27 been successful in incentivizing improvements to the design of packaging material as
- 28 encouraged through the allowance of payment adjustments in accordance with
- 29 subsection 6, paragraph D;
- 30 K. Any proposals for changes to the packaging stewardship program or investments
- 31 in education and infrastructure designed to reduce the amount of packaging material
- 32 used, increase access to recycling, increase the recycling of or recyclability of
- 33 packaging material, reduce program costs or otherwise increase program efficiency,
- 34 which may include an analysis of best practices for municipal recycling programs;
- 35 L. The results of a 3rd-party financial audit of the stewardship organization; and
- 36 M. Any additional information required by the department.
- 37 6. Producer payments. In accordance with the provisions of this subsection and the
- 38 rules adopted by the department, no later than 180 days after the effective date of the
- 39 contract entered into by the department and the stewardship organization pursuant to
- 40 subsection 3, and annually thereafter, a producer shall make payments to the stewardship
- 41 organization to be deposited into the packaging stewardship fund under subsection 12
- 42 based on the net weight of each type of packaging material sold, offered for sale or
- 43 distributed for sale in or into the State by the producer and not managed by the producer

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1 under an approved alternative collection program. The department shall adopt rules setting
2 forth the manner in which such payments must be calculated, which must include, but are
3 not limited to, provisions that:

4 A. Require the amount of a producer's payment to include that producer's share of the
5 program's operational costs as set forth in the proposed budget under subsection 3,
6 paragraph A, subparagraph (5) and that producer's share of the administrative and
7 enforcement costs incurred by the department pursuant to this section;

8 B. Require the amount of a producer's payment to reflect the per-ton costs associated
9 with the collection, processing, transportation and recycling or disposal of the
10 producer's packaging material by municipalities and the costs associated with
11 increasing access to recycling of that packaging material type through investments in
12 infrastructure and education under subsection 11;

13 C. Allow a low-volume producer to elect to pay a flat fee in lieu of a material-specific
14 producer payment calculated pursuant to this subsection, provided that a producer
15 seeking to pay a flat fee as a low-volume producer pursuant to this paragraph must
16 submit to the department the information necessary to demonstrate that the producer
17 meets the definition of "low-volume producer." The department may adopt rules that
18 relieve a producer from paying fees under this subsection with respect to packaging
19 material acquired by the producer through insurance salvage, closeout, bankruptcy or
20 liquidation; and

21 D. Through an adjustment of a producer's payment responsibility calculated in
22 accordance with this subsection and subsection 13, paragraph A, subparagraph (1),
23 encourage packaging material waste reduction; the reuse of packaging material; the use
24 of readily recyclable materials in packaging material; the reduction of the toxicity of
25 packaging material; the use of post-consumer recycled material in packaging material
26 provided that such use does not increase the toxicity of packaging material; the
27 reduction of litter from packaging material; the use of single-material packaging that
28 includes prominent and easily understandable recycling or disposal instructions for
29 consumers or other design characteristics intended to reduce consumer confusion
30 regarding recyclability and to reduce recycling contamination; any other incentives
31 designed to support the management of packaging material consistent with the solid
32 waste management hierarchy in section 2101.

33 Unless otherwise approved by the stewardship organization, a producer, other than a low-
34 volume producer, that makes a payment required pursuant to this subsection shall submit
35 the payment to the stewardship organization at the same time that it submits its annual
36 report to the stewardship organization required pursuant to subsection 7.

37 7. Annual reporting by producers. Beginning no later than 180 days after the
38 effective date of the contract entered into by the department and the stewardship
39 organization pursuant to subsection 3, and annually thereafter, a producer shall report to
40 the stewardship organization the total weight of each type of packaging material sold,
41 offered for sale or distributed for sale in or into the State by the producer in the prior
42 calendar year.

43 A. The report must include a description of the methods used by the producer in
44 determining the amounts reported for each type of packaging material, a description of
45 the characteristics of each type of packaging material reported that are relevant to the

1 payment adjustment criteria adopted by the department by rule pursuant to subsection
2 6, paragraph D and a list of all of the producer's brands associated with each type of
3 packaging material.

4 B. A low-volume producer that elects to pay a flat fee determined by the department
5 by rule adopted pursuant to subsection 6, paragraph C is not required to submit an
6 annual report to the stewardship organization under this subsection.

7 C. The department shall adopt rules that authorize a producer that is unable to fully
8 satisfy the reporting requirements of this subsection due to a failure to obtain sufficient
9 information regarding the characteristics of the packaging material the producer sells,
10 offers for sale or distributes for sale in or into the State to alternatively report to the
11 stewardship organization an estimate of the total weight of the producer's packaging
12 material based on unit quantities, provided that such alternative reporting includes a
13 description of the methods used by the producer to calculate such estimates.

14 **8. Alternative collection programs.** In accordance with the requirements of this
15 subsection and the rules adopted by the department, a producer or group of producers may
16 develop and operate an alternative collection program to collect and manage a type or types
17 of packaging material sold, offered for sale or distributed for sale in or into the State by the
18 producer or producers. A producer that manages a type of packaging material under an
19 approved alternative collection program through reuse, recycling and, where approved by
20 the department, management of that packaging material through incineration may wholly
21 or partially offset the producer's payment obligations under the packaging stewardship
22 program with respect to that same type of packaging material only.

23 A. Beginning on the effective date of the contract entered into by the department and
24 the stewardship organization pursuant to subsection 3, a producer or group of producers
25 seeking to implement an alternative collection program shall submit a proposal for the
26 establishment of that program to the department for approval. The department shall
27 approve or deny the proposal within 120 days of receipt and shall provide an
28 opportunity for public review and comment on the proposal prior to its approval or
29 denial. The department may approve an alternative collection program for a term of 5
30 years and, at the expiration of such term, the producer or group of producers operating
31 the program may submit an updated proposal to the department for approval.

32 B. In determining whether to approve a proposed alternative collection program, the
33 department shall consider:

34 (1) Whether the alternative collection program will provide year-round,
35 convenient, free, statewide collection opportunities for the types of packaging
36 material to be collected under that program;

37 (2) To what extent the alternative collection program intends to manage those
38 types of packaging material to be collected under the program through reuse for an
39 original purpose, through recycling or through disposal at an incineration facility.
40 The department may not approve an alternative collection program that proposes
41 management of a packaging material type through disposal at an incineration
42 facility unless that packaging material is not readily recyclable and the program
43 proposes a process to begin reuse or recycling of that type of packaging material
44 within a period of 3 years or less;

1 (3) Whether the education and outreach strategies proposed for the alternative
2 collection program can be expected to significantly increase consumer awareness
3 of the program throughout the State;

4 (4) How the alternative collection program intends to accurately measure the
5 weight of each packaging material type collected, reused, recycled, disposed of at
6 an incineration facility or otherwise managed under the program; and

7 (5) To what extent approval of the alternative collection program may
8 disproportionately impact any community in the State.

9 C. A proposed modification to an approved alternative collection program must be
10 submitted to the department for written approval. The department shall approve or
11 deny a proposed modification based on application of the criteria described in
12 paragraph B. The department may waive payment of any fees associated with review
13 and approval of a proposed modification to an approved alternative collection program
14 if the review of the proposed modification does not require significant department staff
15 time.

16 D. Beginning no later than 180 days after the effective date of the contract entered into
17 by the department and the stewardship organization pursuant to subsection 3, and
18 annually thereafter, a producer or producers managing an approved alternative
19 collection program shall report annually to the stewardship organization and to the
20 department the following information:

21 (1) The total tons of each type of packaging material collected, reused, recycled,
22 disposed of at an incineration facility or otherwise managed under the alternative
23 collection program in the prior calendar year, including a breakdown of the total
24 tons of each type of material to be credited to each producer participating in the
25 alternative collection program;

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

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

32 (4) Any additional information required by the department.

33 E. If the department determines that an approved alternative collection program is not
34 operating in a manner consistent with the proposal approved under this subsection or
35 the provisions of this subsection, the department shall provide written notice to the
36 producer or producers operating the alternative collection program regarding the nature
37 of the deficiency, the actions necessary to correct the deficiency and the time by which
38 such actions must be implemented. If the department determines that the producer or
39 group of producers have failed to implement the actions described in the written notice
40 within the required time frame, the department shall notify the producers or group of
41 producers as well as the stewardship organization in writing that the producer or group
42 of producers are ineligible to offset payment obligations under the packaging
43 stewardship program based on packaging material managed under the alternative
44 collection program.

