



**FLOOR AMENDMENT STATEMENT:** Yes  
**LEGISLATIVE FISCAL ESTIMATE:** Yes 6/24/2021  
1/6/2022

**A4676 (ACS/2R)**

**INTRODUCED BILL  
(INCLUDES SPONSOR'S STATEMENT):** Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes Envir. & Solid Waste  
Appropriations 12-13-2021  
Appropriations 01-06-2022

**SENATE:** No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

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Scott Fallon, NorthJersey.com, 'SAY GOODBYE TO PACKING PEANUTS IN NEW JERSEY - MURPHY SIGNS PLASTICRECYCLING BILL INTO LAW', Record, The (online), 19 Jan 2022 A7

P.L. 2021, CHAPTER 391, *approved January 18, 2022*  
Senate Committee Substitute (*Fifth Reprint*) for  
Senate, No. 2515

1 AN ACT concerning the use of postconsumer recycled content in  
2 certain containers and packaging products and supplementing  
3 Title 13 of the Revised Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. As used in this act:  
9 “Beverage” means any of the following products if those products  
10 are in liquid, ready-to-drink form, and are intended for human  
11 consumption: <sup>2</sup>~~“milk and milk products;”~~<sup>2</sup> beer and other malt  
12 beverages; wine and distilled spirit coolers; carbonated water,  
13 including soda and carbonated mineral water; noncarbonated water,  
14 including noncarbonated mineral water; carbonated soft drinks;  
15 noncarbonated soft drinks and sport drinks; noncarbonated fruit drinks  
16 that contain any percentage of fruit juice; coffee and tea drinks;  
17 carbonated fruit drinks; and vegetable juice.

18 “Commissioner” means the Commissioner of Environmental  
19 Protection.

20 “Department” means the Department of Environmental Protection.

21 “Food” means articles used for food or drink for consumption by  
22 humans or other animals, and articles used for components of any such  
23 article.

24 “Glass container” means a container made of glass that is filled  
25 with a food or beverage.

26 <sup>5</sup>“Hot fill process” means a process to sterilize both a food product  
27 and its container during the food packaging process, in which the food  
28 product is heated to a temperature between 194 and 203 degrees  
29 Fahrenheit and then injected into the container.<sup>5</sup>

30 <sup>4</sup>“Licensee” means a manufacturer or entity who licenses a brand  
31 and manufactures a product under that brand.<sup>4</sup>

32 “Manufacturer” means <sup>4</sup>~~“a person that”~~<sup>4</sup> : (1) <sup>4</sup>a person that<sup>4</sup>  
33 produces or generates a rigid plastic container, <sup>1</sup>~~“plastic beverage~~  
34 container, glass container,<sup>1</sup> paper carryout bag, plastic carryout bag,  
35 or plastic trash bag that <sup>1</sup>does not contain a product and that<sup>1</sup> is sold or  
36 offered for sale in the State; <sup>4</sup>~~“or”~~<sup>4</sup> (2) <sup>1</sup>~~“produces or generates”~~<sup>4</sup> <sup>4</sup>a  
37 person that<sup>4</sup> is the brand owner of<sup>1</sup> a product that is sold or offered for

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SBA committee amendments adopted June 17, 2021.

<sup>2</sup>Senate floor amendments adopted June 21, 2021.

<sup>3</sup>Assembly AEN committee amendments adopted November 15, 2021.

<sup>4</sup>Assembly AAP committee amendments adopted December 13, 2021.

<sup>5</sup>Assembly AAP committee amendments adopted January 6, 2022.

1 sale in the State and that is packaged in a rigid plastic container, plastic  
2 beverage container, or glass container <sup>4</sup>, unless the brand owner  
3 identifies a licensee who agrees to accept responsibility under this act  
4 and the licensee informs the department in writing of the agreement; or  
5 (3) in the absence of a person meeting the criteria in (1) or (2) of this  
6 definition over whom the State may exercise jurisdiction, a person  
7 who imports or distributes a product into or within the State that is  
8 sold or offered for sale in the State and that is packaged in a rigid  
9 plastic container, plastic beverage container, or glass container<sup>4</sup> .

10 “Manufacturer” shall not include <sup>4</sup>[(<sup>3</sup>: (1) a person who only licenses a  
11 brand or trademark for a product and does not produce, package, or  
12 sell the product in the State; and (2)<sup>3</sup>]<sup>4</sup> a person who, at a single  
13 physical location, produces, packages, and sells a product directly to a  
14 consumer at retail, <sup>1</sup>[including, but not limited to,] which may  
15 include<sup>1</sup> a grocery store, restaurant, bar, cafeteria, café, food truck,  
16 food cart, or similar establishment.

17 “Paper carryout bag” means a bag made of paper that is sold or  
18 provided by a store to a customer for the purpose of containing,  
19 carrying, and transporting food, beverages, or retail goods.

20 “Person” means an individual, corporation, company, association,  
21 society, firm, partnership, or joint stock company.

22 “Plastic” means a synthetic material made from linking monomers  
23 through a chemical reaction to create an organic polymer chain that  
24 can be molded or extruded at high heat into various solid forms  
25 retaining their defined shapes during the life cycle and after disposal.  
26 “Plastic” shall not include material that is designed to be composted in  
27 a municipal or industrial aerobic composting facility and that is  
28 certified by a recognized third-party independent verification body as  
29 meeting the standards therefor established by the American Society for  
30 Testing and Materials in ASTM D6400 or ASTM D6868.

31 “Plastic beverage container” means an individual, separate bottle,  
32 can, jar, carton, or other container made of plastic that is hermetically  
33 sealed or made airtight with a metal or plastic cap, and that contains a  
34 beverage. <sup>2</sup>“Plastic beverage container” shall not include any label,  
35 cap, closure, or other item affixed to the container.<sup>2</sup>

36 “Plastic carryout bag” means a bag made of plastic, of any  
37 thickness, whether woven or nonwoven, that is sold or provided by a  
38 store to a customer for the purpose of containing, carrying, and  
39 transporting food, beverages, or retail goods.

40 “Plastic trash bag” means a bag that is made of plastic, is at least  
41 0.70 mils thick, and is designed and manufactured for use as a  
42 container to hold, store, or transport materials to be discarded,  
43 composted, or recycled, and includes, but is not limited to, a garbage  
44 bag, <sup>1</sup>[composting bag,]<sup>1</sup> lawn or leaf bag, can-liner bag, kitchen bag,  
45 or compactor bag.

46 “Postconsumer recycled content” means a material or product that  
47 has completed its intended end use and product life cycle, and which

1 has been separated from the solid waste stream for the purposes of  
2 collection and recycling. “Postconsumer recycled content” shall not  
3 include secondary waste material or materials and by-products  
4 generated from, and commonly used within, an original manufacturing  
5 and fabrication process.

6 “Rigid plastic container” means a container made of plastic that  
7 has a relatively inflexible finite shape or form, has a minimum  
8 capacity of eight fluid ounces or its equivalent volume and a maximum  
9 capacity of five fluid gallons or its equivalent volume, and is capable  
10 of maintaining its shape while empty or while holding other products.

11

12 2. a. A manufacturer shall achieve compliance with the  
13 postconsumer recycled content requirements of this act based on the  
14 average amount of postconsumer recycled content, by weight <sup>5</sup>or  
15 another metric, as determined by the department<sup>5</sup>, contained in its  
16 products. <sup>1</sup>~~For the first five years after the effective date of this act,~~  
17 ~~a] A<sup>1</sup> manufacturer <sup>1</sup>[may] shall<sup>1</sup>~~ calculate the average amount of  
18 postconsumer recycled content contained in its products using data  
19 specific to products sold or offered for sale in New Jersey <sup>1</sup>[or  
20 nationwide. Beginning five years after the effective date of this act, a  
21 manufacturer shall calculate the average amount of postconsumer  
22 recycled content in its products using data specific to products sold or  
23 offered for sale in New Jersey only.] , if such data are available. If a  
24 manufacturer demonstrates to the department that State-specific data  
25 are not available or feasible to generate, then the manufacturer may  
26 utilize national data to calculate the average amount of postconsumer  
27 recycled content contained in its products.<sup>1</sup> The calculation of  
28 averages may be based on a manufacturer's entire product line or  
29 separated into product sub-lines, provided that all of the  
30 manufacturer's products are accounted for in the calculations.

31 b. <sup>1</sup>If a manufacturer relies on national data to calculate the  
32 average amount of postconsumer recycled content contained in its  
33 products, the manufacturer shall:

34 (1) prorate the national data based on market share <sup>2</sup>[.] or<sup>2</sup>  
35 population, <sup>2</sup>[or another method as may be determined by the  
36 department,]<sup>2</sup> to ensure that the percentage of postconsumer recycled  
37 content calculated for products sold in New Jersey is the same  
38 percentage as calculated for the nation; and

39 (2) document the methodology used to prorate the national data in  
40 the report required pursuant to paragraph (1) of subsection a. of section  
41 14 of this act.

42 c. <sup>1</sup>For the purposes of this section, “product” means a rigid plastic  
43 container, plastic beverage container, glass container, paper carryout  
44 bag, plastic carryout bag, or plastic trash bag that is subject to the  
45 postconsumer recycled content requirements of this act.

- 1           3. a. (1) Beginning two years after the effective date of this act,  
2 all rigid plastic containers sold, offered for sale, or used in association  
3 with the sale or offer for sale of a product in the State by a  
4 manufacturer shall contain, on average, at least <sup>5</sup>~~[25]~~ <sup>10</sup> percent  
5 postconsumer recycled content.
- 6           (2) Beginning five years after the effective date of this act, and  
7 every three years thereafter, the percentage of postconsumer recycled  
8 content required for rigid plastic containers pursuant to this section  
9 shall increase by <sup>5</sup>~~[five]~~ <sup>10</sup> percent, until reaching 50 percent.
- 10          b. <sup>2</sup>~~[Beginning two years after the effective date of this act, a~~  
11 manufacturer shall label each rigid plastic container with <sup>1</sup>: (1)<sup>1</sup> the  
12 name of the manufacturer and the city, state, and country where the  
13 manufacturer is located <sup>1</sup>which may be designated as the location of  
14 the manufacturer's corporate headquarters; or (2) a uniform resource  
15 locator (URL) or quick response (QR) code to an Internet website that  
16 contains the information required pursuant to paragraph (1) of this  
17 subsection<sup>1</sup>.
- 18          c. <sup>2</sup>~~[A rigid plastic container shall be exempt from the~~  
19 postconsumer recycled content requirements of subsection a. of this  
20 section if it:
- 21           (1) is a plastic beverage container, to which the requirements of  
22 section 4 of this act shall apply;
- 23           (2) is associated with a product produced in or brought into the  
24 State that is destined for shipment to a destination outside the State,  
25 and that remains with the product upon shipment;
- 26           (3) contains drugs, dietary supplements, medical devices, or  
27 cosmetics as those terms are defined in the Federal Food, Drug, and  
28 Cosmetic Act, 21 U.S.C. s.301 et seq.;
- 29           (4) contains toxic or hazardous products regulated under the  
30 "Federal Insecticide, Fungicide, and Rodenticide Act," 7 U.S.C. s.136  
31 et seq.;
- 32           (5) is manufactured for use in the shipment of hazardous materials  
33 and is: (a) prohibited from being manufactured with used material by  
34 federal packaging material specifications set forth in 49 C.F.R.  
35 s.178.509 and 49 C.F.R. s.178.522, (b) is subject to the testing  
36 standards set forth in 49 C.F.R. s.178.600 through 49 C.F.R.  
37 s.178.609, or (c) is subject to the recommendations of the United  
38 Nations on the transport of dangerous goods; or
- 39           (6) is a refillable container or a reusable container. For the  
40 purposes of this paragraph, "refillable container" means a rigid plastic  
41 <sup>1</sup>~~[a]~~<sup>1</sup> container that is routinely returned to and refilled by the  
42 manufacturer with the same product packaged by the container; and  
43 "reusable container" means a rigid plastic container that is routinely  
44 reused by consumers to store the original product packaged by the  
45 container.

1           4. a. (1) Beginning two years after the effective date of this act,  
2 all plastic beverage containers sold or offered for sale in the State by a  
3 manufacturer shall contain, on average, at least 15 percent  
4 postconsumer recycled content.

5           (2) Beginning five years after the effective date of this act, and  
6 every three years thereafter, the amount of postconsumer recycled  
7 content required for plastic beverage containers pursuant to this  
8 section shall increase by five percent, until reaching 50 percent <sup>5</sup>;  
9 except that the postconsumer recycled content requirement for  
10 manufacturers who utilize a hot fill process shall not exceed 30  
11 percent<sup>5</sup>.

12           b. <sup>2</sup>**[**Beginning two years after the effective date of this act, a  
13 manufacturer shall label each plastic beverage container sold or  
14 offered for sale in the State with <sup>1</sup>: (1)<sup>1</sup> the name of the manufacturer  
15 and the city, state, and country where the manufacturer is located  
16 <sup>1</sup>which may be designated as the location of the manufacturer's  
17 corporate headquarters; or (2) a uniform resource locator (URL) or  
18 quick response (QR) code to an Internet website that contains the  
19 information required pursuant to paragraph (1) of this subsection<sup>1</sup>.

20           c. <sup>2</sup>**]** The provisions of subsection a. of this section shall not apply  
21 to a refillable beverage container. For the purposes of this subsection,  
22 “refillable beverage container” means a beverage container that holds  
23 150 fluid ounces or less of beverage, and which is routinely returned to  
24 the manufacturer to be refilled and resold.  
25

26           5. a. Beginning two years after the effective date of this act, all  
27 glass containers sold or offered for sale in the State by a  
28 manufacturer shall contain, on average, at least 35 percent  
29 postconsumer recycled content; except that, if a manufacturer  
30 certifies to the department that its use of postconsumer recycled  
31 content is made up of at least 50 percent mixed-color cullet, then  
32 the glass containers shall only be required to contain, on average, at  
33 least 25 percent postconsumer recycled content.

34           b. <sup>2</sup>**[**Beginning two years after the effective date of this act, a  
35 manufacturer shall label each glass container sold or offered for sale  
36 in the State with <sup>1</sup>: (1)<sup>1</sup> the name of the manufacturer and the city,  
37 state, and country where the manufacturer is located <sup>1</sup>which may be  
38 designated as the location of the manufacturer's corporate  
39 headquarters; or (2) a uniform resource locator (URL) or quick  
40 response (QR) code to an Internet website that contains the  
41 information required pursuant to paragraph (1) of this subsection<sup>1</sup>.

42           c. <sup>2</sup>**]** As used in this section, “mixed-color cullet” means cullet  
43 that does not meet the American Society for Testing and Materials  
44 (ASTM) standard specifications for the color mix of color-sorted,  
45 post-filled glass as a raw material for the manufacture of glass  
46 containers.

1       6. Beginning two years after the effective date of this act <sup>2</sup>]:  
2       a. <sup>2</sup> all paper carryout bags sold or offered for sale in the State  
3 by a manufacturer shall contain, on average, at least 40 percent  
4 postconsumer recycled content; except that a paper carryout bag  
5 that holds eight pounds or less shall only be required to contain, on  
6 average, at least 20 percent postconsumer recycled content <sup>2</sup>]; and  
7       b. a manufacturer shall label each paper carryout bag sold or  
8 offered for sale in the State with <sup>1</sup>: (1)<sup>1</sup> the name of the  
9 manufacturer and the city, state, and country where the  
10 manufacturer is located <sup>1</sup>which may be designated as the location of  
11 the manufacturer's corporate headquarters; or (2) a uniform  
12 resource locator (URL) or quick response (QR) code to an Internet  
13 website that contains the information required pursuant to  
14 paragraph (1) of this subsection<sup>1</sup>]<sup>2</sup>.  
15

16       7. All plastic carryout bags sold or offered for sale in the State  
17 by a manufacturer shall:

18       a. beginning two years after the effective date of this act,  
19 contain, on average, at least 20 percent postconsumer recycled  
20 content; <sup>2</sup>and<sup>2</sup>

21       b. beginning five years after the effective date of this act,  
22 contain, on average, at least 40 percent postconsumer recycled  
23 content <sup>2</sup>]; and

24       c. beginning two years after the effective date of this act, be  
25 labeled with <sup>1</sup>: (1)<sup>1</sup> the name of the manufacturer and the city,  
26 state, and country where the manufacturer is located <sup>1</sup>which may be  
27 designated as the location of the manufacturer's corporate  
28 headquarters; or (2) a uniform resource locator (URL) or quick  
29 response (QR) code to an Internet website that contains the  
30 information required pursuant to paragraph (1) of this  
31 subsection<sup>1</sup>]<sup>2</sup>.  
32

33       8. a. <sup>1</sup> [Beginning two years after the effective date of this act,  
34 all] All<sup>1</sup> plastic trash bags sold or offered for sale in the State by a  
35 manufacturer shall <sup>1</sup>:

36       (1) beginning two years after the effective date of this act,<sup>1</sup> contain  
37 <sup>5</sup>], on average, at least 10 percent] the following proportion of<sup>5</sup>  
38 postconsumer recycled content <sup>5</sup>:

39       (a) for plastic trash bags greater than 0.70 mils thick but less than  
40 0.80 mils thick, at least five percent;

41       (b) for plastic trash bags greater than 0.80 mils thick but less than  
42 1.00 mils thick, at least 10 percent; and

43       (c) for plastic trash bags equal to or greater than 1.00 mils thick, at  
44 least 20 percent<sup>5</sup> <sup>1</sup>; and



1 (2) beginning five years after the effective date of this act, contain  
2 <sup>5</sup>[(, on average, at least 20 percent] the following proportion of<sup>5</sup>  
3 postconsumer recycled content<sup>1 5</sup>:

4 (a) for plastic trash bags greater than 0.70 mils thick but less than  
5 0.80 mils thick, at least 10 percent;

6 (b) for plastic trash bags greater than 0.80 mils thick but less than  
7 1.00 mils thick, at least 20 percent; and

8 (c) for plastic trash bags equal to or greater than 1.00 mils thick, at  
9 least 40 percent<sup>5</sup> .

10 b. <sup>2</sup>[(Beginning two years after the effective date of this act, a  
11 manufacturer shall label each container of plastic trash bags sold or  
12 offered for sale in the State with <sup>1</sup>: (1)<sup>1</sup> the name of the manufacturer  
13 and the city, state, and country where the manufacturer is located  
14 <sup>1</sup>which may be designated as the location of the manufacturer's  
15 corporate headquarters; or (2) a uniform resource locator (URL) or  
16 quick response (QR) code to an Internet website that contains the  
17 information required pursuant to paragraph (1) of this subsection<sup>1</sup>.

18 c. <sup>2</sup>[(The provisions of subsection a. of this section shall not apply  
19 to a bag that is designed and manufactured to hold, store, or transport  
20 hazardous waste or regulated medical waste. For the purposes of this  
21 subsection, "hazardous waste" means any solid waste defined as  
22 hazardous waste by the department pursuant to P.L.1970, c.39  
23 (C.13:1E-1 et seq.); and "regulated medical waste" means the same as  
24 that term is defined in section 3 of P.L.1989, c.34 (C.13:1E-48.3).  
25

26 9. a. Notwithstanding the provisions of this act to the contrary,  
27 the department may, pursuant to the "Administrative Procedure  
28 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), review and adjust any  
29 of the postconsumer recycled content requirements established in  
30 sections 3 through 8 of this act. In making an adjustment pursuant  
31 to this section, the department shall consider:

32 (1) changes in market conditions, including supply and demand  
33 for postconsumer recycled content, collection rates, and bale  
34 availability both domestically and globally;

35 (2) recycling rates, as may be determined by the department;

36 (3) the availability of recycled material suitable for  
37 manufacturers to meet the postconsumer recycled content  
38 requirements, including the availability of high-quality recycled  
39 plastic or glass, and food-grade recycled plastic or glass;

40 (4) the capacity of recycling or processing infrastructure;

41 (5) the progress made by manufacturers in meeting the  
42 postconsumer recycled content requirements; and

43 (6) any other factors as determined by the department pursuant  
44 to rule, regulation, or guidance.

45 b. Any adjustment to the postconsumer recycled content  
46 requirements made pursuant to this section shall be only for a time-

1 period, and only under such conditions, as the department may by  
2 rule or regulation establish.

3

4 10. a. A package <sup>1</sup>or container<sup>1</sup> that <sup>1</sup>~~contain~~ contains<sup>1</sup> milk  
5 products, <sup>2</sup>plant-based products with names that include the names of  
6 dairy foods such as “milk,”<sup>2</sup> medical food, <sup>5</sup>food for special dietary  
7 use,<sup>5</sup> or infant formula shall be exempt from the postconsumer  
8 recycled content requirements of this act <sup>1</sup>~~for a period of five years~~  
9 beginning on the effective date of this act<sup>1</sup> .

10 <sup>1</sup>b. (1) A package or container that contains food shall be exempt  
11 from the postconsumer recycled content requirements of this act for a  
12 period of five years beginning on the effective date of this act, except  
13 that the exemption provided in this paragraph shall not apply to a  
14 plastic beverage container or a glass container filled with a beverage.

15 (2) The department may, in its discretion, extend the five-year  
16 exemption provided in paragraph (1) of this subsection.<sup>1</sup> Upon  
17 expiration of the <sup>1</sup>~~five-year~~<sup>1</sup> exemption <sup>1</sup>~~period~~<sup>1</sup>, a manufacturer  
18 <sup>1</sup>~~of milk products, medical food, or infant formula may apply to~~  
19 shall be subject to the applicable postconsumer recycled content  
20 requirements in effect at the time of the expiration, unless the  
21 manufacturer applies to, and receives from,<sup>1</sup> the department <sup>1</sup>~~for~~<sup>1</sup> a  
22 waiver pursuant to section 11 of this act.

23 <sup>1</sup>~~b.~~ <sup>1</sup>c. <sup>1</sup> As used in this section:

24 <sup>5</sup>“Food for special dietary use” means the same as the term is  
25 defined in 21 U.S.C. s.350.<sup>5</sup>

26 “Medical food” and “infant formula” mean the same as those terms  
27 are defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C.  
28 s.301 et seq.

29 “Milk product” means the same as that term is defined <sup>2</sup>~~in the~~  
30 Grade “A” Pasteurized Milk Ordinance promulgated<sup>2</sup> by the United  
31 States Food and Drug Administration.

32

33 11. a. A manufacturer may apply to the department for a waiver  
34 from the postconsumer recycled content requirements established  
35 pursuant to this act. The department may grant a waiver pursuant to  
36 this section if the manufacturer demonstrates, and the department  
37 finds, in writing, that:

38 (1) the manufacturer cannot achieve the postconsumer recycled  
39 content requirements and remain in compliance with applicable rules  
40 and regulations adopted by the United States Food and Drug  
41 Administration, or any other State or federal law, rule, or regulation;

42 (2) it is not technologically feasible for the manufacturer to  
43 achieve the postconsumer recycled content requirements; <sup>1</sup>~~or~~<sup>1</sup>

44 (3) the manufacturer cannot comply with the postconsumer  
45 recycled content requirements due to inadequate availability of

1 recycled material or a substantial disruption in the supply of recycled  
2 material; or

3 (4)<sup>1</sup> the manufacturer cannot comply for another reason as  
4 determined by the department pursuant to rule, regulation, or guidance.

5 b. In order to qualify for a waiver from the postconsumer recycled  
6 content requirements of this act, a manufacturer shall submit to the  
7 department documentation from a federal or State agency or certified  
8 third-party expert, as appropriate, demonstrating that the manufacturer  
9 cannot comply with the postconsumer recycled content requirements  
10 for one of the reasons set forth in subsection a. of this section, and pay  
11 a \$1,000 waiver fee. The department may modify the amount of the  
12 waiver fee, pursuant to the “Administrative Procedure Act,” P.L.1968,  
13 c.410 (C.52:14B-1 et seq.), as necessary to reflect the department’s  
14 costs to administer, monitor, and enforce the provisions of this section.

15 <sup>3</sup>Notwithstanding the provisions of this subsection to the contrary, a  
16 manufacturer that demonstrates to the department that the  
17 manufacturer’s gross revenue is below \$5,000,000 shall not be  
18 required to pay the waiver fee established pursuant to this section.<sup>3</sup>

19 c. The department may grant a waiver from the postconsumer  
20 recycled content requirements for <sup>1</sup>any period of time as the  
21 department deems appropriate a period of not less than two years, as  
22 determined by the department<sup>1</sup> . The department shall publish any  
23 determination to grant a waiver from the postconsumer recycled  
24 content requirements on its Internet website. The department shall  
25 develop a standardized form and procedure for manufacturers to apply  
26 for a waiver pursuant to this section.

27  
28 12. a. The department may require a manufacturer that is  
29 <sup>1</sup>temporarily<sup>1</sup> exempt from the postconsumer recycled content  
30 requirements of this act <sup>1</sup>pursuant to subsection b. of section 10 of  
31 this act<sup>1</sup> , or that has submitted a request for a waiver pursuant to  
32 section 11 of this act, to prepare and submit to the department an  
33 alternative compliance plan that demonstrates that the manufacturer  
34 is taking, and will continue to take, all feasible actions to ensure the  
35 reduction, <sup>1</sup>collection,<sup>1</sup> recycling, and reuse of rigid plastic  
36 containers, plastic beverage containers, glass containers, paper  
37 carryout bags, plastic carryout bags, or plastic trash bags made from  
38 virgin plastic, glass, or paper, as applicable, and <sup>1</sup>to ensure<sup>1</sup> the use  
39 of postconsumer recycled content.

40 b. The department shall adopt, pursuant to the “Administrative  
41 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and  
42 regulations setting forth the substantive requirements for an  
43 alternative compliance plan required pursuant to subsection a. of  
44 this section <sup>2</sup>], which may include, but need not be limited to, a  
45 requirement that the manufacturer take alternative measures to  
46 reduce its use of virgin plastics, glass, or paper, including  
47 sustainable materials management protocols, light weighting,

1 lifecycle analyses, and such other measures as the department may,  
2 by rule or regulation, require<sup>2</sup>.

3 c. The department shall have the authority to approve or  
4 disapprove an alternative compliance plan prepared and submitted  
5 pursuant to this section, and to require a manufacturer to make any  
6 revisions or modifications to its alternative compliance plan as the  
7 department determines necessary, consistent with the provisions of  
8 this act and the rules and regulations adopted by the department.

9 d. A manufacturer shall undertake all of the actions described  
10 in the alternative compliance plan. Failure by a manufacturer to  
11 comply with an approved alternative compliance plan shall  
12 constitute a violation of this act.

13 e. The department may enter into a contract or other legally  
14 binding agreement with one or more trade associations representing  
15 manufacturers, which shall allow the trade association, in lieu of the  
16 manufacturers, to prepare and submit an alternative compliance  
17 plan pursuant to this section and to undertake the actions described  
18 in the alternative compliance plan.

19 <sup>2</sup>[<sup>1</sup>f. The department shall publish a final alternative  
20 compliance plan approved pursuant to this section on the  
21 department's Internet website.]<sup>2</sup>

22  
23 13. a. Beginning <sup>1</sup>[on the September 1 next following] six  
24 months after<sup>1</sup> the effective date of this act, and <sup>1</sup>[each September 1]  
25 annually<sup>1</sup> thereafter, each manufacturer shall register with the  
26 department, in a form and manner as prescribed by the department,  
27 and pay an annual registration fee of \$1,000. The department may  
28 modify the amount of the registration fee, pursuant to the  
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),  
30 as necessary to reflect the department's costs to implement,  
31 administer, monitor, and enforce the provisions of this act. The  
32 department shall establish an electronic registration process on its  
33 Internet website; however, the lack of an electronic registration  
34 process shall not negate the requirement for a manufacturer to register  
35 pursuant to this subsection. <sup>1</sup>Notwithstanding the provisions of this  
36 subsection to the contrary <sup>3</sup>[,] : (1) a manufacturer that demonstrates  
37 to the department that the manufacturer's gross revenue is below  
38 \$5,000,000 shall not be required to pay the registration fee established  
39 pursuant to this section; or (2)<sup>3</sup> a manufacturer that produces or  
40 generates only products that are exempt from the provisions of this act  
41 shall be required to register with the department only once, and shall  
42 be exempt from the registration fee.<sup>1</sup>

43 b. Notwithstanding the provisions of section 16 of this act to the  
44 contrary, a manufacturer that fails to register with the department  
45 pursuant to subsection a. of this section shall first receive a written  
46 warning. A manufacturer that receives a written warning shall register  
47 with the department no later than 90 days after receipt of the warning.

1 A manufacturer that receives a written warning and that fails to  
2 register with the department within 90 days of receipt of the warning  
3 shall be subject to the penalties set forth in section 16 of this act.  
4

5 14. a. <sup>1</sup>(1)<sup>1</sup> Beginning <sup>1</sup>【on the third September 1】 three years  
6 and six months<sup>1</sup> after the effective date of this act, and <sup>1</sup>【on each  
7 September 1】 annually<sup>1</sup> thereafter, each manufacturer shall certify,  
8 in writing, to the department whether or not the rigid plastic  
9 containers, plastic beverage containers, glass containers, paper  
10 carryout bags, plastic carryout bags, or plastic trash bags, as  
11 applicable, sold, offered for sale, or used in association with the  
12 sale or offer for sale of a product in the State, are in compliance  
13 with the postconsumer recycled content requirements of this act, or  
14 are otherwise exempt or have been approved for a waiver from the  
15 requirements. If the manufacturer claims an exemption from the  
16 requirements of this act, the manufacturer shall set forth the specific  
17 basis upon which the exemption is claimed, and submit such proof  
18 as the department determines necessary. The certification shall be  
19 signed by an authorized representative of the manufacturer. A  
20 manufacturer shall submit the certification, in the form and manner  
21 determined by the department, under penalty of perjury. The  
22 certification shall include the amount, in pounds, of virgin plastic,  
23 glass, or paper and <sup>1</sup>the amount, in pounds, of<sup>1</sup> postconsumer  
24 recycled material used by the manufacturer for any products subject  
25 to the requirements of this act, and any other information as the  
26 department deems necessary. The department shall establish an  
27 electronic certification process on its Internet website; however, the  
28 lack of an electronic certification process shall not negate the  
29 requirement for a manufacturer to certify its compliance pursuant to  
30 this subsection.

31 <sup>1</sup>(2) The department may <sup>2</sup>【require that a manufacturer submit  
32 an independent, third-party verification of a compliance  
33 certification made pursuant to this subsection】, in consultation with  
34 manufacturers, study: (a) whether there exist independent, third-  
35 party verification organizations that can verify manufacturers'  
36 compliance with the requirements of this act; and (b) appropriate  
37 accreditation standards for such organizations. The department may  
38 prepare and submit a report including its findings to the Governor,  
39 to the Legislature pursuant to section 2 of P.L.1991, c.164  
40 (C.52:14-19.1), and to the members of the Senate Environment and  
41 Energy Committee and the Assembly Environment and Solid Waste  
42 Committee, or their successors<sup>2</sup> .<sup>1</sup>

43 b. Each manufacturer shall maintain records, in a form  
44 prescribed by the department, that demonstrate, for all rigid plastic  
45 containers, plastic beverage containers, glass containers, paper  
46 carryout bags, plastic carryout bags, or plastic trash bags generated  
47 or produced by the manufacturer, whether and how the

1 manufacturer has complied with the postconsumer recycled content  
2 requirements, or whether the manufacturer qualifies for an  
3 exemption or waiver from the postconsumer recycled content  
4 requirements. The department may adopt specific requirements for  
5 the records required to be maintained pursuant to this subsection  
6 and may request the records from a manufacturer at any time. A  
7 manufacturer shall submit records to the department no later than  
8 30 days after receipt of a request, unless the department extends that  
9 timeframe.

10 c. The department may audit or investigate a manufacturer, at  
11 any time, to assess the manufacturer's compliance with the  
12 requirements of this act. Each year, the department <sup>1</sup>~~shall~~ may<sup>1</sup>  
13 audit, or cause to be audited, a random sample of manufacturers in  
14 order to determine compliance with this act. A manufacturer shall  
15 cooperate fully with any audit or investigation conducted pursuant  
16 to this section. The department may require a manufacturer to pay  
17 the costs of an audit conducted pursuant to this subsection.

18 d. The department shall annually publish a list of registered  
19 manufacturers, their compliance status, and other information the  
20 department deems appropriate on the department's Internet website.

21

22 15. a. Beginning two years after the effective date of this act, no  
23 person shall sell or offer for sale in the State any polystyrene loose  
24 fill packaging.

25 b. As used in this section:

26 "Polystyrene foam" means blown polystyrene and expanded and  
27 extruded foams that are thermoplastic petrochemical materials  
28 utilizing a styrene monomer and processed by a number of  
29 techniques, including, but not limited to, fusion of polymer spheres  
30 (expandable bead polystyrene), injection molding, foam molding,  
31 and extrusion-blow molding (extruded foam polystyrene).

32 "Polystyrene loose fill packaging," commonly known as packing  
33 peanuts, means a void-filling packaging product made of  
34 polystyrene foam that is used as a packaging fill.

35

36 16. a. Whenever, on the basis of available information, the  
37 commissioner finds that a person is in violation of this act, the  
38 commissioner may <sup>1</sup>take one or more of the following actions<sup>1</sup> :

39 (1) issue an order in accordance with subsection b. of this section  
40 requiring the person to comply;

41 (2) bring a civil action in accordance with subsection c. of this  
42 section;

43 (3) levy a civil administrative penalty in accordance with  
44 subsection d. of this section;

45 (4) bring an action for a civil penalty in accordance with  
46 subsection e. of this section; <sup>1</sup>~~or~~<sup>1</sup>

47 (5) require a manufacturer to submit a corrective action plan  
48 pursuant to subsection f. of this section <sup>1</sup>; or

1       (6) notify the public of a manufacturer which, at any time during a  
2 reporting period, was not in compliance with the requirements of this  
3 act<sup>1</sup> .

4       The exercise of any of the remedies provided in this section shall  
5 not preclude recourse to any other remedy so provided.

6       b. Whenever, on the basis of available information, the  
7 commissioner finds that a person is in violation of this act, the  
8 commissioner may issue an order: (1) specifying the provision or  
9 provisions of this act, or the rule or regulation adopted pursuant  
10 thereto, of which the person is in violation; (2) citing the action that  
11 caused the violation; (3) requiring compliance with the provision of  
12 this act or the rule or regulation adopted pursuant thereto of which the  
13 person is in violation; and (4) giving notice to the person of his right to  
14 a hearing on the matters contained in the order.

15       c. The commissioner is authorized to commence a civil action in  
16 Superior Court for appropriate relief from a violation of this act. This  
17 relief may include an assessment against the violator for the costs of  
18 any investigation, inspection, or audit that led to the discovery and  
19 establishment of the violation, and for the reasonable costs of  
20 preparing and litigating the case under this subsection.

21       d. (1) The commissioner is authorized to impose a civil  
22 administrative penalty of not less than \$1,000 and not more than  
23 ~~[\$100,000]~~ \$25,000<sup>1</sup> for each violation of this act or any rule or  
24 regulation adopted pursuant thereto, and each day of the violation shall  
25 constitute an additional, separate, and distinct offense. Any amount  
26 imposed under this subsection shall be assessed pursuant to rules and  
27 regulations adopted by the commissioner for violations of similar type,  
28 seriousness, and duration. The commissioner shall have the authority  
29 to assess penalties prior to the establishment of rules and regulations  
30 governing penalties to the extent that such penalties are reasonable and  
31 based on other violations of a similar type, seriousness, and duration.  
32 No civil administrative penalty shall be imposed until after the person  
33 has been notified by certified mail or personal service. The notice  
34 shall include: a reference to the section of the act, rule, regulation,  
35 order, or permit violated; a concise statement of the facts alleged to  
36 constitute a violation; a statement of the amount of the civil  
37 administrative penalties to be imposed; and a statement of the person's  
38 right to a hearing. The person shall have 20 days from receipt of the  
39 notice within which to deliver to the commissioner a written request  
40 for a hearing. Subsequent to the hearing and upon finding that a  
41 violation has occurred, the commissioner may issue a final order or  
42 civil administrative penalty after imposing the amount of the fine  
43 specified in the notice. If no hearing is requested, the notice shall  
44 become a final order or a final civil administrative penalty upon the  
45 expiration of the 20-day period. Payment of the penalty is due when a  
46 final order is issued or when the notice becomes a final order or a final  
47 civil administrative penalty. The authority to levy a civil  
48 administrative penalty is in addition to all other enforcement

1 provisions in this act, and the payment of a civil administrative penalty  
2 shall not be deemed to affect the availability of any other enforcement  
3 provision in connection with the violation for which the penalty is  
4 levied. A civil administrative penalty imposed under this subsection  
5 may be compromised by the commissioner upon the posting of a  
6 performance bond by the violator, or upon terms and conditions the  
7 commissioner may establish by rule or regulation.