1 **9. Requirements for participating municipalities.** In accordance with the provisions
2 of this subsection and the rules adopted by the department, a municipality may elect to, but
3 is not required to, participate in the packaging stewardship program under this section. To
4 be eligible for reimbursement of costs under subsection 10 as a participating municipality,
5 a municipality must, at a minimum:

6 A. Provide for the collection and recycling of packaging material that is generated in
7 the municipality and is readily recyclable; and

8 B. Annually report to the stewardship organization, on a form provided and approved
9 by the department, all information necessary for the stewardship organization to
10 determine the municipality's incurred costs associated with its collection, processing,
11 transportation and recycling or disposal of recyclable material and of municipal solid
12 waste.

13 Two or more municipalities, municipally owned solid waste processing facilities or quasi-
14 municipal entities that manage waste materials on behalf of a municipality may elect to
15 jointly report to the stewardship organization as required by paragraph B and to jointly
16 receive reimbursement payments pursuant to subsection 10 from the stewardship
17 organization.

18 **10. Municipal reimbursements.** In accordance with the rules adopted by the
19 department pursuant to subsection 13, paragraph A, subparagraph (4), the stewardship
20 organization shall annually disburse to participating municipalities from the packaging
21 stewardship fund established under subsection 12 reimbursement payments for the median
22 per-ton cost of managing packaging material that is readily recyclable, reimbursement
23 payments for the median per-ton cost of managing packaging material that is not readily
24 recyclable and per capita payments associated with packaging material disposed of by
25 participating municipalities. For the purposes of this subsection, the cost to a municipality
26 of managing packaging material may include, but is not limited to, the costs associated with
27 the collection of packaging material, the costs associated with the transportation of
28 packaging material to a recycling establishment or disposal facility and the costs associated
29 with the cleanup and abatement of packaging material litter.

30 A. In accordance with rules adopted by the department, the stewardship organization
31 shall determine the amount of payments to participating municipalities under this
32 subsection based on the following information:

33 (1) Information provided by participating municipalities to the stewardship
34 organization in accordance with subsection 9, paragraph B regarding the costs
35 incurred by those municipalities in recycling packaging material that is readily
36 recyclable and packaging material that is not readily recyclable and the tons of
37 municipal solid waste disposed of in those municipalities, including, but not
38 limited to, waste disposed of in public spaces and schools, which may include
39 packaging material collected for recycling or disposal in public spaces and schools;

40 (2) Information provided to the department by recycling establishments pursuant
41 to section 2145 and aggregated and made available by the department to the
42 stewardship organization, including the tons of recyclable material received by
43 each recycling establishment from each municipality and the tons of processed
44 recyclable material sold by each recycling establishment;

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(3) Information provided to the department by recycling establishments not located in the State or by participating municipalities and made available by the department to the stewardship organization regarding the tons of recyclable material brokered by those municipalities to those recycling establishments and processed and sold by those recycling establishments;

(4) Information obtained by the stewardship organization through the audits of facilities that process recyclable material generated in the State as required by subsection 3, paragraph A, subparagraph (7); and

(5) Any other information specified by the department by rule.

B. In accordance with procedures and requirements adopted by the department by rule, the stewardship organization shall use the information described in paragraph A to determine the total tons of each packaging material type recycled by all municipalities at each recycling establishment and the percentage of those total tons attributable to each participating municipality. In the case of 2 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 an unequal per capita division of that jointly sent material for the purposes of this subsection.

11. Investments in education and infrastructure. In accordance with the provisions of this subsection and as approved by the department, the stewardship organization shall biannually provide for the expenditure of funds within the packaging stewardship fund established under subsection 12 that are designed to improve recycling education and infrastructure in the State.

A. The total amount of investments in education and infrastructure made by the stewardship organization pursuant to this subsection must be directly proportional to the total amount of payments received from all producers for all packaging material that is not readily recyclable and is not actually recycled.

B. Biannually, the department shall solicit proposals for investments in education and infrastructure. A municipality or group of municipalities, a business or a recycling establishment may apply to the department to receive funding from the stewardship organization for a proposed investment in education and infrastructure. The department shall review investment proposals received pursuant to this paragraph and shall solicit input on those proposals from producers, participating municipalities and recycling establishments.

C. After determining the total amount of funds required for investment in accordance with paragraph A and considering the input received pursuant to paragraph B, the department shall direct the stewardship organization to award funds to applicants that submitted proposals pursuant to paragraph B. The department shall ensure that preference for funding is given to proposals that support the State's solid waste management hierarchy under section 2101, promote a circular economy for packaging material types for which producers were required to make payments under subsection 6, increase the recyclability of packaging material that is not readily recyclable, increase access to recycling infrastructure in the State, improve consumer education in the State regarding recycling and recyclability and support recycling and education efforts in financially challenged or otherwise disadvantaged municipalities or

1 communities and in other municipalities or communities that have received minimal or
2 no prior funding pursuant to this paragraph.

3 **12. Packaging stewardship fund; authorized expenditures.** In accordance with the
4 provisions of this subsection and the rules adopted by the department, the stewardship
5 organization shall establish and manage a packaging stewardship fund. The stewardship
6 organization shall deposit into the fund all payments received from producers in accordance
7 with subsection 6 and shall expend those funds for the following purposes:

8 A. To reimburse participating municipalities in accordance with applicable provisions
9 in subsections 9, 10 and 13 and the applicable rules adopted by the department pursuant
10 to those subsections;

11 B. To cover the operating costs of the stewardship organization, which must be
12 annually verified by a 3rd-party financial audit paid for by the stewardship organization
13 as required by subsection 5, paragraph L;

14 C. To pay to the department all applicable fees required under subsection 13, paragraph
15 B, including reimbursement of any costs incurred by the department in adopting rules
16 and in administering and enforcing this section prior to the effective date of the contract
17 entered into by the department and the stewardship organization pursuant to subsection
18 3; and

19 D. To support investments in education and infrastructure made in accordance with
20 subsection 11.

21 **13. Administration and enforcement; rulemaking; fees; department report.** The
22 department shall administer and enforce this section and shall adopt rules as necessary to
23 implement, administer and enforce this section. Rules adopted pursuant to this section are
24 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

25 A. Rules adopted by the department pursuant to this section must include, at a
26 minimum:

27 (1) A process for annually determining a schedule of producer payments required
28 under subsection 6, which must include a flat fee option for low-volume producers
29 pursuant to subsection 6, paragraph C.

30 (a) The payment schedule adopted under this subparagraph must be designed
31 to ensure that the total amount of payments collected each year is equal to or
32 in excess of the anticipated amount of expenditures required pursuant to
33 subsection 12, paragraphs A to D.

34 (b) The payment schedule adopted under this subparagraph must provide for
35 a flat fee option to be assessed on a tiered basis such that a low-volume
36 producer is required to pay no more than \$500 per ton of packaging material
37 and no more than \$7,500 in total annual fees to the stewardship organization
38 under this section;

39 (2) A process for determining on an annual basis those types of packaging material
40 that are readily recyclable, which must involve consultation with the stewardship
41 organization and recycling establishments and must include a transitional period
42 between the time that a type of packaging material is determined to be readily
43 recyclable or to not be readily recyclable and the time that such determinations will

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be effective for the purposes of calculating producer payments and municipal reimbursements in accordance with this section;

(3) A process for determining on an annual basis which municipalities are similar municipalities, which must involve consultation with participating municipalities;

(4) For purposes of determining participating municipality reimbursements under subsection 10, a process for determining the median per-ton cost of managing packaging material that is readily recyclable, the median per-ton cost of managing packaging material that is not readily recyclable and the costs associated with the disposal of packaging material by participating municipalities, which must involve consultation with participating municipalities; and

(5) Requirements for the assessment of program performance by the stewardship organization, including the setting of program goals used to inform the producer payment schedule determined pursuant to subparagraph (1) and the investments in infrastructure and education made pursuant to subsection 11, which must include, but are not limited to, program goals supporting an overall reduction by producers in the amount of packaging material used, an increased reuse by producers of packaging material and an increased amount of post-consumer recycled content in packaging material used by producers; recycling access and collection rate goals for municipalities; overall program and material-specific recycling rate goals; packaging material litter reduction goals; and any other goals required by the department.