8 (2) <sup>1</sup>With respect to violations related to the amount of recycled  
9 content contained in a manufacturer's products, in lieu of the penalties  
10 provided for in paragraph (1) of this subsection, the department shall  
11 assess a civil administrative penalty on a per-pound basis for each  
12 pound of virgin material that is used by a manufacturer in its products  
13 where recycled material is required pursuant to this act. The  
14 department shall establish the per-pound penalty in the rules and  
15 regulations adopted to implement this act.

16 (3)<sup>1</sup> In addition to the assessment of a civil administrative penalty,  
17 the commissioner may, by administrative order and upon an  
18 appropriate finding, assess a violator for the reasonable costs of any  
19 investigation, inspection, or audit which led to the establishment of the  
20 violation.

21 e. Any person who violates this act, an order issued pursuant to  
22 subsection b. of this section, or a court order issued pursuant to  
23 subsection c. of this section, or who fails to pay in full a civil  
24 administrative penalty levied pursuant to subsection d. of this section,  
25 shall be subject, upon order of a court, to a civil penalty not to exceed  
26 ~~1~~[\$100,000] \$50,000, and each day of the violation shall constitute an  
27 additional, separate, and distinct offense<sup>1</sup> . Any penalty imposed  
28 pursuant to this subsection may be collected, and any costs incurred in  
29 connection therewith may be recovered, in a summary proceeding  
30 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274  
31 (C.2A:58-10 et seq.). The Superior Court and the municipal court  
32 shall have jurisdiction to enforce the "Penalty Enforcement Law of  
33 1999."

34 f. The department is authorized to require a manufacturer that  
35 violates the provisions of this act, or any rule or regulation adopted  
36 pursuant thereto, to submit a corrective action plan describing how the  
37 manufacturer intends to come into compliance with the provisions of  
38 this act. The department shall adopt, pursuant to the "Administrative  
39 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and  
40 regulations setting forth the substantive requirements for corrective  
41 action plans.

42 g. In addition to the penalties and remedies provided above, a  
43 person who knowingly, purposely, or recklessly makes a false or  
44 misleading statement on any certification or registration submitted to  
45 the department pursuant to this act shall, upon conviction, be guilty of  
46 a crime of the third degree and, notwithstanding the provisions of  
47 N.J.S.2C:43-3, shall be subject to a fine of not more than \$50,000 and



1 restitution. The department shall refer the provider of any false or  
2 misleading statement to the Attorney General for prosecution.

3

4 17. Any proprietary information or trade secrets included in any  
5 registration, certification, alternative compliance plan, corrective  
6 action plan, or any other record submitted to the department  
7 pursuant to this act shall not be made available to the general public  
8 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known as  
9 the open public records act.

10

11 18. a. There is established in the Department of the Treasury a  
12 special, nonlapsing account to be known as the "Recycling  
13 Enhancement Penalty Account." The account shall be credited with  
14 all penalties collected pursuant to section 16 of this act, and any  
15 interest or investment income earned on monies in the account.  
16 Moneys in the account may be utilized by the department for  
17 administrative expenses incurred in connection with the  
18 enforcement or implementation of this act, for the public education  
19 program required pursuant to subsection b. of this section, and for  
20 other efforts to support recycling markets in the State as the  
21 department may determine.

22 b. The department, in consultation with the Association of New  
23 Jersey Recyclers and the organization under contract with the  
24 department to administer the Clean Communities Program pursuant  
25 to section 6 of P.L.2002, c.128 (C.13:1E-218), shall develop and  
26 implement a Statewide public information and education program to  
27 encourage, support, and increase the recycling of rigid plastic  
28 containers, plastic beverage containers, glass containers, paper  
29 carryout bags, plastic carryout bags, and any other containers or  
30 packaging products, which may include, but need not be limited to,  
31 television, radio, and print advertisements, signage, or classroom  
32 education.

33

34 19. A municipality or county shall not adopt any rule,  
35 regulation, code, or ordinance regulating the postconsumer recycled  
36 content of rigid plastic containers, plastic beverage containers, glass  
37 containers, paper carryout bags, plastic carryout bags, or plastic  
38 trash bags after the effective date of this act. The provisions of this  
39 act shall supersede and preempt any municipal or county rule,  
40 regulation, code, or ordinance regulating the recycled content of  
41 rigid plastic containers, plastic beverage containers, glass  
42 containers, paper carryout bags, plastic carryout bags, or plastic  
43 trash bags that was enacted prior to the effective date of this act.

44

45 20. Nothing in this act shall be construed to impose liability on  
46 any news media that accept or publish advertising for any product  
47 that would otherwise be subject to the provisions of this act.

1 21. Nothing in this act shall be construed to alter, limit, or  
2 otherwise affect any of the provisions of P.L.2020, c.117 (C.13:1E-  
3 99.126 et al.).  
4

5 22. a. <sup>1</sup>~~【The】~~ No later than two years after the effective date of  
6 this act, the<sup>1</sup> department shall adopt, pursuant to the “Administrative  
7 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and  
8 regulations necessary for the implementation of this act. <sup>5</sup>The rules  
9 and regulations shall also establish incentives, to the extent that funds  
10 are appropriated therefor, for manufacturers, recyclers, and retailers to  
11 collect and reuse polyethylene film.<sup>5</sup>

12 b. Prior to the adoption of rules and regulations, and as necessary  
13 thereafter, the department may develop guidance as necessary for the  
14 implementation of this act. <sup>1</sup>The department shall publish any such  
15 guidance on its Internet website.<sup>1</sup>  
16

17 23. No later than five years after the effective date of this act,  
18 the <sup>1</sup>~~【Advisory Council on Solid Waste Management, established~~  
19 ~~pursuant to section 7 of P.L.1970, c.39 (C.13:1E-7),】~~ department<sup>1</sup>  
20 shall prepare and submit a report to the Governor, to the Legislature  
21 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and to the  
22 members of the Senate Environment and Energy Committee and the  
23 Assembly Environment and Solid Waste Committee, or their  
24 successors, assessing the implementation of this act, evaluating the  
25 act’s effectiveness in stimulating the recycling markets in the State,  
26 and making any recommendations for legislative or administrative  
27 action necessary to further the purposes of this act, including  
28 recommendations for whether and how the State should encourage,  
29 require, or support other uses of recycled material.  
30

31 24. This act shall take effect immediately.  
32  
33  
34

35  
36 \_\_\_\_\_  
37 Establishes postconsumer recycled content requirements for rigid  
38 plastic containers, glass containers, paper and plastic carryout bags,  
39 and plastic trash bags; prohibits sale of polystyrene loose fill  
packaging.

# SENATE, No. 2515

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 4, 2020

**Sponsored by:**

**Senator BOB SMITH**

**District 17 (Middlesex and Somerset)**

**Senator LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**SYNOPSIS**

Establishes recycled content requirements for plastic containers, glass containers, paper carryout bags, reusable carryout bags made of plastic film, and plastic trash bags; prohibits sale of polystyrene loose fill packaging.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/10/2020)**

1 AN ACT concerning the sale of certain containers and packaging  
2 products in the State and supplementing Title 13 of the Revised  
3 Statutes.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. As used in sections 1 through 14 of this act:

9 “Beverage” means milk, alcoholic beverages, including beer or  
10 other malt beverages, liquor, wine, vermouth and sparkling wine,  
11 and nonalcoholic beverages, including fruit juice, mineral water and  
12 soda water and similar nonalcoholic carbonated and noncarbonated  
13 drinks intended for human consumption.

14 “Department” means the Department of Environmental  
15 Protection.

16 “Food” means articles used for food or drink for humans and  
17 articles used for components of any such article.

18 “Manufacturer” means a person that: (1) produces or generates a  
19 rigid plastic container, plastic beverage container, glass container,  
20 paper carryout bag, reusable carryout bag made of plastic film, or  
21 plastic trash bag that is sold or offered for sale in the State; or (2)  
22 produces or generates a product that is sold or offered for sale in the  
23 State and packaged in a rigid plastic container, plastic beverage  
24 container, or glass container.

25 “Package” means a container used to protect, store, contain,  
26 transport, display, or sell a product.

27 “Paper carryout bag” means a bag made of paper that is sold or  
28 provided by a store or other retail establishment to a customer for  
29 the purpose of wrapping, containing, or carrying out food,  
30 beverages, or other retail goods.

31 “Person” means an individual, corporation, company,  
32 association, society, firm, partnership, or joint stock company.

33 “Plastic” means a synthetic material made from linking  
34 monomers through a chemical reaction to create an organic polymer  
35 chain that can be molded or extruded at high heat into various solid  
36 forms, which retain their defined shapes during their life cycle and  
37 after disposal.

38 “Plastic beverage container” means an individual bottle or can  
39 composed primarily of plastic that is hermetically sealed or made  
40 airtight with a metal or plastic cap, and that contains a beverage.

41 “Plastic film” means any thin, nonwoven, flexible plastic.

42 “Plastic trash bag” means a bag that is made of plastic, is at least  
43 0.70 mils thick, and is designed and manufactured for use as a  
44 container to hold, store, or transport materials to be discarded,  
45 composted, or recycled, and includes, but is not limited to, a

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 garbage bag, composting bag, lawn or leaf bag, can-liner bag,  
2 kitchen bag, compactor bag, or recycling bag.

3 “Recycled content” means the portion of a package’s total  
4 weight that is composed of recycled material, as determined by a  
5 material balance approach that calculates total recycled material in  
6 the package as a percentage of the total weight of the package.

7 “Recycled material” means a material or product that has  
8 completed its intended end use and product life cycle, and which  
9 has been separated from the solid waste stream for the purposes of  
10 collection and recycling; except that “recycled material” shall not  
11 include secondary waste material or materials and by-products  
12 generated from, and commonly used within, an original  
13 manufacturing and fabrication process.

14 “Reusable carryout bag” means a bag that is sold or provided by  
15 a store to a customer for the purpose of transporting groceries,  
16 prepared foods, or retail goods, and that is designed and  
17 manufactured for multiple reuse.

18 “Rigid plastic container” means a package composed primarily  
19 of plastic that has a relatively inflexible finite shape or form, has a  
20 capacity of between eight ounces and five gallons, and is capable of  
21 maintaining its shape while empty or while holding other products.

22

23 2. a. Except as provided in subsection c. of this section,  
24 beginning January 1, 2022, each rigid plastic container sold, offered  
25 for sale, or used in association with the sale or offer for sale of a  
26 product in the State by a manufacturer shall:

27 (1) contain at least 35 percent recycled content; or

28 (2) be made of a plastic that is being recycled in the State at a  
29 rate of 35 percent.

30 b. A rigid plastic container shall be deemed to meet the  
31 requirements of paragraph (2) of subsection a. of this section if:

32 (1) rigid plastic containers, in the aggregate, are being recycled  
33 in the State at a rate of 35 percent;

34 (2) the rigid plastic container is a specific resin type of rigid  
35 plastic container and that resin type of rigid plastic container is  
36 being recycled in the State at a rate of 35 percent; or

37 (3) the rigid plastic container is a particular product-associated  
38 package and that type of product-associated package is being  
39 recycled in the State at a rate of 35 percent.

40 c. A rigid plastic container shall be exempt from the  
41 requirements of subsection a. of this section if it:

42 (1) is a plastic beverage container, to which the requirements of  
43 section 3 of this act apply;

44 (2) contains drugs, medical devices, medical food, or infant  
45 formula as defined in the Federal Food, Drug, and Cosmetic Act, 21  
46 U.S.C. s.301 et seq.;

1 (3) contains toxic or hazardous products regulated by the  
2 “Federal Insecticide, Fungicide, and Rodenticide Act,” 7 U.S.C.  
3 s.136 et seq.;

4 (4) is associated with a product produced in or brought into the  
5 State that is destined for shipment to other destinations outside the  
6 State and that remains with the product upon shipment;

7 (5) is necessary to provide tamper-resistant seals for public  
8 health purposes;

9 (6) is a source reduced package. A rigid plastic container shall  
10 qualify as a source reduced package if the percentage of package  
11 weight per unit of product has been reduced by at least 10 percent  
12 when compared with the packaging used for the same product by  
13 the same manufacturer five years earlier. In no case may packaging  
14 reduction be achieved, for purposes of this paragraph, by  
15 substituting a different material category for a material that  
16 constituted a substantial part of the packaging in question, or by  
17 packaging changes that adversely impact either the potential for the  
18 package to be recycled or contain recycled material. Exemptions  
19 under this paragraph shall be limited to five years, shall not be  
20 renewable, and shall not be applicable to packages for which the  
21 percentage of package weight per unit of product increased after  
22 January 1, 2021; or

23 (7) is a refillable container or a reusable container. A rigid  
24 plastic container shall qualify as a refillable container if the  
25 container is routinely returned to and refilled by the manufacturer at  
26 least five times with the same product packaged by the container. A  
27 rigid plastic container shall qualify as a reusable container if the  
28 container is routinely reused by consumers at least five times to  
29 store the same product packaged by the container.

30 d. Each year, the department shall determine the recycling rate  
31 for rigid plastic containers in the aggregate. If, for any year, the  
32 department determines that the recycling rate for rigid plastic  
33 containers in the aggregate is less than 35 percent, the department  
34 shall also determine whether the recycling rate for rigid plastic  
35 containers made from each of the major resin types is 35 percent or  
36 more. The department shall determine the recycling rate for rigid  
37 plastic containers in the aggregate, specific resin types of rigid  
38 plastic containers, and product associated packages based on the  
39 percentage, as measured by weight, of such packages sold or  
40 offered for sale in the State that are recycled the preceding calendar  
41 year. The department shall publish the determinations made  
42 pursuant to this subsection on its Internet website.

43 e. If, in any year, the department determines that the recycling  
44 rate for rigid plastic containers is less than 35 percent, the  
45 department shall prepare and submit a report to the Legislature  
46 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and to the  
47 members of the Senate Environment and Energy Committee and the  
48 Assembly Environment and Solid Waste Committee, or their

1 successors, which assesses the reasons why the recycling rate is  
2 below 35 percent, and includes a review of the status of collection  
3 programs in the State and the capacity available in the State to  
4 process rigid plastic containers collected and reclaim the resin from  
5 the collected rigid plastic containers. The department may include  
6 in its report any recommendations for legislative or regulatory  
7 action necessary to improve the recycling rate for rigid plastic  
8 containers.

9 f. The department shall not enforce the provisions of this  
10 section during the first full calendar year after the department  
11 determines, for the first time, that the recycling rate for rigid plastic  
12 containers is less than 35 percent. For any period for which the  
13 department determines that the recycling rate for rigid plastic  
14 containers equals or exceeds 35 percent, a manufacturer shall not be  
15 required to keep records that demonstrate compliance as provided  
16 pursuant to subsection b. of section 10 of this act.

17 g. For the purposes of this section, “product-associated  
18 package” means a brand-specific rigid plastic container line, which  
19 may have one or more sizes, shapes, or designs and which is used in  
20 conjunction with a particular, generic product line.

21  
22 3. a. Beginning January 1, 2022, through December 31, 2025,  
23 each plastic beverage container sold, offered for sale, or filled with  
24 a beverage sold or offered for sale in the State by a manufacturer  
25 shall contain at least 10 percent recycled content.

26 b. Beginning January 1, 2026, through December 31, 2030,  
27 each plastic beverage container sold, offered for sale, or filled with  
28 a beverage sold or offered for sale in the State by a manufacturer  
29 shall contain at least 25 percent recycled content.

30 c. On and after January 1, 2031, each plastic beverage  
31 container sold, offered for sale, or filled with a beverage sold or  
32 offered for sale in the State by a manufacturer shall contain at least  
33 50 percent recycled content.

34 d. The provisions of this section shall not apply to a refillable  
35 plastic beverage container. For the purposes of this subsection, a  
36 “refillable plastic beverage container” means a plastic beverage  
37 container that has a capacity of 150 fluid ounces or less, holds 150  
38 fluid ounces or less of beverage, and which ordinarily would be  
39 returned to the manufacturer to be refilled and resold.

40  
41 4. a. Beginning January 1, 2022, each glass container sold,  
42 offered for sale, or filled with a food or beverage sold or offered for  
43 sale in the State by a manufacturer shall contain at least 35 percent  
44 recycled content; except that, if a manufacturer demonstrates to the  
45 satisfaction of the department that its use of recycled content is  
46 made up of at least 50 percent mixed-color cullet, then the  
47 manufacturer shall use at least 25 percent recycled content in the  
48 manufacturing of its glass containers.

1       b. As used in this section, “mixed-color cullet” means cullet  
2 that does not meet the American Society for Testing and Materials  
3 (ASTM) standard specifications for color mix of color sorted post-  
4 filled glass as raw material for the manufacture of glass containers.

5  
6       5. Beginning January 1, 2022, each paper carryout bag sold or  
7 offered for sale in the State by a manufacturer shall:

8       a. contain at least 40 percent recycled content; except that a  
9 paper carryout bag that holds eight pounds or less shall contain at  
10 least 20 percent recycled content; and

11       b. have printed on the bag the name of the manufacturer, the  
12 country where the bag was manufactured, and the percentage of  
13 recycled content in the bag.

14  
15       6. Each reusable carryout bag made of plastic film that is sold  
16 or offered for sale in the State shall meet the following  
17 requirements:

18       a. Beginning January 1, 2022, the reusable carryout bag shall  
19 contain at least 20 percent recycled content; and

20       b. Beginning January 1, 2025, the reusable carryout bag shall  
21 contain at least 40 percent recycled content.

22  
23       7. a. Except as provided in subsection b. of this section,  
24 beginning January 1, 2022, each plastic trash bag sold or offered for  
25 sale in the State shall contain at least 10 percent recycled content.

26       b. The provisions of subsection a. of this section shall not  
27 apply to a bag that is designed and manufactured to hold, store, or  
28 transport hazardous waste or medical waste.

29  
30       8. A manufacturer may apply to the department for a waiver  
31 from, or reduction in, the recycled content requirements of sections  
32 2 through 7 of this act. The department may approve, in writing, a  
33 waiver or other relief pursuant to this section if the manufacturer  
34 demonstrates, and the department finds, that it is not  
35 technologically feasible for the manufacturer to achieve the  
36 recycled content requirements, or the manufacturer cannot achieve  
37 the recycled content requirements due to a lack of available  
38 recycled material or other market conditions. The department shall  
39 develop a standardized form for manufacturers to apply for a waiver  
40 pursuant to this section.

41  
42       9. a. Beginning January 1, 2022, no person shall sell or offer  
43 for sale in the State polystyrene loose fill packaging.

44       b. Nothing in subsection a. of this section shall be construed to  
45 prohibit a person from using polystyrene loose fill packaging to  
46 package a product sold or offered for sale by the person after  
47 January 1, 2022, if the person purchased the polystyrene loose fill



1 packaging prior to January 1, 2022 and the person does not resell  
2 the polystyrene loose fill packaging.

3 c. As used in this section:

4 “Expanded polystyrene” means blown polystyrene and expanded  
5 and extruded foams that are thermoplastic petrochemical materials  
6 utilizing a styrene monomer and processed by any number of  
7 techniques including, but not limited to, fusion of polymer spheres  
8 (expandable bead foam), injection molding, foam molding, and  
9 extrusion-blown molding (extruded foam polystyrene). “Expanded  
10 polystyrene” shall not include rigid polystyrene.

11 “Polystyrene loose fill packaging,” commonly known as packing  
12 peanuts, means a void-filling packaging product made of expanded  
13 polystyrene that is used as a packaging fill.

14

15 10. a. On or before January 1 of each year, each manufacturer  
16 shall certify, in writing, to the department that the rigid plastic  
17 containers, plastic beverage containers, glass containers, paper  
18 carryout bags, reusable carryout bags made of plastic film, or  
19 plastic trash bags, as applicable, sold, offered for sale, or used in  
20 association with the sale or offer for sale of a product in the State,  
21 are in compliance with the requirements of this act, or are otherwise  
22 exempt or have been approved for a waiver or other relief under the  
23 provisions of this act. A manufacturer shall submit the certification  
24 in the form and manner determined by the department under penalty  
25 of perjury. The certification shall include the amount in pounds of  
26 virgin plastic, glass, or paper products and recycled content used by  
27 the manufacturer for its rigid plastic containers, plastic beverage  
28 containers, glass containers, paper carryout bags, reusable carryout  
29 bags made of plastic film, or plastic trash bags, as applicable, and  
30 any other information the department determines necessary in order  
31 to determine compliance with this act.

32 b. Each manufacturer shall maintain records that demonstrate,  
33 for all rigid plastic containers, plastic beverage containers, glass  
34 containers, paper carryout bags, reusable carryout bags made of  
35 plastic film, or plastic trash bags generated or produced by the  
36 manufacturer, whether and how the manufacturer has complied with  
37 the requirements of this act, or for what reason, if any, the  
38 manufacturer is exempt or has been approved for a waiver or other  
39 relief from the requirements of this act. The department may adopt  
40 specific requirements for the records required to be maintained  
41 pursuant to this subsection. A manufacturer shall submit its records  
42 to the department upon request. Any proprietary information or  
43 trade secrets included in the records submitted to the department  
44 shall not be made available to the general public. The department  
45 may audit or investigate any manufacturer to assess the  
46 manufacturer’s compliance with the requirements of this act.

1        11. a. Any person who violates the provisions of this act, or any  
2 rule or regulation adopted pursuant thereto, shall be subject to a  
3 civil administrative penalty of not more than \$10,000. If the  
4 violation is of a continuing nature, each day during which the  
5 violation continues shall constitute an additional, separate, and  
6 distinct offense. The department may adopt a schedule of penalties  
7 to be applied pursuant to this section. In determining the amount  
8 of any penalty to be imposed, the commissioner shall consider the  
9 nature, circumstances, extent, and severity of the violation. No  
10 civil administrative penalty shall be imposed until after the person  
11 has been notified by certified mail or personal service. The notice  
12 shall include: a reference to the provision of this section, or any rule  
13 or regulation adopted pursuant thereto, violated; a concise statement  
14 of the facts alleged to constitute a violation; a statement of the  
15 amount of the civil administrative penalties to be imposed; and a  
16 statement of the person's right to a hearing. The person shall have  
17 20 days from receipt of the notice within which to deliver to the  
18 commissioner a written request for a hearing. Subsequent to the  
19 hearing and upon finding that a violation has occurred, the  
20 commissioner may issue a final order or civil administrative penalty  
21 after imposing the amount of the fine specified in the notice. If no  
22 hearing is requested, the notice shall become a final order or a final  
23 civil administrative penalty upon the expiration of the 20-day  
24 period. Payment of the penalty is due when a final order is issued  
25 or when the notice becomes a final order or a final civil  
26 administrative penalty. The authority to levy a civil administrative  
27 penalty shall be in addition to all other enforcement provisions in  
28 this act, and the payment of a civil administrative penalty shall not  
29 be deemed to affect the availability of any other enforcement  
30 provision in connection with the violation for which the penalty is  
31 levied. A civil administrative penalty imposed under this  
32 subsection may be compromised by the department upon the  
33 posting of a performance bond by the violator, or upon terms and  
34 conditions the department may establish by rule or regulation.

35        b. In addition to the assessment of a civil administrative  
36 penalty pursuant to subsection a. of this section, the department  
37 may, by administrative order, and upon an appropriate finding,  
38 assess a violator for the reasonable costs of any audit, investigation,  
39 or inspection which led to the establishment of the violation. The  
40 department may retain any amount it collects pursuant to this  
41 subsection.

42        c. In addition to, or in lieu of, assessing a civil administrative  
43 penalty pursuant to subsection a. of this section, the department  
44 may require a manufacturer to submit a corrective action plan to the  
45 department detailing how the manufacturer will come into  
46 compliance with the provisions of this act.

1       12. There is established in the Department of the Treasury a  
2 special, nonlapsing account to be known as the "Recycling  
3 Enhancement Penalty Account." The account shall be credited with  
4 all penalties collected pursuant to subsection a. of section 11 of this  
5 act, and any interest or investment income earned on monies in the  
6 account. Moneys in the account shall be expended, upon  
7 appropriation by the Legislature, for the sole purpose of supporting  
8 recycling in the State. The department may offer recommendations  
9 each year to the Legislature on appropriate uses of the moneys in  
10 the account, and shall transmit such recommendations to the  
11 chairpersons of the Senate Environment and Energy Committee and  
12 the Assembly Environment and Solid Waste Committee, or their  
13 successors, for their respective consideration.

14

15       13. A municipality or county shall not adopt any rule,  
16 regulation, code, or ordinance regulating the recycled content of  
17 rigid plastic containers, plastic beverage containers, glass  
18 containers, paper carryout bags, reusable carryout bags made of  
19 plastic film, or plastic trash bags after the effective date of this act.  
20 The provisions of this act shall supersede and preempt any  
21 municipal or county rule, regulation, code, or ordinance regulating  
22 the recycled plastic content requirement for plastic beverage  
23 containers that was enacted prior to the effective date of this act.

24

25       14. No later than 18 months after the effective date of this act,  
26 the department shall adopt, pursuant to the "Administrative  
27 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and  
28 regulations necessary for the implementation of this act.

29

30       15. This act shall take effect immediately.

31

32

33

#### STATEMENT

34

35       This bill would establish recycled content requirements for  
36 plastic containers, glass containers, paper carryout bags, reusable  
37 carryout bags made of plastic film, and plastic trash bags sold or  
38 offered for sale in the State, and prohibit the sale of polystyrene  
39 loose fill packaging.

40

41       Specifically, under the bill, beginning January 1, 2022, each  
42 rigid plastic container sold, offered for sale, or used in association  
43 with the sale or offer for sale of a product in the State would be  
44 required to: (1) contain at least 35 percent recycled content; or (2)  
45 be made of a plastic that is being recycled in the State at a rate of 35  
46 percent. A rigid plastic container would be deemed to be made of a  
47 plastic that is being recycled in the State at a rate of 35 percent if:  
48 (1) rigid plastic containers, in the aggregate, are being recycled in  
the State at a rate of 35 percent; (2) the rigid plastic container is a

1 specific resin type of rigid plastic container and that type of  
2 container is being recycled in the State at a rate of 35 percent; or (3)  
3 the container is a particular product-associated package and that  
4 type of product-associated package is being recycled in the State at  
5 a rate of 35 percent. The bill exempts several types of rigid plastic  
6 containers from the recycled content requirements.

7 Each year, the Department of Environmental Protection (DEP)  
8 would determine the recycling rate for rigid plastic containers. If,  
9 for any year, the DEP determines that the recycling rate for rigid  
10 plastic containers is less than 35 percent, the DEP would also be  
11 required to: (1) determine and publish on its Internet website  
12 whether the recycling rate for rigid plastic containers made from  
13 each of the seven major resin types is 35 percent or more; and (2)  
14 prepare and submit a report to the Legislature assessing the reasons  
15 why the recycling rate is below 35 percent, including a review of  
16 the status of collection programs in the State and the State's  
17 recycling capacity for rigid plastic containers. The DEP would not  
18 enforce the recycled content requirements for rigid plastic  
19 containers in the first full calendar year after it determines, for the  
20 first time, that the recycling rate for rigid plastic containers is less  
21 than 35 percent.

22 Under the bill, different recycled content requirements would  
23 apply to plastic beverage containers. Specifically, beginning  
24 January 1, 2022 through December 31, 2025, each plastic beverage  
25 container sold, offered for sale, or filled with a beverage sold or  
26 offered for sale in the State would be required to contain at least 10  
27 percent recycled content. Beginning January 1, 2026 through  
28 December 31, 2030, each plastic beverage container would be  
29 required to contain at least 25 percent recycled content. On and  
30 after January 1, 2031, each plastic beverage container would be  
31 required to contain at least 50 percent recycled content. However,  
32 the recycled content requirements would not apply to refillable  
33 plastic beverage containers.

34 Additionally, beginning January 1, 2022, each glass container  
35 sold, offered for sale, or filled with a food or beverage sold or  
36 offered for sale in the State would be required to contain at least 35  
37 percent recycled content. However, if a manufacturer demonstrates  
38 to the satisfaction of the DEP that its use of recycled content is  
39 made up of at least 50 percent mixed-color cullet, then the  
40 manufacturer would only be required to use at least 25 percent  
41 recycled content in the manufacturing of its glass containers.

42 Beginning January 1, 2022, each paper carryout bag sold or  
43 offered for sale in the State would be required to contain at least 40  
44 percent recycled content. However, a paper carryout bag that holds  
45 eight pounds or less would only be required to contain at least 20  
46 percent recycled content. Under the bill, a paper carryout bag  
47 would also be required to have printed on the bag the name of the

1 manufacturer, the country where the bag was manufactured, and the  
2 percentage of recycled content in the bag.

3 Under the bill, each reusable carryout bag made of plastic film  
4 that is sold or offered for sale in the State would be required to  
5 contain at least 20 percent recycled content beginning January 1,  
6 2022, and 40 percent recycled content beginning January 1, 2025.  
7 Beginning January 1, 2022, each plastic trash bag sold or offered  
8 for sale in the State would be required to contain at least 10 percent  
9 recycled content, but this provision would not apply to bags  
10 designed and manufactured to hold, store, or transport hazardous  
11 waste or medical waste.

12 Under the bill, a manufacturer would be permitted to apply to the  
13 department for a waiver from, or reduction in, the recycled content  
14 requirements of the bill. The department would be authorized to  
15 grant a waiver or other relief if the manufacturer demonstrates, and  
16 the department finds, that it is not technologically feasible for the  
17 manufacturer to achieve the recycled content requirements, or the  
18 manufacturer cannot achieve the requirements due to a lack of  
19 available recycled material or other anomalous market conditions.

20 Under the bill, beginning January 1, 2022, a person would be  
21 prohibited from selling, or offering for sale in the State, polystyrene  
22 loose fill packaging, commonly known as “packing peanuts.”

23 Under the bill , each manufacturer would be required to certify,  
24 in writing, to the DEP each year that the rigid plastic containers,  
25 plastic beverage containers, glass containers, paper carryout bags,  
26 reusable carryout bags made of plastic film, or plastic trash bags  
27 sold, offered for sale, or used in association with the sale or offer  
28 for sale of a product in the State are in compliance with the  
29 requirements of the bill, or are otherwise exempt or have been  
30 approved for a waiver or other relief. Each manufacturer would be  
31 required to maintain records that demonstrate, for all rigid plastic  
32 containers, plastic beverage containers, glass containers, paper  
33 carryout bags, reusable carryout bags made of plastic film, or  
34 plastic trash bags generated or produced by the manufacturer,  
35 whether and how the manufacturer has complied with the  
36 requirements of the bill, or for what reason, if any, the manufacturer  
37 is exempt or has been approved for a waiver or other relief. A  
38 manufacturer would be required to submit its records to the DEP  
39 upon request. The DEP would also be authorized to audit or  
40 investigate any manufacturer to assess its compliance with the  
41 requirements of the bill.

42 Any person who violates the provisions of the bill would be  
43 subject to a civil administrative penalty of not more than \$10,000,  
44 and each day during which the violation continues would constitute  
45 an additional, separate, and distinct offense. The DEP would be  
46 authorized to adopt a schedule of penalties to be applied under the  
47 bill. In addition to the assessment of a civil administrative penalty,  
48 the DEP would be authorized to assess a violator for the reasonable

1 costs of any audit, investigation, or inspection which led to the  
2 establishment of a violation. Also, the DEP would be authorized to  
3 require a manufacturer to submit a corrective action plan detailing  
4 how the manufacturer will come into compliance with the bill.

5 The bill would establish a special, nonlapsing account in the  
6 Department of the Treasury to be known as the "Recycling  
7 Enhancement Penalty Account." The account would be credited  
8 with all penalties collected under the bill, and any interest or  
9 investment income earned from the account. Moneys in the account  
10 would be used, upon appropriation by the Legislature, for the sole  
11 purpose of supporting recycling in the State. The DEP would make  
12 recommendations each year to the Legislature on appropriate uses  
13 of moneys in the account and transmit those recommendations to  
14 the appropriate legislative committees.

15 The bill would prohibit a municipality or county from adopting  
16 any rule, regulation, code, or ordinance regulating the recycled  
17 content of rigid plastic containers, plastic beverage containers, glass  
18 containers, paper carryout bags, reusable carryout bags made of  
19 plastic film, or plastic trash bags after the effective date of the bill.  
20 The bill would also supersede and preempt any municipal or county  
21 rule, regulation, code, or ordinance regulating the recycled content  
22 of those items.

# SENATE ENVIRONMENT AND ENERGY COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR SENATE, No. 2515

# STATE OF NEW JERSEY

DATED: DECEMBER 10, 2020

The Senate Environment and Energy Committee favorably reports a committee substitute for Senate Bill No. 2515.

This committee substitute would establish postconsumer recycled content requirements for rigid plastic containers, glass containers, paper and plastic carryout bags, and plastic trash bags, and prohibit the sale of polystyrene loose fill packaging.

Specifically, beginning two years after the bill's effective date, all rigid plastic containers sold, offered for sale, or used in association with the sale or offer for sale of a product in the State by a manufacturer would be required to contain, on average, at least 25 percent postconsumer recycled content. Beginning five years after the effective date, and every three years thereafter, the percentage of postconsumer recycled content required for rigid plastic containers would increase by five percent, until reaching 50 percent. The bill provides exemptions from the postconsumer recycled content requirements for several types of rigid plastic containers.

Under the bill, separate requirements would apply to plastic beverage containers. Specifically, beginning two years after the bill's effective date, all plastic beverage containers sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 15 percent postconsumer recycled content. Beginning five years after the bill's effective date, and every three years thereafter, the percentage of postconsumer recycled content required would increase by five percent until reaching 50 percent. The recycled content requirements for plastic beverage containers would not apply to refillable beverage containers.

Beginning two years after the bill's effective date, all glass containers sold or offered for sale in the State would be required to contain, on average, at least 35 percent postconsumer recycled content. However, if a manufacturer certifies to the Department of Environmental Protection (DEP) that its use of postconsumer recycled content is made up of at least 50 percent mixed-color cullet, then the manufacturer's glass containers would only be required to contain, on average, 25 percent postconsumer recycled content.

Beginning two years after the bill's effective date, all paper carryout bags sold or offered for sale in the State by a manufacturer

would be required to contain, on average, at least 40 percent postconsumer recycled content. However, a paper carryout bag that holds eight pounds or less would only be required to contain, on average, at least 20 percent postconsumer recycled content. All plastic carryout bags sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 20 percent postconsumer recycled content beginning two years after the effective date, and 40 percent postconsumer recycled content beginning five years after the effective date. Beginning two years after the bill's effective date, all plastic trash bags sold or offered for sale in the State would be required to contain, on average, at least 10 percent postconsumer recycled content, but this requirement would not apply to bags designed to hold, store, or transport hazardous waste or medical waste.

Packages that contain milk products, medical food, and infant formula would be exempt from the postconsumer recycled content requirements in the bill for a period of five years beginning on the effective date of the bill.

Beginning two years after the effective date, manufacturers would be required to label each product listed above with the name of the manufacturer and the city, state, and country where the manufacturer is located. In the case of plastic trash bags, the labeling requirement would apply to the container of the plastic trash bags.