To the maximum extent practicable, material-specific recycling rate goals adopted pursuant to this subparagraph must reflect the following recycling standards:

(a) Sorted glass is considered recycled if it does not require further processing before entering a glass furnace or before use in the production of filtration media, abrasive materials, glass fiber insulation or construction materials;

(b) Sorted metal is considered recycled if it does not require further processing before entering a smelter or furnace;

(c) Sorted paper is considered recycled if it does not require further processing before entering a pulping operation; and

(d) Plastic separated by polymer is considered recycled if it does not require further processing before entering a pelletization, extrusion or molding operation or, in the case of plastic flakes, does not require further processing before use in a final product.

B. At the time that the stewardship organization submits its annual report to the department pursuant to subsection 5, the stewardship organization shall pay to the department a reasonable annual fee established by the department, not to exceed \$300,000, to cover the department's actual costs for review of the stewardship organization's annual report and the department's costs in the prior fiscal year for its oversight, administration and enforcement of the packaging stewardship program. In accordance with subsection 12, paragraph C, the annual fee required under this paragraph may include reimbursement of any costs incurred by the department in adopting rules and in administering and enforcing this section prior to the effective date

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of the contract entered into by the department and the stewardship organization pursuant to subsection 3.

C. A producer or group of producers, when submitting a proposal to the department for the establishment of an alternative collection program or submitting a proposal to the department for modifications to an approved alternative collection program under subsection 8, shall pay to the department a reasonable fee established by the department to cover the department's actual costs for review of the proposal or proposed modifications. A producer or group of producers operating an approved alternative collection program under subsection 8 shall pay to the department a reasonable annual fee established by the department, not to exceed \$10,000 per participating producer, to cover the department's actual costs for review of the producer's or group's annual report and the department's costs for the oversight, administration and enforcement of the alternative collection program, which may be waived by the department if those activities by the department do not require significant department staff time.

D. Beginning February 15, 2023, and annually thereafter, the department shall submit a report to the joint committee of the Legislature having jurisdiction over environment and natural resources matters regarding the packaging stewardship program and alternative collection programs implemented pursuant to this section.

(1) The report must include, at a minimum, data on the amount and type of packaging material associated with products sold, offered for sale or distributed for sale in or into the State; data regarding how that packaging material was managed; and any recommendations for amendments to the programs implemented under this section, including, but not limited to, the establishment of new program goals or the imposition of a prohibition on the sale, offer for sale or distribution for sale in or into the State of products associated with packaging material that the department has determined is nonessential, is contaminating collected recyclable material, is a common source of litter or exhibits toxicity, particularly if that toxicity is demonstrated to have a disproportionate impact on any community in the State.

(2) Beginning February 15, 2027, and every 5 years thereafter, the report under this paragraph must describe the results of a comprehensive review of the rules adopted by the department pursuant to this section and shall include recommendations by the department for any legislative changes to this section determined necessary as a result of that review, including, but not limited to, changes to the flat fee that may be paid by a low-volume producer pursuant to subsection 6, paragraph C, as well as a description of any changes to those rules that the department intends to propose in a future rulemaking.

(3) The report required under this paragraph may be included in the report required pursuant to section 1772, subsection 1.

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

1 producer's or stewardship organization's packaging stewardship program or alternative
2 collection program consistent with the provisions of this section.

3 **15. Proprietary information.** Proprietary information submitted to the department
4 pursuant to the requirements of this section or the rules adopted pursuant to this section
5 that is identified by the submitter as proprietary information is confidential and must be
6 handled by the department in the same manner as confidential information is handled under
7 section 1310-B.



8 **Sec. 2. Department of Environmental Protection; stewardship program**
9 **for packaging; routine technical rulemaking.** On or before May 1, 2022, the
10 Department of Environmental Protection shall initiate routine technical rulemaking
11 consistent with the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A to adopt
12 rules necessary for the implementation, administration and enforcement of a stewardship
13 program for packaging pursuant to Title 38, section 2146. The rulemaking required by this
14 section must be done within existing resources and, notwithstanding any provision of law
15 to the contrary, the department may use funds within the Maine Solid Waste Management
16 Fund established pursuant to Title 38, section 2201 to support its activities required by this
17 section except that, if the department uses funds within the Maine Solid Waste Management
18 Fund as authorized under this section, the department shall deposit back into that fund the
19 same amount of funds withdrawn once reimbursed pursuant to Title 38, section 2146,
20 subsection 13, paragraph B.

21 **SUMMARY**

22 This bill establishes a stewardship program in the State for packaging material, to be
23 operated by a stewardship organization contracted by the Department of Environmental
24 Protection following a competitive bidding process. Under the program, producers of
25 products contained, protected, delivered, presented or distributed in or using packaging
26 material pay into a fund based on the amount by weight of packaging material associated
27 with the products they sell, offer for sale or distribute for sale in or into the State. Producers
28 can wholly or partially offset this payment obligation by implementing independent
29 programs to recycle packaging of the same material type for which they have a payment
30 obligation and can further reduce their payment obligation by reducing the amount of
31 packaging associated with the products they sell, offer for sale or distribute for sale in or
32 into the State or by meeting other program incentives.

33 Producer payments received by the stewardship organization are used to reimburse
34 eligible municipalities for certain recycling and waste management costs. To be eligible
35 for such reimbursements, a municipality must share with the stewardship organization
36 certain data regarding its recycling and waste management costs and must provide for the
37 collection and recycling of packaging material generated in the municipality that is
38 determined to be readily recyclable. In addition to the payment of municipal
39 reimbursements, the stewardship organization is authorized to use producer payments to
40 cover the operational costs for the program, to pay department fees and to make
41 investments in education and infrastructure aimed at reducing packaging waste and
42 improving recycling outcomes in the State.

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An Act To Support and Improve Municipal Recycling Programs and Save Taxpayer Money

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 8.

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

C. "Collection" means the gathering of waste, including the preliminary sorting and storage of waste for the purposes of transport to a recycling establishment.

D. "EAN" means an International Article Number, previously called a European Article Number, 13-digit barcode.

~~E. D.~~ "Franchisee" means a person that is granted a franchise by a franchisor authorizing the use of the franchisor's trade name, service mark or related characteristic and the sharing of the franchisor's proprietary knowledge or processes pursuant to an oral or written arrangement for a definite or indefinite period.

~~E. F.~~ "Franchisor" means a person that grants to a franchisee a franchise authorizing the use of the person's trade name, service mark or related characteristic and the sharing of the person's proprietary knowledge or processes pursuant to an oral or written arrangement for a definite or indefinite period.

~~G. F.~~ "Low-volume producer" means a producer that sold, offered for sale or distributed for sale in or into the State during the prior calendar year products contained, protected, delivered, presented or distributed in or using more than one ton but less than 15 tons of packaging material in total.

~~H. G.~~ "Municipality" means a city, town, county, township, village or plantation; a refuse disposal district under chapter 17; or a regional association.

~~I. H.~~ "Packaging material" means a discrete type of material, or a category of material that includes multiple discrete types of material with similar management requirements and similar commodity values, used for the containment, protection, delivery, presentation or distribution of a product, including a product sold over the Internet, at the time that the product leaves a point of sale with or is received by the consumer of the product. "Packaging material" does not include a discrete type of material, or a category of material that includes multiple discrete types of material, that is:

(1) 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;

(2) A beverage container, as defined in section 3102, subsection 2, subject to the requirements of chapter 33; or

(3) A container for architectural paint, as defined in section 2144, subsection 1, paragraph A, provided that is collected through a paint stewardship program that is in operation and that has been approved by the department pursuant to section 2144, as long as the stewardship organization operating that program;

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(a) Has demonstrated to the department's satisfaction that it recycles at least 90% of the containers of architectural paint collected under the program; or

(b) Subject to the approval of the department, if unable to satisfy the requirements of division (a), has demonstrated to the department's satisfaction that it recycles at least 80% of the containers of architectural paint collected under the program.

J. ~~J.~~ "Packaging stewardship fund" or "fund" means a privately held account established and managed by the stewardship organization pursuant to subsection 12.

K. ~~K.~~ "Packaging stewardship organization" or "stewardship organization" means the entity contracted by the department under subsection 3 to operate the packaging stewardship program.

L. ~~L.~~ "Packaging stewardship program" or "program" means the program implemented under this section by the 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 or into the State by each producer and to reimburse participating municipalities for certain municipal recycling and waste management costs.

M. ~~M.~~ "Participating municipality" means a municipality that has complied with the requirements of subsection 9 and is eligible for reimbursement of certain costs in accordance with subsection 10.

N. ~~N.~~ "Post-consumer recycled material" means new material produced using material resulting from the recovery, separation, collection and reprocessing of material that would otherwise be disposed of or processed as waste and that was originally sold for consumption. "Post-consumer recycled material" does not include post-industrial material or pre-consumer material.

O. ~~O.~~ "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, or offers 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 franchisor 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, Section 501(c)(3).

P. ~~P.~~ "Proprietary information" has the same meaning as in section 1771, subsection 6-A.

Q. ~~Q.~~ "Readily recyclable" means, with respect to a type of packaging material, that the type of packaging material meets the criteria and standards for recyclability, as determined by the department by rule:

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

~~(2) Has a consistent market for purchase. 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.~~

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

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~~S. R.~~ "Reuse" has the same meaning as in section 1771, subsection 8.

~~T. S.~~ "Similar municipalities" means 2 or more municipalities that, as determined by department ~~rule in accordance with~~ rules adopted pursuant to subsection 13, paragraph A, subparagraph (3), have similar population sizes, have similar geographic locations, and share other department-specified criteria; ~~proximity to resources and regional recycling capacity and other factors determined by the department to affect the costs associated with the collection, processing, transportation and recycling or disposal of packaging material by municipalities.~~

~~U. T.~~ "Toxicity" means, with respect to packaging material, the presence in packaging material or the use in the manufacturing, recycling or disposal of packaging material of intentionally introduced metals or chemicals regulated pursuant to Title 32, chapter 26-A; food contact chemicals of high concern or priority food contact chemicals regulated pursuant to Title 32, chapter 26-B; or chemicals of concern, chemicals of high concern or priority chemicals identified pursuant to chapter 16-D.

~~V.~~ "Universal Product Code" or "UPC" means a standard for encoding a set of lines and spaces that can be scanned and interpreted into numbers to identify a Product. Universal Product Code may also mean any accepted industry barcode which replaces the UPC including but not limited to Universal Product Code (UPC), EAN and other codes that may be used to identify a product.

2. Producer exemptions. 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 \$2,000,000 in total gross revenue during the prior calendar year;
- B. The producer sold, offered for sale or distributed for sale in or into 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 realized more than 50% of its total gross revenue in the prior calendar year from the sale of goods it acquired through insurance salvages, closeouts, bankruptcies and liquidations.

A producer claiming an exemption under this subsection shall 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.

3. 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. No later than May 1, 2022, and e-~~Consistent with applicable competitive bidding requirements under state purchasing laws, and following the adoption of rules by the department pursuant to subsection 13, 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 the successful bidder and must be required to include, at a minimum:

- (1) A description of how the bidder will administer the stewardship organization, including:
 - (a) The mechanism or process, to be developed with input from producers, by which a producer may request and receive assistance from the stewardship organization in the reporting of required information and regarding methods by which the packaging material used by a producer may be modified so as to reduce the producer's payment obligations under subsection 6; and

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- (b) The mechanism or process, to be developed with input from municipalities, by which a participating municipality may request and receive assistance from the stewardship organization in the reporting of required information and regarding methods by which a municipality's recycling program may be modified so as to increase access to and participation in the program;
- (2) A description of how the bidder intends to solicit and consider input from interested persons, including, but not limited to, producers, municipalities, environmental organizations and waste management and recycling establishments, regarding the bidder's operation of the packaging stewardship program, if selected;
- (3) A description of how the bidder intends to establish and manage the packaging stewardship fund consistent with subsection 12, including, but not limited to: the staffing the bidder intends to use for management of the fund; a plan to ensure equity of access to the fund for all participating municipalities ~~financially challenged or otherwise disadvantaged municipalities or communities~~; a plan for providing technical support to producers and municipalities regarding program requirements; and a plan for administering payments to and reimbursements from the fund and the financial mechanisms, including investment types, if any, the bidder intends to use in managing the fund;
- (4) A proposed financial assurance plan that ensures all funds held in the packaging stewardship fund are immediately and exclusively forfeited and transferred to or otherwise made immediately available to the department to support waste diversion, reuse or recycling programs when the stewardship organization's contract with the department is terminated by the department or expires, unless the stewardship organization enters into a new contract with the department in accordance with paragraph B prior to the expiration of the stewardship organization's existing contract;
- (5) A proposed budget outlining the anticipated costs of operating the packaging stewardship program, including identification of any start-up costs that will not be ongoing and a description of the method by which the bidder intends to determine and collect producer payments during the initial start-up period of program operation to fund the program's operational costs during that initial start-up period and to reimburse or require additional payments by those producers subsequent to that initial start-up period based on producer reporting of the actual amount of packaging material sold, offered for sale or distributed for sale in or into the State by each producer during that initial start-up period. The proposed budget under this subparagraph may overestimate the cost of operating the program during its initial start-up period of operation but must describe the method and basis for any overestimate;
- (6) A certification that the bidder will not share, except with the department, information provided to the bidder by a producer that is proprietary information and that is identified by the producer as proprietary information. The certification must include a description of the methods by which the bidder intends to ensure the confidentiality of such information;
- ~~(7) A description of how the bidder will conduct representative audits of recyclable material processed and sold by facilities that process recyclable material generated in the State, which must include, but is not limited to:~~
- ~~(a) A description of the sampling techniques to be used in these audits, which must include random sampling;~~
- ~~(b) A description of how these audits, at a minimum, will be designed to solicit information regarding the extent to which recyclable material processed and sold by these facilities reflects the tons of each type of packaging material collected in the State for recycling and the tons of~~

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~~each type of packaging material recycled in the State, as well as the ultimate destination of and intended use for that recycled material;~~

~~(c) A description of how these 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; and~~

~~(d) A description of the process by which a facility 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;~~

~~(9) A description of how the bidder will conduct representative audits of municipal solid waste disposed of in the State and representative audits of waste littered in the State, which must include, but is not limited to:~~

~~(a) A description of the sampling techniques to be used in these audits, which must include random sampling;~~

~~(b) For waste disposal audits, a description of the types and weight of packaging material in the waste stream and the percentage by weight and volume of the waste stream that is composed of packaging material; and~~

~~(c) For litter audits, a description of packaging material type by weight in the sampled litter, identification of the producer or producers of the packaging material in the sampled litter, if identifiable, and an evaluation based on these audits regarding the areas of the State in which litter accumulation is greatest;~~

~~(7) A description of how the bidder will conduct a statewide recycling needs assessment that must, at a minimum, include an evaluation of:~~

~~(a) Current funding needs affecting recycling access and availability in the State;~~

~~(b) The capacity, costs and needs associated with the collection and transportation of recyclable material in the State;~~

~~(c) The processing capacity, market conditions and opportunities in the State and regionally for recyclable material; and~~

~~(iv) Consumer education needs in the State with respect to recycling and reducing contamination in collected recyclable material; and~~

~~(89) 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 a bidder that has submitted a proposal in accordance with the requirements of this subsection, the term of which must cover 10 years of operation of the packaging stewardship program by the stewardship organization. The contract must, at a minimum, include provisions to ensure that the stewardship organization will perform and report on the needs assessment within a reasonable timeframe and operate the program in accordance with all applicable statutory requirements and the rules adopted by the department under this section.

If, at the close of the competitive bidding process under this subsection, the department determines that no bidder has submitted, in accordance with this subsection, a proposal that meets the requirements of this subsection, the department may reopen a new competitive bidding process under this subsection.

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4. Prohibition; producer compliance information. This subsection governs the sale or distribution in the State of products with packaging not in compliance with the requirements of this section and sets forth requirements for the collection and publication of compliance information.

A. Except as provided in paragraph D, ~~b~~Beginning one calendar year following the effective date of the contract entered into by the department and the stewardship organization pursuant to subsection 3:

(1) A producer may not sell, offer for sale or distribute for sale in or into the State a product contained, protected, delivered, presented or distributed in or using packaging material for which the producer has not complied with all applicable requirements of this section; and

(2) A retailer may not sell, offer for sale or distribute for sale in or into 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 product is contained, protected, delivered, presented or distributed in or using packaging material for which its producer has not complied with all applicable requirements of this section.