A manufacturer would be required to achieve compliance with the postconsumer recycled content requirements of the bill based on the average amount of postconsumer recycled content, by weight, contained in its products. For the first five years after the bill's effective date, a manufacturer would be authorized to calculate its average using data specific to its products sold or offered for sale in New Jersey or nationwide. Beginning five years after the effective date, a manufacturer would be required to calculate its average using data specific to its products sold or offered for sale in New Jersey only. The calculation of averages may be based on a manufacturer's entire product line or separated into product sub-lines, provided that all of the manufacturer's products are accounted for in the calculations.

Under the bill, the DEP would be authorized to review and adjust any of the postconsumer recycled content requirements established in the bill through rule or regulation. In making an adjustment, the DEP would be required to consider various factors, including changes in market conditions, recycling rates, the availability of recycled material, the capacity of recycling or processing infrastructure, and progress made by the manufacturers in meeting the postconsumer recycled content requirements.

The bill provides that a manufacturer may apply to the DEP for a waiver from the postconsumer recycled content requirements. The DEP would be authorized to grant a waiver if the manufacturer demonstrates, and the DEP finds, in writing, that: (1) the manufacturer



cannot achieve the postconsumer recycled content requirements and remain in compliance with another State or federal law, rule, or regulation; (2) it is not technologically feasible for the manufacturer to achieve the requirements; or (3) the manufacturer cannot comply for another reason as determined by the DEP pursuant to rule or regulation. In order to qualify for a waiver, a manufacturer would be required to submit documentation from a federal or State agency or certified third-party expert, as appropriate, demonstrating that the manufacturer cannot comply with the requirements for one of the reasons set forth above.

Under the bill, the DEP would be authorized to require a manufacturer that is exempt from the postconsumer recycled content requirements, or that has submitted a request for a waiver, to prepare and submit to the DEP an alternative compliance plan that demonstrates that the manufacturer is taking, and will continue to take, all feasible actions to ensure the reduction, recycling, and reuse of packaging materials, and the use of postconsumer recycled content. The DEP would be required to adopt rules and regulations setting forth the substantive requirements for the alternative compliance plan, which could include sustainable materials management protocols, light weighting, lifecycle analyses, and other measures. The DEP would have the authority to approve or disapprove an alternative compliance plan, and to require a manufacturer to make any revisions or modifications to its plan as the DEP deems necessary, consistent with the bill and the DEP's rules and regulations.

Failure by a manufacturer to comply with an approved alternative compliance plan would constitute a violation of the provisions in the bill. The bill would authorize the DEP to enter into a contract or other legally binding agreement with one or more trade associations representing manufacturers, which would allow the trade association, in lieu of the manufacturers, to prepare and submit an alternative compliance plan, and to undertake the actions described in the plan.

Each September 1, manufacturers would be required to register with the DEP and pay an annual registration fee of \$1,000. A manufacturer that fails to register with the DEP would first receive a written warning and thereafter be subject to the penalties established pursuant to the bill. Each September 1, manufacturers would also be required to certify, in writing, to the DEP whether or not their products comply with the postconsumer recycled content requirements of the bill or are otherwise exempt or have been approved for a waiver. If the manufacturer claims an exemption, the manufacturer would be required to set forth the specific basis upon which the exemption is claimed, and submit such proof as the DEP determined necessary. The certification would be required to be signed by an authorized representative of the manufacturer.

Under the bill, each manufacturer would be required to maintain records that demonstrate, for all applicable products generated or

produced by the manufacturer, whether and how the manufacturer has complied with the postconsumer recycled content requirements. The DEP would be authorized to establish specific requirements for the record and to request the records from a manufacturer at any time. The DEP would also be authorized to audit or investigate a manufacturer, at any time, to assess the manufacturer's compliance with the bill. The DEP would be required to publish a list of registered manufacturers, their compliance status, and other information the DEP deems appropriate, annually, on its Internet website.

Beginning two years after the bill's effective date, a person would be prohibited from selling or offering for sale in the State any polystyrene loose fill packaging, commonly known as packing peanuts.

A person who violates the provisions of the bill would be subject to a civil administrative penalty of between \$1,000 and \$100,000 for each violation, and each day during which the violation continues would constitute an additional, separate, and distinct offense. The amount of any civil administrative penalty would be assessed pursuant to rules and regulations adopted by the DEP for violations of similar type, seriousness, and duration. A person who violates the provisions of the bill, and any order issues pursuant thereto, or who fails to pay in full a civil administrative penalty, would be subject, upon order of a court, to a civil penalty not to exceed \$100,000. Civil penalties would be imposed and recovered in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999." In addition to these penalties, a person who knowingly, purposely, or recklessly makes a false or misleading statement to the DEP on any certification or registration would be guilty of a crime of the third degree and subject to a fine of up to \$50,000 and restitution. The bill establishes other remedies and enforcement mechanisms.

Under the bill, any proprietary information or trade secrets included in any registration, certification, or other document submitted to the DEP would not be made available to the general public under the open public records act.

The bill would require the DEP, in consultation with the Association of New Jersey Recyclers and the Clean Communities Program, to develop and implement a Statewide public information and education program to encourage, support, and increase the recycling of certain packaging products and containers.

The bill would preempt any municipal rule, regulation, code, or ordinance regulating postconsumer recycled content of certain packaging products and containers. Finally, nothing in the bill would be construed to alter, limit, or otherwise affect any provision of P.L.2020, c.117 (C.13:1E-99.126 et al) (the single-use plastics ban).

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2515**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 17, 2021

The Senate Budget and Appropriations Committee reports favorably the Senate Committee Substitute for Senate Bill No. 2515, with committee amendments.

This bill, as amended, would establish postconsumer recycled content requirements for rigid plastic containers, glass containers, paper and plastic carryout bags, and plastic trash bags, and prohibit the sale of polystyrene loose fill packaging.

Specifically, beginning two years after the bill's effective date, all rigid plastic containers sold, offered for sale, or used in association with the sale or offer for sale of a product in the State by a manufacturer would be required to contain, on average, at least 25 percent postconsumer recycled content. Beginning five years after the effective date, and every three years thereafter, the percentage of postconsumer recycled content required for rigid plastic containers would increase by five percent, until reaching 50 percent. The bill provides exemptions from the postconsumer recycled content requirements for several types of rigid plastic containers.

Under the bill, separate requirements would apply to plastic beverage containers. Specifically, beginning two years after the bill's effective date, all plastic beverage containers sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 15 percent postconsumer recycled content. Beginning five years after the bill's effective date, and every three years thereafter, the percentage of postconsumer recycled content required would increase by five percent until reaching 50 percent. The recycled content requirements for plastic beverage containers would not apply to refillable beverage containers.

Beginning two years after the bill's effective date, all glass containers sold or offered for sale in the State would be required to contain, on average, at least 35 percent postconsumer recycled content. However, if a manufacturer certifies to the Department of Environmental Protection (DEP) that its use of postconsumer recycled content is made up of at least 50 percent mixed-color cullet, then the

manufacturer's glass containers would only be required to contain, on average, 25 percent postconsumer recycled content.

Beginning two years after the bill's effective date, paper carryout bags sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 40 percent postconsumer recycled content, except that paper carryout bags that hold eight pounds or less would only be required to contain, on average, at least 20 percent postconsumer recycled content. All plastic carryout bags sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 20 percent postconsumer recycled content beginning two years after the bill's effective date, and 40 percent postconsumer recycled content beginning five years after the bill's effective date. Beginning two years after the bill's effective date, all plastic trash bags sold or offered for sale in the State would be required to contain, on average, at least 10 percent postconsumer recycled content, and this requirement would increase to 20 percent five years after the bill's effective date. The requirement would not apply to plastic trash bags designed to hold, store, or transport hazardous waste or medical waste.

Packages that contain milk products, medical food, or infant formula would be exempt from the postconsumer recycled content requirements of the bill. In addition, packages or containers that contain food, except for plastic beverage containers or glass beverage containers, would be exempt from the postconsumer recycled content requirements of the bill for a period of five years.

Beginning two years after the bill's effective date, manufacturers would be required to label each product covered under the bill with the name of the manufacturer and the city, state, and country where the manufacturer is located, or with a uniform resource locator (URL) or quick response (QR) code that leads to this information. In the case of plastic trash bags, the labeling requirement would apply to the container of the plastic trash bags.

A manufacturer would be required to achieve compliance with the postconsumer recycled content requirements of the bill based on the average amount of postconsumer recycled content, by weight, contained in its products. A manufacturer would be required to calculate its average using data specific to its products sold or offered for sale in New Jersey, unless the manufacturer can demonstrate to the DEP that those data are unavailable and infeasible to generate, in which case the manufacture could use nationwide data.

Under the bill, the DEP would be authorized to review and adjust any of the postconsumer recycled content requirements established in the bill through rule or regulation. In making an adjustment, the DEP would be required to consider various factors, including changes in market conditions, recycling rates, the availability of recycled material, the capacity of recycling or processing infrastructure, and progress made by the manufacturers in meeting the postconsumer recycled content requirements.

The bill provides that a manufacturer may apply to the DEP for a waiver from the postconsumer recycled content requirements. The DEP would be authorized to grant a waiver if the manufacturer demonstrates, and the DEP finds, in writing, that: (1) the manufacturer cannot achieve the postconsumer recycled content requirements and remain in compliance with another State or federal law, rule, or regulation; (2) it is not technologically feasible for the manufacturer to achieve the requirements; (3) the manufacturer cannot comply with the postconsumer recycled content requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material; or (4) the manufacturer cannot comply for another reason as determined by the DEP pursuant to rule or regulation. In order to qualify for a waiver, a manufacturer would be required to submit documentation from a federal or State agency or certified third-party expert, as appropriate, demonstrating that the manufacturer cannot comply with the requirements for one of the reasons set forth above.

Under the bill, the DEP would be authorized to require a manufacturer that is temporarily exempt from the postconsumer recycled content requirements, or that has submitted a request for a waiver, to prepare and submit to the DEP an alternative compliance plan that demonstrates that the manufacturer is taking, and will continue to take, all feasible actions to ensure the reduction, collection, recycling, and reuse of packaging materials, and to ensure the use of postconsumer recycled content. The DEP would be required to adopt rules and regulations setting forth the substantive requirements for the alternative compliance plan, which could include sustainable materials management protocols, light weighting, lifecycle analyses, and other measures. The DEP would have the authority to approve or disapprove an alternative compliance plan, and to require a manufacturer to make any revisions or modifications to its plan as the DEP deems necessary, consistent with the bill and the DEP's rules and regulations.

Failure by a manufacturer to comply with an approved alternative compliance plan would constitute a violation of the provisions in the bill. The bill would authorize the DEP to enter into a contract or other legally binding agreement with one or more trade associations representing manufacturers, which would allow the trade association, in lieu of the manufacturers, to prepare and submit an alternative compliance plan, and to undertake the actions described in the plan.

Each year, manufacturers of products covered under the bill would be required to register with the DEP and pay an annual registration fee of \$1,000. A manufacturer that fails to register with the DEP would first receive a written warning and thereafter be subject to the penalties established pursuant to the bill. Each year, manufacturers would also be required to certify, in writing, to the DEP whether or not their products comply with the postconsumer recycled content requirements of the bill or are otherwise exempt or have been approved for a waiver. If the manufacturer claims an exemption, the manufacturer would be

required to set forth the specific basis upon which the exemption is claimed, and submit such proof as the DEP determined necessary. The DEP would also be authorized to require that a manufacturer submit an independent, third-party verification of the compliance certification.

Under the bill, each manufacturer would be required to maintain records that demonstrate, for all applicable products generated or produced by the manufacturer, whether and how the manufacturer has complied with the postconsumer recycled content requirements. The DEP would be authorized to establish specific requirements for the record and to request the records from a manufacturer at any time. The DEP would also be authorized to audit or investigate a manufacturer, at any time, to assess the manufacturer's compliance with the bill. The DEP would be required to publish a list of registered manufacturers, their compliance status, and other information the DEP deems appropriate, annually, on its Internet website.

Beginning two years after the bill's effective date, a person would be prohibited from selling or offering for sale in the State any polystyrene loose fill packaging, commonly known as packing peanuts.

A person who violates the provisions of the bill would be subject to a civil administrative penalty of between \$1,000 and \$25,000 for each violation, and each day during which the violation continues would constitute an additional, separate, and distinct offense. The amount of any civil administrative penalty would be assessed pursuant to rules and regulations adopted by the DEP for violations of similar type, seriousness, and duration. With respect to violations related to the amount of recycled content contained in a manufacturer's products, in lieu of the penalties described above, the DEP would assess a civil administrative penalty on a per-pound basis for each pound of virgin material that is used where recycled material is required. A person who violates the provisions of the bill, and any order issues pursuant thereto, or who fails to pay in full a civil administrative penalty, would be subject, upon order of a court, to a civil penalty not to exceed \$50,000, and each day during which the violation continues would constitute an additional, separate, and distinct offense. In addition to these penalties, a person who knowingly, purposely, or recklessly makes a false or misleading statement to the DEP on any certification or registration would be guilty of a crime of the third degree and subject to a fine of up to \$50,000 and restitution. The bill also establishes other remedies and enforcement mechanisms.

Under the bill, any proprietary information or trade secrets included in any registration, certification, or other document submitted to the DEP would not be made available to the general public under the open public records act.

The bill would require the DEP, in consultation with the Association of New Jersey Recyclers and the Clean Communities Program, to develop and implement a Statewide public information and education

program to encourage, support, and increase the recycling of certain packaging products and containers.

Finally, the bill would preempt any municipal rule, regulation, code, or ordinance regulating postconsumer recycled content of certain packaging products and containers.

COMMITTEE AMENDMENTS:

The committee amendments to the bill would:

- (1) clarify the definition of "manufacturer;"
- (2) require manufacturers to use State-specific data to calculate the average amount of recycled content in their products, unless such data is unavailable, in which case manufacturers may use nationwide data;
- (3) provide that manufacturers may satisfy the labeling requirements of the bill by using a URL or QR code;
- (4) increase the recycled content requirements for plastic trash bags to 20 percent, beginning five years after the bill's effective date, and remove composting bags from the definition of "plastic trash bag";
- (5) make the bill's exemption for medical food, infant formula, and milk products permanent, rather than temporary;
- (6) provide that the bill's requirements would not apply to food containers and packages (except for beverage containers made of plastic or glass) until five years after the bill's effective date;
- (7) provide that manufacturers may apply to the DEP for a waiver from the bill's provisions due to an inadequate availability of recycled material;
- (8) provide that the DEP may issue a waiver from the bill's provisions for a period not to exceed two years, rather than an unspecified period;
- (9) require the DEP to publish final alternative compliance plans it approves on its Internet website;
- (10) clarify that manufactures that produce products that are not covered by the bill would only be required to register once with the DEP and would be exempt from the registration fee;
- (11) provide that the DEP may, rather than shall, audit, or cause to be audited, a random sample of manufacturers in order to determine compliance with the provisions of the bill;
- (12) authorize the DEP to require that a manufacturer submit an independent, third-party verification of the compliance certification required by the bill;
- (13) reduce the maximum civil and civil administrative penalties authorized by the bill to \$50,000 and \$25,000, respectively;
- (14) provide that, for manufacturers that fail to use enough recycled content but otherwise comply with the bill's provisions, the DEP would assess a civil administrative penalty that is proportional to the amount of excess virgin material used;

(15) authorize the DEP, as one of its enforcement mechanisms, to notify the public of any manufacturer that is out of compliance with the bill's provisions;

(16) add a timeframe for the DEP to adopt rules and regulations no later than two years after the bill is enacted into law;

(17) require the DEP, rather than the Advisory Council on Solid Waste Management, to prepare the report required pursuant to section 23 of the bill; and

(18) make other clarifying and technical changes to the bill.

FISCAL IMPACT:

The Office of Legislative Services (OLS) determines that there will be a marginal expenditure increase from the State General Fund by the DEP to implement the bill's postconsumer recycling content requirements. The OLS determines that the requirements of this bill would require hiring additional personnel. The DEP assumes that the cost of hiring one additional person to fulfil the requirements of the bill would be \$80,000 annually.

The OLS notes that there may also be a marginal increase in State revenues from registration fees and civil penalties established pursuant to the bill. The precise revenue increase cannot be determined as it depends on the number of manufacturers that will be required to pay the registration fee and on the number of manufacturers that violate the provisions of the bill and are assessed penalties.



# STATEMENT TO

[First Reprint]

## SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2515**

with Senate Floor Amendments  
(Proposed by Senator SMITH)

ADOPTED: JUNE 21, 2021

These floor amendments would:

(1) exclude milk and milk products from the definition of “beverage”;

(2) exclude labels, caps, closures, and other items affixed to the container from the definition of "plastic beverage container";

(3) remove the authority of the Department of Environmental Protection (DEP) to require a method other than the use of market share or population when a manufacturer pro rates national data to calculate the average amount of postconsumer recycled content contained in its products sold in the State;

(4) remove the labeling requirements of the bill for rigid plastic containers, plastic beverage containers, glass containers, paper carryout bags, plastic carryout bags, and plastic trash bags;

(5) exempt packages and containers that contain plant-based products with names that include the names of dairy foods from the bill's provisions, and revise the definition of “milk product”;

(6) delete the explicit authorization for the DEP to adopt, in rules and regulations, provisions requiring alternative compliance measures to reduce the use of virgin materials;

(7) delete the requirement for the DEP to publish alternative compliance plans on its internet website; and

(8) delete the authority of the DEP to require a third-party verification of the required compliance certification that a manufacturer is in compliance with the post-consumer content requirements in the bill and require that the DEP, in consultation with manufacturers, study whether there exist independent, third-party verification organizations that can verify manufacturers' compliance with the requirements in the bill, and appropriate accreditation standards for such organizations.