B. ~~At the department's request, t~~The stewardship organization shall provide to the department a list of producers that are participating in the program and the UPCs for products that are compliant with the program's requirements and, if known to the stewardship organization, a list of producers that are not participating in the program and are not compliant with the program's requirements. The stewardship organization shall provide to the department regularly updated information regarding producer compliance.

C. Based on 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 regularly updated list of ~~producers~~ UPCs for products that the department has determined are compliant with all applicable requirements of this section and a list of producers and, where applicable, specific products and their UPCs for which the department has determined the producer has not complied with all applicable requirements of this section. The department shall conduct outreach to retailers to provide notification of the information made available under this paragraph and any changes to that information.

D. Notwithstanding a producer's failure to comply with all applicable requirements of this section for a type or types of packaging material used to contain, protect, deliver, present or distribute a product of the producer, the department may authorize the sale or distribution for sale in or into the State of another product or products of the producer that is contained, protected, delivered, presented or distributed in or using a different type or types of packaging material for which that producer has complied with all applicable requirements of this section. In the event that the department provides such an authorization, the department shall ensure that such information is included in the information made available pursuant to paragraph C.

5. Annual reporting by stewardship organization. ~~Beginning one calendar year following the effective date of the contract entered into by the department and the stewardship organization pursuant to subsection 3, and annually thereafter,~~ In accordance with rules adopted by the department, the stewardship organization shall annually submit to the department and make available on its publicly accessible website a report that includes, at a minimum, the following information:

A. Contact information for the stewardship organization;

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

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- C. The total amount (e.g. weight, volume) of each type of packaging material sold, offered for sale or distributed for sale in or into the State by each participating producer as reported in accordance with subsection 7;
- D. As applicable, the total amount (e.g. weight, volume) of each type of packaging material collected and managed by each participating producer through alternative collection programs approved by the department under subsection 8;
- E. A complete accounting of payments made to and by the stewardship organization during the prior calendar year, including information on how the stewardship organization determined the amount of such payments in accordance with subsections 6 and 10 and the rules adopted under subsection 13, paragraph A, subparagraphs (1) and (4);
- F. A list of producers that are not participating in the program that are required to participate in the program and any product-specific noncompliance, if known by the stewardship organization;
- G. A description of education and infrastructure investments made by the stewardship organization in prior calendar years and an evaluation of how those investments were designed to increase access to recycling in the State and to encourage the reuse of packaging material;
- H. A description of the results of the representative audits required pursuant to subsection 13, paragraph A, subparagraphs ~~(7) and (9)~~(6);
- I. An assessment of the progress made toward the achievement of any program goals required by the department by rule pursuant to subsection 13, paragraph ~~D~~ A, subparagraph 5;
- J. An assessment of whether the payment schedule for producer payments adopted by the department by rule pursuant to subsection 13, paragraph A, subparagraph (1) has been successful in incentivizing improvements to the design of packaging material as encouraged through the allowance of payment adjustments in accordance with subsection ~~13E~~, paragraph ~~A~~ ~~D~~ subparagraph (1);
- K. Any proposals for changes to the packaging stewardship program or investments in education and infrastructure designed to reduce the amount of packaging material used, increase access to recycling, increase the recycling of or recyclability of packaging material, reduce program costs or otherwise increase program efficiency, which may include an analysis of best practices for municipal recycling programs;
- L. The results of a 3rd-party financial audit of the stewardship organization;
- M. An estimate of annual greenhouse gas emission effects of the packaging stewardship program in Maine; and
- MN. Any additional information required by the department.

6. Producer payments. In accordance with the provisions of this subsection and the rules adopted by the department, no later than 180 days after the effective date of the contract entered into by the department and the stewardship organization pursuant to subsection 3, and annually thereafter, a producer shall make payments to the stewardship organization to be deposited into the packaging stewardship fund under subsection 12 based on the net amount (e.g. weight, volume) of each type of packaging material sold, offered for sale or distributed for sale in or into the State by the producer and not managed by the producer under an approved alternative collection program. The department shall adopt rules setting forth the manner in which such payments must be calculated for material that is readily recyclable and for material that is not readily recyclable. Payments must incent the use of readily recyclable materials over the use of those that are not readily recyclable, ~~which must include, but are not limited to, provisions that~~

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~~A. Require the amount of a producer's payment to include that producer's share of the program's operational costs as set forth in the proposed budget under subsection 3, paragraph A, subparagraph (5) and that producer's share of the administrative and enforcement costs incurred by the department pursuant to this section;~~

~~B. Require the amount of a producer's payment to reflect the per ton costs associated with the collection, processing, transportation and recycling or disposal of the producer's packaging material by municipalities and the costs associated with increasing access to recycling of that packaging material type through investments in infrastructure and education under subsection 11;~~

~~C. Allow a low volume producer to elect to pay a flat fee in lieu of a material specific producer payment calculated pursuant to this subsection, provided that a producer seeking to pay a flat fee as a low volume producer pursuant to this paragraph must submit to the department the information necessary to demonstrate that the producer meets the definition of "low volume producer." The department may adopt rules that relieve a producer from paying fees under this subsection with respect to packaging material acquired by the producer through insurance salvage, closeout, bankruptcy or liquidation; and~~

~~D. Through an adjustment of a producer's payment responsibility calculated in accordance with this subsection and subsection 13, paragraph A, subparagraph (1), encourage packaging material waste reduction; the reuse of packaging material; the use of readily recyclable materials in packaging material; the reduction of the toxicity of packaging material; the use of post consumer recycled material in packaging material provided that such use does not increase the toxicity of packaging material; the reduction of litter from packaging material; the use of single material packaging that includes prominent and easily understandable recycling or disposal instructions for consumers or other design characteristics intended to reduce consumer confusion regarding recyclability and to reduce recycling contamination; any other incentives designed to support the management of packaging material consistent with the solid waste management hierarchy in section 2404.~~

~~Unless otherwise approved by the stewardship organization, a producer, other than a low volume producer, that makes a payment required pursuant to this subsection shall submit the payment to the stewardship organization at the same time that it submits its annual report to the stewardship organization required pursuant to subsection 7.~~

7. Annual reporting by producers. ~~Beginning no later than 180 days after the effective date of the contract entered into by the department and the stewardship organization pursuant to subsection 3, and annually thereafter~~ In accordance with the rules adopted by the department, a producer shall report to the stewardship organization the total amount (e.g. weight, volume) of each type of packaging material sold, offered for sale or distributed for sale in or into the State by the producer in the prior calendar year.

~~A. The report must include a description of the methods used by the producer in determining the amounts reported for each type of packaging material, a description of the characteristics of each type of packaging material reported that are relevant to the payment adjustment criteria adopted by the department by rule pursuant to subsection 6, paragraph D and a list of all of the producer's brands associated with each type of packaging material.~~

~~B. A low volume producer that elects to pay a flat fee determined by the department by rule adopted pursuant to subsection 6, paragraph C is not required to submit an annual report to the stewardship organization under this subsection.~~

~~C. The department shall adopt rules that authorize a producer that is unable to fully satisfy the reporting requirements of this subsection due to a failure to obtain sufficient information regarding the characteristics of the packaging material the producer sells, offers for sale or distributes for sale in or into~~

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~~the State to alternatively report to the stewardship organization an estimate of the total weight of the producer's packaging material based on unit quantities, provided that such alternative reporting includes a description of the methods used by the producer to calculate such estimates.~~

8. Alternative collection programs. In accordance with the requirements of this subsection and the rules adopted by the department, 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 or into the State by the producer or producers. A producer that manages a type of packaging material under an approved alternative collection program through reuse, recycling and, where approved by the department, management of that packaging material through incineration 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. Beginning on the effective date of the contract entered into by the department and the stewardship organization pursuant to subsection 3, a producer or group of producers seeking to implement an alternative collection program shall submit a proposal for the establishment of that program to the department for approval. The department shall approve or deny the proposal within 120 days of receipt and shall provide an opportunity for public review and comment on the proposal prior to its approval or denial. The department may approve an alternative collection program for a term of 5 years and, at the expiration of such term, the producer or group of producers operating the program may submit an updated proposal to the department for approval.

B. In determining whether to approve a proposed alternative collection program, the department shall consider:

(1) Whether the alternative collection program will provide year-round, 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 at an incineration facility. The department may not approve an alternative collection program that proposes management of a packaging material type through disposal 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 3 years or less;

(3) Whether the education and outreach strategies proposed for the alternative collection program can be expected to significantly increase consumer awareness of the program throughout the State;

(4) How the alternative collection program intends to accurately measure the amount (e.g. weight, volume) of each packaging material type collected, reused, recycled, disposed of at an incineration facility or otherwise managed under the program; and

(5) To what extent approval of the alternative collection program may disproportionately impact any community in the State.

C. A proposed modification to an approved alternative collection program must be submitted to the department for written approval. The department shall approve or deny a proposed modification based on application of the criteria described in paragraph B. The department may waive payment of any fees associated with review and approval of a proposed modification to an approved alternative collection program if the review of the proposed modification does not require significant department staff time.

~~D. Beginning no later than 180 days after the effective date of the contract entered into by the department and the stewardship organization pursuant to subsection 3, and annually thereafter, In accordance with~~

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rules adopted by the department, a producer or producers managing an approved alternative collection program shall 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, disposed of 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 to be credited to each producer participating in the alternative collection program;
- (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 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 shall provide written notice to the producer or producers operating the alternative collection program regarding the nature of the deficiency, the actions necessary to correct the deficiency and the time by which such actions must be implemented. If the department determines that the producer or group of producers have failed to implement the actions described in the written notice within the required time frame, the department shall notify the producers or group of producers as well as the stewardship organization in writing that the producer or group of producers are ineligible to offset payment obligations under the packaging stewardship program based on packaging material managed under the alternative collection program.

9. Requirements for participating municipalities. In accordance with the provisions of this subsection and the rules adopted by the department, a municipality may elect to, but is not required to, participate in the packaging stewardship program under this section. To be eligible for reimbursement of costs under subsection 10 as a participating municipality, a municipality must, at a minimum:

- A. Provide for the collection and recycling of packaging material that is generated in the municipality and is readily recyclable; and
- B. Annually report to the stewardship organization, on a form provided and approved by the department, all information necessary for the stewardship organization to determine the municipality's incurred costs associated with its collection, processing, transportation and recycling or disposal of recyclable material and of municipal solid waste.

Two or more municipalities, municipally owned solid waste processing facilities or quasi-municipal entities that manage waste materials on behalf of a municipality may elect to jointly report to the stewardship organization as required by paragraph B and to jointly receive reimbursement payments pursuant to subsection 10 from the stewardship organization.

10. Municipal reimbursements. In accordance with the rules adopted by the department pursuant to subsection 13, paragraph A, subparagraph (4), the stewardship organization shall annually disburse to participating municipalities from the packaging stewardship fund established under subsection 12 reimbursement for the median per-ton cost of managing packaging material that is readily recyclable, and reimbursement for the median per-ton cost of managing packaging material that is not readily recyclable, ~~and per capita payments associated with packaging material disposed of by participating municipalities.~~ For the purposes of this subsection, the cost to a municipality of managing packaging material may include, but

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~~is not limited to, the costs associated with the collection of packaging material, the costs associated with the transportation, of packaging material to a recycling establishment or disposal facility and the costs associated with the cleanup and abatement processing of packaging material litter.~~

A. In accordance with rules adopted by the department, the stewardship organization shall determine the amount of payments to participating municipalities under this subsection based on the following information:

(1) Information provided by participating municipalities to the stewardship organization in accordance with subsection 9, paragraph B regarding the costs incurred by those municipalities in recycling packaging material that is readily recyclable and packaging material that is not readily recyclable and the tons of municipal solid waste disposed of in those municipalities, including, but not limited to, waste disposed of in public spaces and schools, which may include packaging material collected for recycling or disposal in public spaces and schools;

(2) Information provided to the department by recycling establishments pursuant to section 2145 and aggregated and made available by the department to the stewardship organization, including the tons of recyclable material received by each recycling establishment from each municipality and the tons of processed recyclable material sold by each recycling establishment;

(3) Information provided to the department by recycling establishments not located in the State or by participating municipalities and made available by the department to the stewardship organization regarding the tons of recyclable material brokered by those municipalities to those recycling establishments and processed and sold by those recycling establishments;

(4) Information obtained by the stewardship organization through the audits of facilities that process recyclable material generated in the State as required by subsection 3, paragraph A, subparagraph (7); and

(5) Any other information specified by the department by rule.

B. In accordance with procedures and requirements adopted by the department by rule, the stewardship organization shall use the information described in paragraph A to determine the total tons of each packaging material type recycled by all municipalities at each recycling establishment and the percentage of those total tons attributable to each participating municipality. In the case of 2 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 an unequal per capita division of that jointly sent material for the purposes of this subsection.

11. Investments in education and infrastructure. In accordance with the provisions of this subsection and as approved by the department, the stewardship organization shall biannually provide for the expenditure of funds within the packaging stewardship fund established under subsection 12 that are designed to improve recycling education and infrastructure in the State.

A. The total amount of investments in education and infrastructure made by the stewardship organization pursuant to this subsection must be directly proportional to the total amount of payments received from all producers for all packaging material that is not readily recyclable and is not actually recycled.

B. Biannually, the department shall solicit proposals for investments in education and infrastructure. A municipality or group of municipalities, a business or a recycling establishment may apply to the department to receive funding from the stewardship organization for a proposed investment in education and infrastructure. The department shall review investment proposals received pursuant to this

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~~paragraph and shall solicit input on these proposals from producers, participating municipalities and recycling establishments.~~

~~C. After determining the total amount of funds required for investment in accordance with paragraph A and considering the input received pursuant to paragraph B, the department shall direct the stewardship organization to award funds to applicants that submitted proposals pursuant to paragraph B. The stewardship organization shall make investments in education and infrastructure that support the recycling of packaging material in the State, which must be approved by the department prior to any such expenditures and which must incorporate input from producers and participating municipalities.~~

~~(A) The stewardship organization shall submit any proposed expenditure under this paragraph to the department for approval prior to making such expenditure.~~

~~(B) The department shall adopt rules setting approval criteria for the evaluation of proposed expenditures under this paragraph.~~

~~(C) The department shall approve or deny a proposed expenditure under this paragraph within 90 days of receipt of the proposal; and~~

~~(D) The department shall ensure that preference for funding is given to proposals that support the State's solid waste management hierarchy under section 2101, promote a circular economy for packaging material types for which producers were required to make payments under subsection 6, increase the recyclability of packaging material that is not readily recyclable, increase access to recycling infrastructure in the State, improve consumer education in the State regarding recycling and recyclability and/or equitably support recycling and education efforts in all participating municipalities, in particular financially challenged or otherwise disadvantaged municipalities or communities and in other municipalities or those communities that have received minimal or no prior funding pursuant to this paragraph.~~

12. Packaging stewardship fund; authorized expenditures. In accordance with the provisions of this subsection and the rules adopted by the department, 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 6 and shall expend those funds for the following purposes:

A. To reimburse participating municipalities in accordance with applicable provisions in subsections 9, 10 and 13 and the applicable rules adopted by the department pursuant to those subsections;

B. To cover the operating costs of the stewardship organization, which must be annually verified by a 3rd-party financial audit paid for by the stewardship organization as required by subsection 5, paragraph L;

C. To pay to the department all applicable fees required under subsection 13, paragraph B, including reimbursement of any costs incurred by the department in adopting rules and in administering and enforcing this section prior to the effective date of the contract entered into by the department and the stewardship organization pursuant to subsection 3; and

D. To support investments in education and infrastructure made in accordance with subsection 11.

13. Administration and enforcement; rulemaking; fees; department report. The department shall administer and enforce this section and shall adopt rules as necessary to implement, administer and enforce this section. The Department shall solicit input from interested persons during development of draft rules. The Department must provide at least 30 days for public comment on draft rules, and a public hearing on

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draft rules must be held in accordance with Title 5, section 8052. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. Rules adopted by the department pursuant to this section must include, at a minimum:

(1) A process for annually determining a schedule of producer payments required under subsection 6, including the timing of payments and the timing and content of the annual producer reporting required by subsection 7, which must include a flat fee option for low-volume producers pursuant to subsection 6, paragraph C.