**LEGISLATIVE FISCAL ESTIMATE**  
 [First Reprint]  
 SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 2515**  
**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

DATED: JUNE 24, 2021

**SUMMARY**

- Synopsis:** Establishes postconsumer recycled content requirements for rigid plastic containers, glass containers, paper and plastic carryout bags, and plastic trash bags; prohibits sale of polystyrene loose fill packaging.
- Type of Impact:** Annual expenditure increase and revenue increase to the State General Fund.
- Agencies Affected:** Department of Environmental Protection.

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<u><b>Year 1</b></u>	<u><b>Year 2</b></u>	<u><b>Year 3</b></u>
<b>Annual State Expenditure Increase</b>		Marginal	
<b>Annual State Revenue Increase</b>		Indeterminate	

- The Office of Legislative Services (OLS) determines that there will be a marginal expenditure increase from the State General Fund by the Department of Environmental Protection (DEP) to implement the bill’s postconsumer recycling content requirements. The OLS determines that the requirements of this bill would require hiring additional personnel. The DEP assumes that the cost of hiring one additional person to fulfil the requirements of the bill would be \$80,000 annually.
- The OLS notes that there may also be a marginal increase in State revenues from registration fees and civil penalties established pursuant to the bill. The precise revenue increase cannot be determined as it depends on the number of manufacturers that will be required to pay the registration fee and on the number of manufacturers that violate the provisions of the bill and are assessed penalties.

## **BILL DESCRIPTION**

This bill would establish postconsumer recycled content requirements for rigid plastic containers, glass containers, plastic beverage containers, paper and plastic carryout bags, and plastic trash bags, and prohibit the sale of polystyrene loose fill packaging.

Under the bill, the DEP would be authorized to review and adjust any of the postconsumer recycled content requirements established in the bill through rule or regulation. In making an adjustment, the DEP would be required to consider various factors, including changes in market conditions, recycling rates, the availability of recycled material, the capacity of recycling or processing infrastructure, and progress made by the manufacturers in meeting the postconsumer recycled content requirements.

The bill provides that a manufacturer may apply to the DEP for a waiver from the postconsumer recycled content requirements. The DEP would be authorized to grant a waiver if the manufacturer demonstrates, and the DEP finds, in writing, that: (1) the manufacturer cannot achieve the postconsumer recycled content requirements and remain in compliance with another State or federal law, rule, or regulation; (2) it is not technologically feasible for the manufacturer to achieve the requirements; (3) the manufacturer cannot comply with the postconsumer recycled content requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material; or (4) the manufacturer cannot comply for another reason as determined by the DEP pursuant to rule or regulation. In order to qualify for a waiver, a manufacturer would be required to submit documentation from a federal or State agency or certified third-party expert, as appropriate, demonstrating that the manufacturer cannot comply with the requirements for one of the reasons set forth above.

Under the bill, the DEP would be authorized to require a manufacturer that is temporarily exempt from the postconsumer recycled content requirements, or that has submitted a request for a waiver, to prepare and submit to the DEP an alternative compliance plan that demonstrates that the manufacturer is taking, and will continue to take, all feasible actions to ensure the reduction, collection, recycling, and reuse of packaging materials, and to ensure the use of postconsumer recycled content. The DEP would be required to adopt rules and regulations setting forth the substantive requirements for the alternative compliance plan, which could include sustainable materials management protocols, light weighting, lifecycle analyses, and other measures. The DEP would have the authority to approve or disapprove an alternative compliance plan, and to require a manufacturer to make any revisions or modifications to its plan as the DEP deems necessary, consistent with the bill and the DEP's rules and regulations.

Failure by a manufacturer to comply with an approved alternative compliance plan would constitute a violation of the provisions in the bill. The bill would authorize the DEP to enter into a contract or other legally binding agreement with one or more trade associations representing manufacturers, which would allow the trade association, in lieu of the manufacturers, to prepare and submit an alternative compliance plan, and to undertake the actions described in the plan.

Beginning six months after the effective date of the bill and annually thereafter, manufacturers would be required to register with the DEP and pay an annual registration fee of \$1,000. A manufacturer that fails to register with the DEP would first receive a written warning and thereafter be subject to the penalties established pursuant to the bill. Three years and six months after the effective date of the bill and annually thereafter, manufacturers would also be required to certify, in writing, to the DEP whether or not their products comply with the postconsumer recycled content requirements of the bill or are otherwise exempt or have been approved for a waiver. If the manufacturer claims an exemption, the manufacturer would be required to set forth the specific basis upon which the exemption is claimed, and submit such proof as the DEP determined

necessary. The DEP would also be authorized to require that a manufacturer submit an independent, third-party verification of the compliance certification.

Under the bill, each manufacturer would be required to maintain records that demonstrate, for all applicable products generated or produced by the manufacturer, whether and how the manufacturer has complied with the postconsumer recycled content requirements. The DEP would be authorized to establish specific requirements for the record and to request the records from a manufacturer at any time. The DEP would also be authorized to audit or investigate a manufacturer, at any time, to assess the manufacturer's compliance with the bill. The DEP would be required to publish a list of registered manufacturers, their compliance status, and other information the DEP deems appropriate, annually, on its Internet website.

A person who violates the provisions of the bill would be subject to a civil administrative penalty of between \$1,000 and \$25,000 for each violation, and each day during which the violation continues would constitute an additional, separate, and distinct offense. The amount of any civil administrative penalty would be assessed pursuant to rules and regulations adopted by the DEP for violations of similar type, seriousness, and duration. With respect to violations related to the amount of recycled content contained in a manufacturer's products, in lieu of the penalties described above, the DEP would assess a civil administrative penalty on a per-pound basis for each pound of virgin material that is used where recycled material is required. A person who violates the provisions of the bill, and any order issued pursuant thereto, or who fails to pay in full a civil administrative penalty, would be subject, upon order of a court, to a civil penalty not to exceed \$50,000, and each day during which the violation continues would constitute an additional, separate, and distinct offense. In addition to these penalties, a person who knowingly, purposely, or recklessly makes a false or misleading statement to the DEP on any certification or registration would be guilty of a crime of the third degree and subject to a fine of up to \$50,000 and restitution. The bill also establishes other remedies and enforcement mechanisms.

Finally, the bill would require the DEP, in consultation with the Association of New Jersey Recyclers and the Clean Communities Program, to develop and implement a statewide public information and education program to encourage, support, and increase the recycling of certain packaging products and containers.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS determines that there will be a marginal annual expenditure increase from the General Fund by the DEP to implement the bill, including the following additional administrative tasks: (1) reviewing and adjusting any of the postconsumer recycled content requirements established in the bill through rule or regulation; (2) granting waivers to a manufacturer from the postconsumer recycled content requirements; (3) adopting rules and regulations setting forth the substantive requirements for alternative compliance plans; (4) approving or disapproving alternative compliance plans; (5) auditing or investigating manufacturers to assess their compliance with the bill; (6) publishing a list of registered manufacturers, their compliance status, and other information the DEP deems appropriate, annually, on its Internet website; (7) establishing a per-pound penalty for each pound of virgin material used when recycled content is

required in a manufacturer's products; and (8) developing and implementing a Statewide public information and education program to encourage, support, and increase the recycling of certain packaging products and containers. The OLS determines that the requirements of this bill would require hiring additional personnel. The DEP assumes that the cost of hiring one additional person to fulfil the requirements of the bill would be \$80,000 annually.

The OLS notes that there may also be a marginal increase in State revenues from registration fees and civil penalties established pursuant to the bill. The precise revenue increase cannot be determined as it depends on the number of manufacturers that will be required to pay the registration fee and on the number of manufacturers that violate the provisions of the bill and are assessed penalties. Each manufacturer would be required to register with the DEP and pay an annual registration fee of \$1,000. This bill also establishes civil administrative penalty of between \$1,000 and \$25,000 for each violation, and an alternative penalty based on the amount of excess virgin material used for persons who violate the recycled content requirements of the bill, but otherwise conform to its provisions. In addition to these penalties, a person who knowingly, purposely, or recklessly makes a false or misleading statement to the DEP on any certification or registration would be guilty of a crime of the third degree and subject to a fine of up to \$50,000 and restitution.

*Section: Environment, Agriculture, Energy, and Natural Resources*

*Analyst: Eric Hansen  
Associate Research Analyst*

*Approved: Thomas Koenig  
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY ENVIRONMENT AND SOLID WASTE  
COMMITTEE

STATEMENT TO

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 2515**

with committee amendments

**STATE OF NEW JERSEY**

DATED: NOVEMBER 15, 2021

The Assembly Environment and Solid Waste Committee reports favorably and with committee amendments Senate Committee Substitute for Bill No. 2515.

This bill, as amended by the committee, would establish postconsumer recycled content requirements for rigid plastic containers, glass containers, paper and plastic carryout bags, and plastic trash bags, and prohibit the sale of polystyrene loose fill packaging.

Specifically, beginning two years after the bill's effective date, all rigid plastic containers sold, offered for sale, or used in association with the sale or offer for sale of a product in the State by a manufacturer would be required to contain, on average, at least 25 percent postconsumer recycled content. Beginning five years after the effective date, and every three years thereafter, the percentage of postconsumer recycled content required for rigid plastic containers would increase by five percent, until reaching 50 percent. The bill provides exemptions from the postconsumer recycled content requirements for several types of rigid plastic containers.

Under the bill, separate requirements would apply to plastic beverage containers. Specifically, beginning two years after the bill's effective date, all plastic beverage containers sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 15 percent postconsumer recycled content. Beginning five years after the bill's effective date, and every three years thereafter, the percentage of postconsumer recycled content required would increase by five percent until reaching 50 percent. The recycled content requirements for plastic beverage containers would not apply to refillable beverage containers.

Beginning two years after the bill's effective date, all glass containers sold or offered for sale in the State would be required to contain, on average, at least 35 percent postconsumer recycled content. However, if a manufacturer certifies to the Department of

Environmental Protection (DEP) that its use of postconsumer recycled content is made up of at least 50 percent mixed-color cullet, then the manufacturer's glass containers would only be required to contain, on average, 25 percent postconsumer recycled content.

Beginning two years after the bill's effective date, paper carryout bags sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 40 percent postconsumer recycled content, except that paper carryout bags that hold eight pounds or less would only be required to contain, on average, at least 20 percent postconsumer recycled content. All plastic carryout bags sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 20 percent postconsumer recycled content beginning two years after the bill's effective date, and 40 percent postconsumer recycled content beginning five years after the bill's effective date. Beginning two years after the bill's effective date, all plastic trash bags sold or offered for sale in the State would be required to contain, on average, at least 10 percent postconsumer recycled content, and this requirement would increase to 20 percent five years after the bill's effective date. The requirement would not apply to plastic trash bags designed to hold, store, or transport hazardous waste or medical waste.

Packages or containers that contain milk products, plant-based products with names that include the names of dairy foods such as "milk," medical food, or infant formula would be exempt from the postconsumer recycled content requirements of the bill. In addition, packages or containers that contain food, except for plastic beverage containers or glass beverage containers, would be exempt from the postconsumer recycled content requirements of the bill for a period of five years.

A manufacturer would be required to achieve compliance with the postconsumer recycled content requirements of the bill based on the average amount of postconsumer recycled content, by weight, contained in its products. A manufacturer would be required to calculate its average using data specific to its products sold or offered for sale in New Jersey, unless the manufacturer can demonstrate to the DEP that those data are unavailable and infeasible to generate, in which case the manufacturer could use nationwide data.

Under the bill, the DEP would be authorized to review and adjust any of the postconsumer recycled content requirements established in the bill through rule or regulation. In making an adjustment, the DEP would be required to consider various factors, including changes in market conditions, recycling rates, the availability of recycled material, the capacity of recycling or processing infrastructure, and progress made by the manufacturers in meeting the postconsumer recycled content requirements.

The bill provides that a manufacturer may apply to the DEP for a waiver from the postconsumer recycled content requirements. The

DEP would be authorized to grant a waiver if the manufacturer demonstrates, and the DEP finds, in writing, that: (1) the manufacturer cannot achieve the postconsumer recycled content requirements and remain in compliance with another State or federal law, rule, or regulation; (2) it is not technologically feasible for the manufacturer to achieve the requirements; (3) the manufacturer cannot comply with the postconsumer recycled content requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material; or (4) the manufacturer cannot comply for another reason as determined by the DEP pursuant to rule or regulation. In order to qualify for a waiver, a manufacturer would be required to submit documentation from a federal or State agency or certified third-party expert, as appropriate, demonstrating that the manufacturer cannot comply with the requirements for one of the reasons set forth above.

Under the bill, the DEP would be authorized to require a manufacturer that is temporarily exempt from the postconsumer recycled content requirements, or that has submitted a request for a waiver, to prepare and submit to the DEP an alternative compliance plan that demonstrates that the manufacturer is taking, and will continue to take, all feasible actions to ensure the reduction, collection, recycling, and reuse of packaging materials, and to ensure the use of postconsumer recycled content. The DEP would be required to adopt rules and regulations setting forth the substantive requirements for the alternative compliance plan, which could include sustainable materials management protocols, light weighting, lifecycle analyses, and other measures. The DEP would have the authority to approve or disapprove an alternative compliance plan, and to require a manufacturer to make any revisions or modifications to its plan as the DEP deems necessary, consistent with the bill and the DEP's rules and regulations.

Failure by a manufacturer to comply with an approved alternative compliance plan would constitute a violation of the provisions in the bill. The bill would authorize the DEP to enter into a contract or other legally binding agreement with one or more trade associations representing manufacturers, which would allow the trade association, in lieu of the manufacturers, to prepare and submit an alternative compliance plan, and to undertake the actions described in the plan.

Each year, manufacturers of products covered under the bill would be required to register with the DEP and pay an annual registration fee of \$1,000, except that a manufacturer who demonstrates to the DEP that their gross revenue is below \$5 million would be exempt from paying this fee. A manufacturer that fails to register with the DEP would first receive a written warning and thereafter be subject to the penalties established pursuant to the bill. Each year, manufacturers would also be required to certify, in writing, to the DEP whether or not their products comply with the postconsumer recycled content



requirements of the bill or are otherwise exempt or have been approved for a waiver. If the manufacturer claims an exemption, the manufacturer would be required to set forth the specific basis upon which the exemption is claimed, and submit such proof as the DEP determined necessary.

Under the bill, each manufacturer would be required to maintain records that demonstrate, for all applicable products generated or produced by the manufacturer, whether and how the manufacturer has complied with the postconsumer recycled content requirements. The DEP would be authorized to establish specific requirements for the record and to request the records from a manufacturer at any time. The DEP would also be authorized to audit or investigate a manufacturer, at any time, to assess the manufacturer's compliance with the bill. The DEP would be required to publish a list of registered manufacturers, their compliance status, and other information the DEP deems appropriate, annually, on its Internet website.

Beginning two years after the bill's effective date, a person would be prohibited from selling or offering for sale in the State any polystyrene loose fill packaging, commonly known as packing peanuts.

A person who violates the provisions of the bill would be subject to a civil administrative penalty of between \$1,000 and \$25,000 for each violation, and each day during which the violation continues would constitute an additional, separate, and distinct offense. The amount of any civil administrative penalty would be assessed pursuant to rules and regulations adopted by the DEP for violations of similar type, seriousness, and duration. With respect to violations related to the amount of recycled content contained in a manufacturer's products, in lieu of the penalties described above, the DEP would assess a civil administrative penalty on a per-pound basis for each pound of virgin material that is used where recycled material is required. A person who violates the provisions of the bill, and any order issues pursuant thereto, or who fails to pay in full a civil administrative penalty, would be subject, upon order of a court, to a civil penalty not to exceed \$50,000, and each day during which the violation continues would constitute an additional, separate, and distinct offense. In addition to these penalties, a person who knowingly, purposely, or recklessly makes a false or misleading statement to the DEP on any certification or registration would be guilty of a crime of the third degree and subject to a fine of up to \$50,000 and restitution. The bill also establishes other remedies and enforcement mechanisms.

Under the bill, any proprietary information or trade secrets included in any registration, certification, or other document submitted to the DEP would not be made available to the general public under the open public records act.

The bill would require the DEP, in consultation with the Association of New Jersey Recyclers and the Clean Communities

Program, to develop and implement a Statewide public information and education program to encourage, support, and increase the recycling of certain packaging products and containers.

Finally, the bill would preempt any municipal rule, regulation, code, or ordinance regulating postconsumer recycled content of certain packaging products and containers.

As amended and reported by the committee, this bill is identical to Assembly Bill No. 4676 (ACS) as also reported by the committee.

COMMITTEE AMENDMENTS:

The committee amendments to the bill would exclude from the definition of “manufacturer” a person who only licenses a brand or trademark for a product and does not produce, package, or sell the product in the State. The committee amendments would also exempt a manufacturer who demonstrates to the department that their gross revenue is below \$5 million from paying the waiver fee established in section 11 of the bill and the registration fee established in section 13 of the bill.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[Third Reprint]

## SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2515**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: DECEMBER 13, 2021

The Assembly Appropriations Committee reports favorably Senate Bill No. 2515 (SCS/3R), with committee amendments.

This bill, as amended by the committee, would establish postconsumer recycled content requirements for rigid plastic containers, glass containers, paper and plastic carryout bags, and plastic trash bags, and prohibit the sale of polystyrene loose fill packaging.

Specifically, beginning two years after the bill's effective date, all rigid plastic containers sold, offered for sale, or used in association with the sale or offer for sale of a product in the State by a manufacturer would be required to contain, on average, at least 25 percent postconsumer recycled content. Beginning five years after the effective date, and every three years thereafter, the percentage of postconsumer recycled content required for rigid plastic containers would increase by five percent, until reaching 50 percent. The bill provides exemptions from the postconsumer recycled content requirements for several types of rigid plastic containers.

Under the bill, separate requirements would apply to plastic beverage containers. Specifically, beginning two years after the bill's effective date, all plastic beverage containers sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 15 percent postconsumer recycled content. Beginning five years after the bill's effective date, and every three years thereafter, the percentage of postconsumer recycled content required would increase by five percent until reaching 50 percent. The recycled content requirements for plastic beverage containers would not apply to refillable beverage containers.