~~(a) The payment schedule adopted under this subparagraph must be designed to ensure that the total amount of payments collected each year is equal to or in excess of the anticipated amount of expenditures required pursuant to subsection 12, paragraphs A to D.~~

(ba) The process payment schedule adopted under this subparagraph must provide for a flat fee option to be assessed on a tiered basis such that a low-volume producer is required to pay no more than \$500 per ton of packaging material and no more than \$7,500 in total annual fees to the stewardship organization under this section;

(b) For producers other than low-volume producers, the process must result in a payment schedule that is based on, and covers the cost of managing, the amount of each type of packaging material sold, offered for sale or distributed for sale in or into the State by a producer and not managed under an approved alternative collection program, adjusted as applicable pursuant to the adjustment schedule described in subparagraph (1)(c).

(c) For producers other than low-volume producers, the rule must delineate criteria to be used to adjust producer payments. Criteria should provide incentives for the following with respect to packaging material: use of recycled content, lower toxicity, reduction, reuse, recyclability, labeling to reduce consumer confusion, and other incentives consistent with generally accepted industry standards;

(d) Producer reporting must include information necessary to determine these payments and compliance of products by UPC. For producers that are not low volume producers, this includes a description of the methods used by the producer in determining the amounts reported for each type of packaging material, a description of the characteristics of each type of packaging material that are relevant to the payment adjustment criteria adopted by the department pursuant to subparagraph 1(c) and a list of the producer's brands and UPCs associated with each type of packaging material. Reporting by a low-volume producer will be limited to the information necessary to calculate a fee and determine compliance. The department shall adopt rules that authorize a producer that is unable to fully satisfy the reporting requirements due to a failure to obtain sufficient information regarding the characteristics of the packaging material the producer sells, offers for sale or distributes for sale in or into the State to alternatively report to the stewardship organization an estimate of the total amount of the producer's packaging material based on unit quantities, provided that such alternative reporting includes a description of the methods used by the producer to calculate such estimates. In cases where a producer has provided an estimate of packaging material in accordance with this subparagraph, estimates must be adjusted using the least favorable characteristics with respect to the adjustment criteria described in subparagraph (1)(c), unless otherwise determined by the department;

(2) A process for determining on an annual basis those types of packaging material that are readily recyclable, which must involve consultation with the stewardship organization and recycling establishments and must include a transitional period between the time that a type of packaging

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material is determined to be readily recyclable or to not be readily recyclable and the time that such determinations will be effective for the purposes of calculating producer payments and municipal reimbursements in accordance with this section;

(3) A process for determining on an annual basis which municipalities are similar municipalities, which must involve consultation with participating municipalities;

~~(4) For purposes of determining participating municipality reimbursements under subsection 10, a process for determining municipal reimbursements, including a description of the information required from participating municipalities under subsection 9, a method for calculating the reimbursements required by subsection 10, and the timing of both reporting and payment. The method for calculating reimbursements must include the median per-ton cost of managing packaging material that is readily recyclable, and the median per-ton cost of managing packaging material that is not readily recyclable, must incentivize municipal waste management activities that represent higher priorities on the solid waste management hierarchy, and the costs associated with the disposal of packaging material by participating municipalities, which must involve consultation with participating municipalities; and~~

~~(5) Requirements for the assessment of program performance by the stewardship organization, including the setting of program goals used to inform the producer payment schedule determined pursuant to subparagraph (1) and the investments in infrastructure and education made pursuant to subsection 11, which must include, but are not limited to, program goals supporting an overall reduction by producers in the amount of packaging material used, an increased reuse by producers of packaging material and an increased amount of post-consumer recycled content in packaging material used by producers; recycling access and collection rate goals for municipalities; overall program and material-specific recycling rate goals; packaging material litter reduction goals; and any other goals required by the department.~~

To the maximum extent practicable, material-specific recycling rate goals adopted pursuant to this subparagraph must reflect the following recycling standards:

(a) Sorted glass is considered recycled if it does not require further processing before entering a glass furnace or before use in the production of filtration media, abrasive materials, glass fiber insulation or construction materials;

(b) Sorted metal is considered recycled if it does not require further processing before entering a smelter or furnace;

(c) Sorted paper is considered recycled if it does not require further processing before entering a pulping operation; and

(d) Plastic separated by polymer is considered recycled if it does not require further processing before entering a pelletization, extrusion or molding operation or, in the case of plastic flakes, does not require further processing before use in a final product.

(6) A description of how the stewardship organization will conduct representative audits of recyclable material processed and sold by facilities that process recyclable material generated in the State and of municipal solid waste disposed in the State, which must include, but is not limited to:

(a) A description of the sampling techniques to be used in those audits, which must include random sampling;

(b) For audits of recyclable material, description of how those audits, at a minimum, will be designed to solicit information regarding the extent to which recyclable material processed and

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sold by those facilities reflects the tons of each type of packaging material collected in the State for recycling and the tons of each type of packaging material recycled in the State, as well as the ultimate destination of and intended use for that recycled material;

(c) For audits of recyclable material, a description of how those 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;

(d) For audits of recyclable material, a description of the process by which a facility 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

(b) For audits of municipal solid waste, a description of the types and weight of packaging material in the waste stream and the percentage by weight and volume of the waste stream that is composed of packaging material.

(7) A schedule by which the stewardship organization must annually report to the department pursuant to subsection 5 and a schedule by which a producer or group of producers operating an approved alternative collection program must annually report to the stewardship organization and to the department pursuant to subsection 8, paragraph D;

(8) A process by which the stewardship organization will develop and submit for department review, and a process by which the department shall review and approve or deny, proposed expenditures from the fund for investments in education and infrastructure pursuant to subsection 11. The stewardship organization's development of such investment proposals must incorporate input from producers, recycling establishments, and participating municipalities.

B. At the time that the stewardship organization submits its annual report to the department pursuant to subsection 5, the stewardship organization shall pay to the department a reasonable annual fee established by the department, not to exceed \$300,000, to cover the department's actual costs for review of the stewardship organization's annual report and the department's costs in the prior fiscal year for its oversight, administration and enforcement of the packaging stewardship program. In accordance with subsection 12, paragraph C, the annual fee required under this paragraph may include reimbursement of any costs incurred by the department in adopting rules and in administering and enforcing this section prior to the effective date of the contract entered into by the department and the stewardship organization pursuant to subsection 3.

C. A producer or group of producers, when submitting a proposal to the department for the establishment of an alternative collection program or submitting a proposal to the department for modifications to an approved alternative collection program under subsection 8, shall pay to the department a reasonable fee established by the department to cover the department's actual costs for review of the proposal or proposed modifications. A producer or group of producers operating an approved alternative collection program under subsection 8 shall pay to the department a reasonable annual fee established by the department, not to exceed \$10,000 per participating producer, to cover the department's actual costs for review of the producer's or group's annual report and the department's costs for the oversight, administration and enforcement of the alternative collection program, which may be waived by the department if those activities by the department do not require significant department staff time.

D. In order to determine if packaging for certain federally regulated products should be excluded from the definition of "packaging materials" in Section 1(l), the department shall review:

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(1) Packaging for drugs that is collected under an approved stewardship program for substances recognized as drugs under 21 United States Code, Section 321(g)(1), as amended, and any regulations adopted pursuant to that provision, including, but not limited to, prescription and nonprescription drugs, drugs in medical devices and combination products, brand and generic drugs and drugs for veterinary use.

(2) Packaging for a medical device regulated by the U.S. Food and Drug Administration as a drug under 21CFR parts 200 and 300 et. seq., as a biologic under 21CFR part 600 et. seq., and as a medical device under 21CFR part 800 et. seq.;

(3) Packaging regulated pursuant to Section 211.132 of Title 21 of the Code of Federal Regulations, laws or regulations covering child-resistant packaging pursuant to Part 1700 of Subchapter E of Chapter II of Title 16 of the Code of Federal Regulations;

(4) Packaging that is used for the containment, protection, delivery, presentation or distribution of a substance regulated by the United States Consumer Product Safety Commission pursuant to the federal Poison Prevention Packaging Act of 1970 for which special packaging is required under 16 Code of Federal Regulations, Part 1700;

In conducting the review, the department shall consider, among other factors, which if any, of the federally regulated products are required to conform to specific packaging content or construction standards that may preclude or significantly diminish the producers' ability to modify packaging to increase recyclability or reduce volume. If product packaging is identified that may appropriately be excluded from the definition of "packaging material", the department will initiate rulemaking to exclude that packaging.