Beginning two years after the bill's effective date, all glass containers sold or offered for sale in the State would be required to contain, on average, at least 35 percent postconsumer recycled content. However, if a manufacturer certifies to the Department of Environmental Protection (DEP) that its use of postconsumer recycled content is made up of at least 50 percent mixed-color cullet, then the

manufacturer's glass containers would only be required to contain, on average, 25 percent postconsumer recycled content.

Beginning two years after the bill's effective date, paper carryout bags sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 40 percent postconsumer recycled content, except that paper carryout bags that hold eight pounds or less would only be required to contain, on average, at least 20 percent postconsumer recycled content. All plastic carryout bags sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 20 percent postconsumer recycled content beginning two years after the bill's effective date, and 40 percent postconsumer recycled content beginning five years after the bill's effective date. Beginning two years after the bill's effective date, all plastic trash bags sold or offered for sale in the State would be required to contain, on average, at least 10 percent postconsumer recycled content, and this requirement would increase to 20 percent five years after the bill's effective date. The requirement would not apply to plastic trash bags designed to hold, store, or transport hazardous waste or medical waste.

Packages or containers that contain milk products, plant-based products with names that include the names of dairy foods such as "milk," medical food, or infant formula would be exempt from the postconsumer recycled content requirements of the bill. In addition, packages or containers that contain food, except for plastic beverage containers or glass beverage containers, would be exempt from the postconsumer recycled content requirements of the bill for a period of five years.

A manufacturer would be required to achieve compliance with the postconsumer recycled content requirements of the bill based on the average amount of postconsumer recycled content, by weight, contained in its products. A manufacturer would be required to calculate its average using data specific to its products sold or offered for sale in New Jersey, unless the manufacturer can demonstrate to the DEP that those data are unavailable and infeasible to generate, in which case the manufacturer could use nationwide data.

Under the bill, the DEP would be authorized to review and adjust any of the postconsumer recycled content requirements established in the bill through rule or regulation. In making an adjustment, the DEP would be required to consider various factors, including changes in market conditions, recycling rates, the availability of recycled material, the capacity of recycling or processing infrastructure, and progress made by the manufacturers in meeting the postconsumer recycled content requirements.

The bill provides that a manufacturer may apply to the DEP for a waiver from the postconsumer recycled content requirements. The DEP would be authorized to grant a waiver if the manufacturer demonstrates, and the DEP finds, in writing, that: (1) the manufacturer

cannot achieve the postconsumer recycled content requirements and remain in compliance with another State or federal law, rule, or regulation; (2) it is not technologically feasible for the manufacturer to achieve the requirements; (3) the manufacturer cannot comply with the postconsumer recycled content requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material; or (4) the manufacturer cannot comply for another reason as determined by the DEP pursuant to rule or regulation. In order to qualify for a waiver, a manufacturer would be required to submit documentation from a federal or State agency or certified third-party expert, as appropriate, demonstrating that the manufacturer cannot comply with the requirements for one of the reasons set forth above.

Under the bill, the DEP would be authorized to require a manufacturer that is temporarily exempt from the postconsumer recycled content requirements, or that has submitted a request for a waiver, to prepare and submit to the DEP an alternative compliance plan that demonstrates that the manufacturer is taking, and will continue to take, all feasible actions to ensure the reduction, collection, recycling, and reuse of packaging materials, and to ensure the use of postconsumer recycled content. The DEP would be required to adopt rules and regulations setting forth the substantive requirements for the alternative compliance plan, which could include sustainable materials management protocols, light weighting, lifecycle analyses, and other measures. The DEP would have the authority to approve or disapprove an alternative compliance plan, and to require a manufacturer to make any revisions or modifications to its plan as the DEP deems necessary, consistent with the bill and the DEP's rules and regulations.

Failure by a manufacturer to comply with an approved alternative compliance plan would constitute a violation of the provisions in the bill. The bill would authorize the DEP to enter into a contract or other legally binding agreement with one or more trade associations representing manufacturers, which would allow the trade association, in lieu of the manufacturers, to prepare and submit an alternative compliance plan, and to undertake the actions described in the plan.

Each year, manufacturers of products covered under the bill would be required to register with the DEP and pay an annual registration fee of \$1,000, except that a manufacturer who demonstrates to the DEP that their gross revenue is below \$5,000,000 would be exempt from paying this fee. A manufacturer that fails to register with the DEP would first receive a written warning and thereafter be subject to the penalties established pursuant to the bill. Each year, manufacturers would also be required to certify, in writing, to the DEP whether or not their products comply with the postconsumer recycled content requirements of the bill or are otherwise exempt or have been approved for a waiver. If the manufacturer claims an exemption, the

manufacturer would be required to set forth the specific basis upon which the exemption is claimed, and submit such proof as the DEP determined necessary.

Under the bill, each manufacturer would be required to maintain records that demonstrate, for all applicable products generated or produced by the manufacturer, whether and how the manufacturer has complied with the postconsumer recycled content requirements. The DEP would be authorized to establish specific requirements for the record and to request the records from a manufacturer at any time. The DEP would also be authorized to audit or investigate a manufacturer, at any time, to assess the manufacturer's compliance with the bill. The DEP would be required to publish a list of registered manufacturers, their compliance status, and other information the DEP deems appropriate, annually, on its Internet website.

Beginning two years after the bill's effective date, a person would be prohibited from selling or offering for sale in the State any polystyrene loose fill packaging, commonly known as packing peanuts.

A person who violates the provisions of the bill would be subject to a civil administrative penalty of between \$1,000 and \$25,000 for each violation, and each day during which the violation continues would constitute an additional, separate, and distinct offense. The amount of any civil administrative penalty would be assessed pursuant to rules and regulations adopted by the DEP for violations of similar type, seriousness, and duration. With respect to violations related to the amount of recycled content contained in a manufacturer's products, in lieu of the penalties described above, the DEP would assess a civil administrative penalty on a per-pound basis for each pound of virgin material that is used where recycled material is required. A person who violates the provisions of the bill, and any order issues pursuant thereto, or who fails to pay in full a civil administrative penalty, would be subject, upon order of a court, to a civil penalty not to exceed \$50,000, and each day during which the violation continues would constitute an additional, separate, and distinct offense. In addition to these penalties, a person who knowingly, purposely, or recklessly makes a false or misleading statement to the DEP on any certification or registration would be guilty of a crime of the third degree and subject to a fine of up to \$50,000 and restitution. The bill also establishes other remedies and enforcement mechanisms.

Under the bill, any proprietary information or trade secrets included in any registration, certification, or other document submitted to the DEP would not be made available to the general public under the open public records act.

The bill would require the DEP, in consultation with the Association of New Jersey Recyclers and the Clean Communities Program, to develop and implement a Statewide public information

and education program to encourage, support, and increase the recycling of certain packaging products and containers.

Finally, the bill would preempt any municipal rule, regulation, code, or ordinance regulating postconsumer recycled content of certain packaging products and containers.

As amended and reported by the committee, this bill is identical to Assembly Bill No. 4676 (ACS) as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

The committee amendments to the bill revise the definition of “manufacturer” to clarify how the bill applies to licensees and add a definition for the term “licensee.”

FISCAL IMPACT:

The Office of Legislative Services (OLS) determines that there will be a marginal expenditure increase from the State General Fund by the Department of Environmental Protection (DEP) to implement the bill’s postconsumer recycling content requirements. The OLS determines that the requirements of this bill would require hiring additional personnel. The DEP assumes that the cost of hiring one additional person to fulfil the requirements of the bill would be \$80,000 annually.

The OLS notes that there may also be a marginal increase in State revenues from registration fees and civil penalties established pursuant to the bill. The precise revenue increase cannot be determined as it depends on the number of manufacturers that will be required to pay the registration fee and on the number of manufacturers that violate the provisions of the bill and are assessed penalties.

**LEGISLATIVE FISCAL ESTIMATE**  
 [Fourth Reprint]  
**SENATE COMMITTEE SUBSTITUTE FOR**  
**SENATE, No. 2515**  
**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

DATED: JANUARY 6, 2022

**SUMMARY**

- Synopsis:** Establishes postconsumer recycled content requirements for rigid plastic containers, glass containers, paper and plastic carryout bags, and plastic trash bags; prohibits sale of polystyrene loose fill packaging.
- Type of Impact:** Annual expenditure increase and revenue increase to the State General Fund.
- Agencies Affected:** Department of Environmental Protection.

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>Annual State Expenditure Increase</b>		Marginal	
<b>Annual State Revenue Increase</b>		Indeterminate	

- The Office of Legislative Services (OLS) determines that there will be a marginal expenditure increase from the State General Fund by the Department of Environmental Protection (DEP) to implement the bill’s postconsumer recycling content requirements. The OLS determines that the requirements of this bill would require hiring additional personnel. The DEP assumes that the cost of hiring one additional person to fulfil the requirements of the bill would be \$80,000 annually.
- The OLS notes that there may also be a marginal increase in State revenues from registration fees and civil penalties established pursuant to the bill. The precise revenue increase cannot be determined as it depends on the number of manufacturers that will be required to pay the registration fee and on the number of manufacturers that violate the provisions of the bill and are assessed penalties.



## **BILL DESCRIPTION**

This bill would establish postconsumer recycled content requirements for rigid plastic containers, glass containers, plastic beverage containers, paper and plastic carryout bags, and plastic trash bags, and prohibit the sale of polystyrene loose fill packaging.

Under the bill, the DEP would be authorized to review and adjust any of the postconsumer recycled content requirements established in the bill through rule or regulation. In making an adjustment, the DEP would be required to consider various factors, including changes in market conditions, recycling rates, the availability of recycled material, the capacity of recycling or processing infrastructure, and progress made by the manufacturers in meeting the postconsumer recycled content requirements.

The bill provides that a manufacturer may apply to the DEP for a waiver from the postconsumer recycled content requirements. The DEP would be authorized to grant a waiver if the manufacturer demonstrates, and the DEP finds, in writing, that: (1) the manufacturer cannot achieve the postconsumer recycled content requirements and remain in compliance with another State or federal law, rule, or regulation; (2) it is not technologically feasible for the manufacturer to achieve the requirements; (3) the manufacturer cannot comply with the postconsumer recycled content requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material; or (4) the manufacturer cannot comply for another reason as determined by the DEP pursuant to rule or regulation. In order to qualify for a waiver, a manufacturer would be required to submit documentation from a federal or State agency or certified third-party expert, as appropriate, demonstrating that the manufacturer cannot comply with the requirements for one of the reasons set forth above.

Under the bill, the DEP would be authorized to require a manufacturer that is temporarily exempt from the postconsumer recycled content requirements, or that has submitted a request for a waiver, to prepare and submit to the DEP an alternative compliance plan that demonstrates that the manufacturer is taking, and will continue to take, all feasible actions to ensure the reduction, collection, recycling, and reuse of packaging materials, and to ensure the use of postconsumer recycled content. The DEP would be required to adopt rules and regulations setting forth the substantive requirements for the alternative compliance plan, which could include sustainable materials management protocols, light weighting, lifecycle analyses, and other measures. The DEP would have the authority to approve or disapprove an alternative compliance plan, and to require a manufacturer to make any revisions or modifications to its plan as the DEP deems necessary, consistent with the bill and the DEP's rules and regulations.

Failure by a manufacturer to comply with an approved alternative compliance plan would constitute a violation of the provisions in the bill. The bill would authorize the DEP to enter into a contract or other legally binding agreement with one or more trade associations representing manufacturers, which would allow the trade association, in lieu of the manufacturers, to prepare and submit an alternative compliance plan, and to undertake the actions described in the plan.

Beginning six months after the effective date of the bill and annually thereafter, manufacturers would be required to register with the DEP and pay an annual registration fee of \$1,000, except that a manufacturer who demonstrates to the DEP that their gross revenue is below \$5 million would be exempt from paying this fee. A manufacturer that fails to register with the DEP would first receive a written warning and thereafter be subject to the penalties established pursuant to the bill. Three years and six months after the effective date of the bill and annually thereafter, manufacturers would also be required to certify, in writing, to the DEP whether or not their products comply with the postconsumer recycled content requirements of the bill or are otherwise exempt or have been approved for a waiver. If the manufacturer claims an exemption, the

manufacturer would be required to set forth the specific basis upon which the exemption is claimed, and submit such proof as the DEP determined necessary.

Under the bill, each manufacturer would be required to maintain records that demonstrate, for all applicable products generated or produced by the manufacturer, whether and how the manufacturer has complied with the postconsumer recycled content requirements. The DEP would be authorized to establish specific requirements for the record and to request the records from a manufacturer at any time. The DEP would also be authorized to audit or investigate a manufacturer, at any time, to assess the manufacturer's compliance with the bill. The DEP would be required to publish a list of registered manufacturers, their compliance status, and other information the DEP deems appropriate, annually, on its Internet website.

A person who violates the provisions of the bill would be subject to a civil administrative penalty of between \$1,000 and \$25,000 for each violation, and each day during which the violation continues would constitute an additional, separate, and distinct offense. The amount of any civil administrative penalty would be assessed pursuant to rules and regulations adopted by the DEP for violations of similar type, seriousness, and duration. With respect to violations related to the amount of recycled content contained in a manufacturer's products, in lieu of the penalties described above, the DEP would assess a civil administrative penalty on a per-pound basis for each pound of virgin material that is used where recycled material is required. A person who violates the provisions of the bill, and any order issued pursuant thereto, or who fails to pay in full a civil administrative penalty, would be subject, upon order of a court, to a civil penalty not to exceed \$50,000, and each day during which the violation continues would constitute an additional, separate, and distinct offense. In addition to these penalties, a person who knowingly, purposely, or recklessly makes a false or misleading statement to the DEP on any certification or registration would be guilty of a crime of the third degree and subject to a fine of up to \$50,000 and restitution. The bill also establishes other remedies and enforcement mechanisms.

Finally, the bill would require the DEP, in consultation with the Association of New Jersey Recyclers and the Clean Communities Program, to develop and implement a statewide public information and education program to encourage, support, and increase the recycling of certain packaging products and containers.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS determines that there will be an marginal annual expenditure increase from the State General Fund by the DEP to implement the bill, including the following additional administrative tasks: (1) reviewing and adjusting any of the postconsumer recycled content requirements established in the bill through rule or regulation; (2) granting waivers to a manufacturer from the postconsumer recycled content requirements; (3) adopting rules and regulations setting forth the substantive requirements for alternative compliance plans; (4) approving or disapproving alternative compliance plans; (5) auditing or investigating manufacturers to assess their compliance with the bill; (6) publishing a list of registered manufacturers, their compliance status, and other information the DEP deems appropriate, annually, on its Internet website; (7) establishing a per-pound penalty for each pound of virgin material used when recycled content is

required in a manufacturer's products; and (8) developing and implementing a Statewide public information and education program to encourage, support, and increase the recycling of certain packaging products and containers. The OLS determines that the requirements of this bill would require hiring additional personnel. The DEP assumes that the cost of hiring one additional person to fulfil the requirements of the bill would be \$80,000 annually.

The OLS notes that there may also be a marginal increase in State revenues from registration fees and civil penalties established pursuant to the bill. The precise revenue increase cannot be determined as it depends on the number of manufacturers that will be required to pay the registration fee and on the number of manufacturers that violate the provisions of the bill and are assessed penalties. Each manufacturer would be required to register with the DEP and pay an annual registration fee of \$1,000. This bill also establishes civil administrative penalty of between \$1,000 and \$25,000 for each violation, and an alternative penalty based on the amount of excess virgin material used for persons who violate the recycled content requirements of the bill, but otherwise conform to its provisions. In addition to these penalties, a person who knowingly, purposely, or recklessly makes a false or misleading statement to the DEP on any certification or registration would be guilty of a crime of the third degree and subject to a fine of up to \$50,000 and restitution.

*Section: Environment, Agriculture, Energy, and Natural Resources*

*Analyst: Eric Hansen  
Associate Research Analyst*

*Approved: Thomas Koenig  
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[Fourth Reprint]

## SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2515**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JANUARY 6, 2022

The Assembly Appropriations Committee reports favorably Senate Bill No. 2515 (SCS/4R), with committee amendments.

This bill, as amended by the committee, would establish postconsumer recycled content requirements for rigid plastic containers, glass containers, paper and plastic carryout bags, and plastic trash bags, and prohibit the sale of polystyrene loose fill packaging.

Specifically, beginning two years after the bill's effective date, all rigid plastic containers sold, offered for sale, or used in association with the sale or offer for sale of a product in the State by a manufacturer would be required to contain, on average, at least 10 percent postconsumer recycled content. Beginning five years after the effective date, and every three years thereafter, the percentage of postconsumer recycled content required for rigid plastic containers would increase by 10 percent, until reaching 50 percent. The bill provides exemptions from the postconsumer recycled content requirements for several types of rigid plastic containers.

Under the bill, separate requirements would apply to plastic beverage containers. Specifically, beginning two years after the bill's effective date, all plastic beverage containers sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 15 percent postconsumer recycled content. Beginning five years after the bill's effective date, and every three years thereafter, the percentage of postconsumer recycled content required would increase by five percent until reaching 50 percent, except for plastic beverage containers that are filled using the "hot fill process," as defined by the bill, which would cap at 30 percent postconsumer recycled content. The recycled content requirements for plastic beverage containers would not apply to refillable beverage containers.

Beginning two years after the bill's effective date, all glass containers sold or offered for sale in the State would be required to contain, on average, at least 35 percent postconsumer recycled content. However, if a manufacturer certifies to the Department of

Environmental Protection (DEP) that its use of postconsumer recycled content is made up of at least 50 percent mixed-color cullet, then the manufacturer's glass containers would only be required to contain, on average, 25 percent postconsumer recycled content.

Beginning two years after the bill's effective date, paper carryout bags sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 40 percent postconsumer recycled content, except that paper carryout bags that hold eight pounds or less would only be required to contain, on average, at least 20 percent postconsumer recycled content. All plastic carryout bags sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 20 percent postconsumer recycled content beginning two years after the bill's effective date, and 40 percent postconsumer recycled content beginning five years after the bill's effective date. Beginning two years after the bill's effective date, all plastic trash bags sold or offered for sale in the State would be required to contain a certain percentage of recycled content, which would vary according to the thickness of the bag, as set forth in paragraph (1) of subsection a. of section 8 of the bill. Beginning five years after the bill's effective date, the recycled content requirements would increase, as set forth in paragraph (2) of subsection a. of section 8 of the bill. The requirement would not apply to plastic trash bags designed to hold, store, or transport hazardous waste or medical waste.