E. Beginning February 15, 2024~~3~~, and annually thereafter, the department shall submit a report to the joint committee of the Legislature having jurisdiction over environment and natural resources matters regarding the packaging stewardship program and alternative collection programs implemented pursuant to this section.

(1) The report must include, at a minimum, data on the amount and type of packaging material associated with products sold, offered for sale or distributed for sale in or into the State; data regarding how that packaging material was managed; and any recommendations for amendments to the programs implemented under this section, including, but not limited to, the establishment of new program goals or the imposition of a prohibition on the sale, offer for sale or distribution for sale in or into the State of products associated with packaging material that the department has determined is nonessential, is contaminating collected recyclable material, ~~is a common source of litter~~ or exhibits toxicity, particularly if that toxicity is demonstrated to have a disproportionate impact on any community in the State.

(2) Beginning February 15, 2027, and every 5 years thereafter, the report under this paragraph must describe the results of a comprehensive review of the rules adopted by the department pursuant to this section and shall include recommendations by the department for any legislative changes to this section determined necessary as a result of that review, including, but not limited to, changes to the flat fee that may be paid by a low-volume producer pursuant to subsection 136, paragraph AG, subparagraph (1)(a), as well as a description of any changes to those rules that the department intends to propose in a future rulemaking.

(3) The report required under this paragraph may be included in the report required pursuant to section 1772, subsection 1.

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

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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 pursuant to the requirements of this section or the rules adopted pursuant to 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.

Sec. 2. Department of Environmental Protection; stewardship program for packaging; routine technical rulemaking. On or before ~~May~~ December 31, 2022, the Department of Environmental Protection shall initiate routine technical rulemaking consistent with the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A to adopt rules necessary for the implementation, administration and enforcement of a stewardship program for packaging pursuant to Title 38, section 2146. ~~The rulemaking required by this section must be done within existing resources and, notwithstanding any provision of law to the contrary,~~ the department may use funds within the Maine Solid Waste Management Fund established pursuant to Title 38, section 2201 to support its activities required by this section except that, if the department uses funds within the Maine Solid Waste Management Fund as authorized under this section, the department shall deposit back into that fund the same amount of funds withdrawn once reimbursed pursuant to Title 38, section 2146, subsection 13, paragraph B.

SUMMARY

This bill establishes a stewardship program in the State for packaging material, to be operated by a stewardship organization contracted by the Department of Environmental Protection following a competitive bidding process. Under the program, producers of products contained, protected, delivered, presented or distributed in or using packaging material pay into a fund based on the amount by weight of packaging material associated with the products they sell, offer for sale or distribute for sale in or into 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 associated with the products they sell, offer for sale or distribute for sale in or into the State or by meeting other program incentives.

Producer payments received by the stewardship organization are used to reimburse eligible municipalities for certain recycling and waste management costs. To be eligible for such reimbursements, a municipality must share with the stewardship organization certain data regarding its recycling and waste management costs and must provide for the collection and recycling of packaging material generated in the municipality that is determined to be readily recyclable. In addition to the payment of municipal reimbursements, the stewardship organization is authorized to use producer payments to cover the operational costs for the program, to pay department fees and to make investments in education and infrastructure aimed at reducing packaging waste and improving recycling outcomes in the State.

Title 38: WATERS AND NAVIGATION**Chapter 13: WASTE MANAGEMENT****Subchapter 1: GENERAL PROVISIONS****§1310-B. Confidential information**

1. **Public records.** Except as provided in subsections 2 and 3, information obtained by the department under this chapter is a public record as provided by Title 1, chapter 13, subchapter I.

In addition to remedies provided under Title 1, chapter 13, subchapter I, the Superior Court may assess against the department reasonable attorney fees and other litigation costs reasonably incurred by an aggrieved person who prevails in the appeal of the department's denial for a request for information under subchapter V.

[PL 1989, c. 794, §3 (AMD).]

2. **Hazardous waste information and information on mercury-added products and electronic devices; chemicals; recyclables.** Information relating to hazardous waste submitted to the department under this subchapter, information relating to mercury-added products submitted to the department under chapter 16-B, information relating to electronic devices submitted to the department under section 1610, subsection 6-A, information related to priority toxic chemicals submitted to the department under chapter 27, information related to products that contain the "deca" mixture of polybrominated diphenyl ethers submitted to the department under section 1609 or information related to reporting on reportable recyclable materials submitted to the department under section 2145 may be designated by the person submitting it as being only for the confidential use of the department, its agents and employees, the Department of Agriculture, Conservation and Forestry and the Department of Health and Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees ³⁸ of the United States Environmental Protection Agency and the Attorney General and, for waste information, employees of the municipality in which the waste is located. The

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designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the person submitting the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submitter and the person requesting the designated information. A person aggrieved by a decision of the department may appeal only to the Superior Court in accordance with the provisions of section 346. All information provided by the department to the municipality under this subsection is confidential and not a public record under Title 1, chapter 13. In the event a request for such information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this subsection.

[PL 2019, c. 291, Pt. B, §1 (AMD).]

3. Release of information. The commissioner shall not release the designated information prior to the expiration of the time allowed for the filing of an appeal or to the rendering of the decision on any appeal.

[PL 1979, c. 699, §17 (NEW).]

4. License and enforcement information. Information required by the department for the purpose of obtaining a permit, license, certification or other approval may not be designated or treated as designated information under subsection 2.

[PL 1979, c. 699, §17 (NEW).]

5. Rules. The board may adopt rules to carry out the purposes of this section. The rules shall be consistent with the provisions of Title 1, chapter 13, subchapter I.

[PL 1981, c. 470, Pt. A, §173 (AMD).]

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6. Prohibition; penalties.

A. It is unlawful to disclose designated information to any person not authorized by this section. [PL 1979, c. 699, §17 (NEW).]

B. Any person who solicits, accepts or agrees to accept, or who promises, offers or gives any pecuniary benefit in return for the disclosure of designated information is guilty of a Class D crime and to the civil penalty of paragraph C. [PL 1979, c. 699, §17 (NEW).]

C. Any person who knowingly discloses designated information, knowing that he is not authorized to do so, is subject to a civil penalty of not more than \$5,000. [PL 1979, c. 699, §17 (NEW).]

D. In any action under this subsection, the court shall first declare that the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. [PL 1979, c. 699, §17 (NEW).]

[PL 1979, c. 699, §17 (NEW).]

SECTION HISTORY

PL 1979, c. 699, §17 (NEW). PL 1981, c. 470, §§A172,A173 (AMD). PL 1985, c. 267, §2 (AMD). PL 1987, c. 517, §24 (AMD). PL 1989, c. 794, §3 (AMD). PL 1989, c. 890, §§A40,B233 (AMD). PL 2001, c. 373, §1 (AMD). PL 2003, c. 661, §1 (AMD). PL 2003, c. 689, §B6 (REV). PL 2005, c. 561, §7 (AMD). PL 2005, c. 590, §3 (AMD). PL 2007, c. 466, Pt. A, §72 (AMD). PL 2009, c. 397, §1 (AMD). PL 2009, c. 579, Pt. A, §1 (AMD). PL 2009, c. 610, §1 (AMD). PL 2011, c. 420, Pt. A, §35 (AMD). PL 2011, c. 657, Pt. W, §5 (REV). PL 2015, c. 250, Pt. C, §10 (AMD). PL 2019, c. 291, Pt. B, §1 (AMD).

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.

If you need legal advice, please consult a qualified attorney.

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PUBLIC RECORDS EXCEPTION REVIEW CHECKLIST

Revised 2/13/12

A. Whether the record protected needs to be collected (Conclusion of committee of jurisdiction?)		
B. The value to the agency or official or to the public in maintaining the record (Conclusion of committee of jurisdiction?)		
C. Whether federal law requires the record to be confidential		
Does the proposed exception meet one or more of the following (D, E, F, G or I)		
D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in disclosure		
E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records		
F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records		
G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records		
I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception		
H. Whether the proposed exception is as narrowly tailored as possible		
<i>If the proposed exception creates broad confidentiality for an entity: 2-A. Accountability review of agency or official.</i> In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.		
2-B. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.		