Packages or containers that contain milk products, plant-based products with names that include the names of dairy foods such as "milk," medical food, food for special dietary use, or infant formula would be exempt from the postconsumer recycled content requirements of the bill. In addition, packages or containers that contain food, except for plastic beverage containers or glass beverage containers, would be exempt from the postconsumer recycled content requirements of the bill for a period of five years.

A manufacturer would be required to achieve compliance with the postconsumer recycled content requirements of the bill based on the average amount of postconsumer recycled content, by weight or another metric, as determined by the DEP, contained in its products. A manufacturer would be required to calculate its average using data specific to its products sold or offered for sale in New Jersey, unless the manufacturer can demonstrate to the DEP that those data are unavailable and infeasible to generate, in which case the manufacture could use nationwide data.

Under the bill, the DEP would be authorized to review and adjust any of the postconsumer recycled content requirements established in the bill through rule or regulation. In making an adjustment, the DEP would be required to consider various factors, including changes in market conditions, recycling rates, the availability of recycled material, the capacity of recycling or processing infrastructure, and

progress made by the manufacturers in meeting the postconsumer recycled content requirements.

The bill provides that a manufacturer may apply to the DEP for a waiver from the postconsumer recycled content requirements. The DEP would be authorized to grant a waiver if the manufacturer demonstrates, and the DEP finds, in writing, that: (1) the manufacturer cannot achieve the postconsumer recycled content requirements and remain in compliance with another State or federal law, rule, or regulation; (2) it is not technologically feasible for the manufacturer to achieve the requirements; (3) the manufacturer cannot comply with the postconsumer recycled content requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material; or (4) the manufacturer cannot comply for another reason as determined by the DEP pursuant to rule or regulation. In order to qualify for a waiver, a manufacturer would be required to submit documentation from a federal or State agency or certified third-party expert, as appropriate, demonstrating that the manufacturer cannot comply with the requirements for one of the reasons set forth above.

Under the bill, the DEP would be authorized to require a manufacturer that is temporarily exempt from the postconsumer recycled content requirements, or that has submitted a request for a waiver, to prepare and submit to the DEP an alternative compliance plan that demonstrates that the manufacturer is taking, and will continue to take, all feasible actions to ensure the reduction, collection, recycling, and reuse of packaging materials, and to ensure the use of postconsumer recycled content. The DEP would be required to adopt rules and regulations setting forth the substantive requirements for the alternative compliance plan, which could include sustainable materials management protocols, light weighting, lifecycle analyses, and other measures. The DEP would have the authority to approve or disapprove an alternative compliance plan, and to require a manufacturer to make any revisions or modifications to its plan as the DEP deems necessary, consistent with the bill and the DEP's rules and regulations.

Failure by a manufacturer to comply with an approved alternative compliance plan would constitute a violation of the provisions in the bill. The bill would authorize the DEP to enter into a contract or other legally binding agreement with one or more trade associations representing manufacturers, which would allow the trade association, in lieu of the manufacturers, to prepare and submit an alternative compliance plan, and to undertake the actions described in the plan.

Each year, manufacturers of products covered under the bill would be required to register with the DEP and pay an annual registration fee of \$1,000, except that a manufacturer who demonstrates to the DEP that their gross revenue is below \$5,000,000 would be exempt from paying this fee. A manufacturer that fails to register with the DEP

would first receive a written warning and thereafter be subject to the penalties established pursuant to the bill. Each year, manufacturers would also be required to certify, in writing, to the DEP whether or not their products comply with the postconsumer recycled content requirements of the bill or are otherwise exempt or have been approved for a waiver. If the manufacturer claims an exemption, the manufacturer would be required to set forth the specific basis upon which the exemption is claimed, and submit such proof as the DEP determined necessary.

Under the bill, each manufacturer would be required to maintain records that demonstrate, for all applicable products generated or produced by the manufacturer, whether and how the manufacturer has complied with the postconsumer recycled content requirements. The DEP would be authorized to establish specific requirements for the record and to request the records from a manufacturer at any time. The DEP would also be authorized to audit or investigate a manufacturer, at any time, to assess the manufacturer's compliance with the bill. The DEP would be required to publish a list of registered manufacturers, their compliance status, and other information the DEP deems appropriate, annually, on its Internet website.

Beginning two years after the bill's effective date, a person would be prohibited from selling or offering for sale in the State any polystyrene loose fill packaging, commonly known as packing peanuts.

A person who violates the provisions of the bill would be subject to a civil administrative penalty of between \$1,000 and \$25,000 for each violation, and each day during which the violation continues would constitute an additional, separate, and distinct offense. The amount of any civil administrative penalty would be assessed pursuant to rules and regulations adopted by the DEP for violations of similar type, seriousness, and duration. With respect to violations related to the amount of recycled content contained in a manufacturer's products, in lieu of the penalties described above, the DEP would assess a civil administrative penalty on a per-pound basis for each pound of virgin material that is used where recycled material is required. A person who violates the provisions of the bill, and any order issues pursuant thereto, or who fails to pay in full a civil administrative penalty, would be subject, upon order of a court, to a civil penalty not to exceed \$50,000, and each day during which the violation continues would constitute an additional, separate, and distinct offense. In addition to these penalties, a person who knowingly, purposely, or recklessly makes a false or misleading statement to the DEP on any certification or registration would be guilty of a crime of the third degree and subject to a fine of up to \$50,000 and restitution. The bill also establishes other remedies and enforcement mechanisms.

Under the bill, any proprietary information or trade secrets included in any registration, certification, or other document submitted

to the DEP would not be made available to the general public under the open public records act.

The bill would require the DEP, in consultation with the Association of New Jersey Recyclers and the Clean Communities Program, to develop and implement a Statewide public information and education program to encourage, support, and increase the recycling of certain packaging products and containers. The bill would require the DEP to adopt rules and regulations to implement the bill's provisions, no later than two years after the bill's effective date. The bill would require the rules and regulations to establish incentives for manufacturers, recyclers, and retailers to collect and reuse polyethylene film, to the extent that funds are made available for this purpose.

Finally, the bill would preempt any municipal rule, regulation, code, or ordinance regulating postconsumer recycled content of certain packaging products and containers.

As amended and reported by the committee, Senate Bill No. 2515 (SCS/4R) is identical to Assembly Bill No. 4676 (ACS/1R), which also was amended and reported by the committee on this date.

#### COMMITTEE AMENDMENTS

The committee amendments to the bill:

1) provide that a manufacture may utilize a metric other than weight when determining the average amount of postconsumer recycled content in its products, if authorized by the DEP;

2) revise the bill's postconsumer recycled content requirements for rigid plastic containers, reducing the initial requirement from 25 percent to 10 percent, and increasing the amount by which the requirement increases (every three years beginning five years after the bill's effective date) from five percent to 10 percent;

3) provide that plastic beverage containers that are filled using a hot fill process would not be required to contain more than 30 percent postconsumer recycled content, under the bill, and add a definition of "hot fill process;"

4) revise the bill's postconsumer recycled content requirements for plastic trash bags, including making the requirement vary according to the thickness of the plastic bag;

5) exempt from the bill's postconsumer recycled content requirements packages and containers that contain "food for special dietary use," as that term is defined in the "Federal Food, Drug, and Cosmetic Act;" and

6) require the DEP to establish incentives for manufacturers, recyclers, and retailers to collect and reuse polyethylene film, to the extent that funds are made available for this purpose, when it adopts rules and regulations to implement the bill.



FISCAL IMPACT

The Office of Legislative Services (OLS) determines that there will be a marginal expenditure increase from the State General Fund by the Department of Environmental Protection (DEP) to implement the bill's postconsumer recycling content requirements. The OLS determines that the requirements of this bill would require hiring additional personnel. The OLS assumes that the cost of hiring one additional person to fulfil the requirements of the bill would be \$80,000 annually.

The OLS notes that there may also be a marginal increase in State revenues from registration fees and civil penalties established pursuant to the bill. The precise revenue increase cannot be determined as it depends on the number of manufacturers that will be required to pay the registration fee and on the number of manufacturers that violate the provisions of the bill and are assessed penalties.

# ASSEMBLY, No. 4676

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED SEPTEMBER 17, 2020

**Sponsored by:**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

**SYNOPSIS**

Establishes recycled content requirements for plastic containers, glass containers, paper carryout bags, reusable carryout bags made of plastic film, and plastic trash bags; prohibits sale of polystyrene loose fill packaging.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning the sale of certain containers and packaging  
2 products in the State and supplementing Title 13 of the Revised  
3 Statutes.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. As used in sections 1 through 14 of this act:

9 “Beverage” means milk, alcoholic beverages, including beer or  
10 other malt beverages, liquor, wine, vermouth and sparkling wine,  
11 and nonalcoholic beverages, including fruit juice, mineral water and  
12 soda water and similar nonalcoholic carbonated and noncarbonated  
13 drinks intended for human consumption.

14 “Department” means the Department of Environmental  
15 Protection.

16 “Food” means articles used for food or drink for humans and  
17 articles used for components of any such article.

18 “Manufacturer” means a person that: (1) produces or generates a  
19 rigid plastic container, plastic beverage container, glass container,  
20 paper carryout bag, reusable carryout bag made of plastic film, or  
21 plastic trash bag that is sold or offered for sale in the State; or (2)  
22 produces or generates a product that is sold or offered for sale in the  
23 State and packaged in a rigid plastic container, plastic beverage  
24 container, or glass container.

25 “Package” means a container used to protect, store, contain,  
26 transport, display, or sell a product.

27 “Paper carryout bag” means a bag made of paper that is sold or  
28 provided by a store or other retail establishment to a customer for  
29 the purpose of wrapping, containing, or carrying out food,  
30 beverages, or other retail goods.

31 “Person” means an individual, corporation, company,  
32 association, society, firm, partnership, or joint stock company.

33 “Plastic” means a synthetic material made from linking  
34 monomers through a chemical reaction to create an organic polymer  
35 chain that can be molded or extruded at high heat into various solid  
36 forms, which retain their defined shapes during their life cycle and  
37 after disposal.

38 “Plastic beverage container” means an individual bottle or can  
39 composed primarily of plastic that is hermetically sealed or made  
40 airtight with a metal or plastic cap, and that contains a beverage.

41 “Plastic film” means any thin, nonwoven, flexible plastic.

42 “Plastic trash bag” means a bag that is made of plastic, is at least  
43 0.70 mils thick, and is designed and manufactured for use as a  
44 container to hold, store, or transport materials to be discarded,  
45 composted, or recycled, and includes, but is not limited to, a  
46 garbage bag, composting bag, lawn or leaf bag, can-liner bag,  
47 kitchen bag, compactor bag, or recycling bag.

1       “Recycled content” means the portion of a package’s total  
2 weight that is composed of recycled material, as determined by a  
3 material balance approach that calculates total recycled material in  
4 the package as a percentage of the total weight of the package.

5       “Recycled material” means a material or product that has  
6 completed its intended end use and product life cycle, and which  
7 has been separated from the solid waste stream for the purposes of  
8 collection and recycling; except that “recycled material” shall not  
9 include secondary waste material or materials and by-products  
10 generated from, and commonly used within, an original  
11 manufacturing and fabrication process.

12       “Reusable carryout bag” means a bag that is sold or provided by  
13 a store to a customer for the purpose of transporting groceries,  
14 prepared foods, or retail goods, and that is designed and  
15 manufactured for multiple reuse.

16       “Rigid plastic container” means a package composed primarily  
17 of plastic that has a relatively inflexible finite shape or form, has a  
18 capacity of between eight ounces and five gallons, and is capable of  
19 maintaining its shape while empty or while holding other products.  
20

21       2. a. Except as provided in subsection c. of this section,  
22 beginning January 1, 2022, each rigid plastic container sold, offered  
23 for sale, or used in association with the sale or offer for sale of a  
24 product in the State by a manufacturer shall:

25       (1) contain at least 35 percent recycled content; or

26       (2) be made of a plastic that is being recycled in the State at a  
27 rate of 35 percent.

28       b. A rigid plastic container shall be deemed to meet the  
29 requirements of paragraph (2) of subsection a. of this section if:

30       (1) rigid plastic containers, in the aggregate, are being recycled  
31 in the State at a rate of 35 percent;

32       (2) the rigid plastic container is a specific resin type of rigid  
33 plastic container and that resin type of rigid plastic container is  
34 being recycled in the State at a rate of 35 percent; or

35       (3) the rigid plastic container is a particular product-associated  
36 package and that type of product-associated package is being  
37 recycled in the State at a rate of 35 percent.

38       c. A rigid plastic container shall be exempt from the  
39 requirements of subsection a. of this section if it:

40       (1) is a plastic beverage container, to which the requirements of  
41 section 3 of this act apply;

42       (2) contains drugs, medical devices, medical food, or infant  
43 formula as defined in the Federal Food, Drug, and Cosmetic Act, 21  
44 U.S.C. s.301 et seq.;

45       (3) contains toxic or hazardous products regulated by the  
46 “Federal Insecticide, Fungicide, and Rodenticide Act,” 7 U.S.C.  
47 s.136 et seq.;

1 (4) is associated with a product produced in or brought into the  
2 State that is destined for shipment to other destinations outside the  
3 State and that remains with the product upon shipment;

4 (5) is necessary to provide tamper-resistant seals for public  
5 health purposes;

6 (6) is a source reduced package. A rigid plastic container shall  
7 qualify as a source reduced package if the percentage of package  
8 weight per unit of product has been reduced by at least 10 percent  
9 when compared with the packaging used for the same product by  
10 the same manufacturer five years earlier. In no case may packaging  
11 reduction be achieved, for purposes of this paragraph, by  
12 substituting a different material category for a material that  
13 constituted a substantial part of the packaging in question, or by  
14 packaging changes that adversely impact either the potential for the  
15 package to be recycled or contain recycled material. Exemptions  
16 under this paragraph shall be limited to five years, shall not be  
17 renewable, and shall not be applicable to packages for which the  
18 percentage of package weight per unit of product increased after  
19 January 1, 2021; or

20 (7) is a refillable container or a reusable container. A rigid  
21 plastic container shall qualify as a refillable container if the  
22 container is routinely returned to and refilled by the manufacturer at  
23 least five times with the same product packaged by the container. A  
24 rigid plastic container shall qualify as a reusable container if the  
25 container is routinely reused by consumers at least five times to  
26 store the same product packaged by the container.

27 d. Each year, the department shall determine the recycling rate  
28 for rigid plastic containers in the aggregate. If, for any year, the  
29 department determines that the recycling rate for rigid plastic  
30 containers in the aggregate is less than 35 percent, the department  
31 shall also determine whether the recycling rate for rigid plastic  
32 containers made from each of the major resin types is 35 percent or  
33 more. The department shall determine the recycling rate for rigid  
34 plastic containers in the aggregate, specific resin types of rigid  
35 plastic containers, and product associated packages based on the  
36 percentage, as measured by weight, of such packages sold or  
37 offered for sale in the State that are recycled the preceding calendar  
38 year. The department shall publish the determinations made  
39 pursuant to this subsection on its Internet website.

40 e. If, in any year, the department determines that the recycling  
41 rate for rigid plastic containers is less than 35 percent, the  
42 department shall prepare and submit a report to the Legislature  
43 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and to the  
44 members of the Senate Environment and Energy Committee and the  
45 Assembly Environment and Solid Waste Committee, or their  
46 successors, which assesses the reasons why the recycling rate is  
47 below 35 percent, and includes a review of the status of collection  
48 programs in the State and the capacity available in the State to

1 process rigid plastic containers collected and reclaim the resin from  
2 the collected rigid plastic containers. The department may include  
3 in its report any recommendations for legislative or regulatory  
4 action necessary to improve the recycling rate for rigid plastic  
5 containers.

6 f. The department shall not enforce the provisions of this  
7 section during the first full calendar year after the department  
8 determines, for the first time, that the recycling rate for rigid plastic  
9 containers is less than 35 percent. For any period for which the  
10 department determines that the recycling rate for rigid plastic  
11 containers equals or exceeds 35 percent, a manufacturer shall not be  
12 required to keep records that demonstrate compliance as provided  
13 pursuant to subsection b. of section 10 of this act.

14 g. For the purposes of this section, “product-associated  
15 package” means a brand-specific rigid plastic container line, which  
16 may have one or more sizes, shapes, or designs and which is used in  
17 conjunction with a particular, generic product line.

18

19 3. a. Beginning January 1, 2022, through December 31, 2025,  
20 each plastic beverage container sold, offered for sale, or filled with  
21 a beverage sold or offered for sale in the State by a manufacturer  
22 shall contain at least 10 percent recycled content.

23 b. Beginning January 1, 2026, through December 31, 2030,  
24 each plastic beverage container sold, offered for sale, or filled with  
25 a beverage sold or offered for sale in the State by a manufacturer  
26 shall contain at least 25 percent recycled content.

27 c. On and after January 1, 2031, each plastic beverage  
28 container sold, offered for sale, or filled with a beverage sold or  
29 offered for sale in the State by a manufacturer shall contain at least  
30 50 percent recycled content.

31 d. The provisions of this section shall not apply to a refillable  
32 plastic beverage container. For the purposes of this subsection, a  
33 “refillable plastic beverage container” means a plastic beverage  
34 container that has a capacity of 150 fluid ounces or less, holds 150  
35 fluid ounces or less of beverage, and which ordinarily would be  
36 returned to the manufacturer to be refilled and resold.

37

38 4. a. Beginning January 1, 2022, each glass container sold,  
39 offered for sale, or filled with a food or beverage sold or offered for  
40 sale in the State by a manufacturer shall contain at least 35 percent  
41 recycled content; except that, if a manufacturer demonstrates to the  
42 satisfaction of the department that its use of recycled content is  
43 made up of at least 50 percent mixed-color cullet, then the  
44 manufacturer shall use at least 25 percent recycled content in the  
45 manufacturing of its glass containers.

46 b. As used in this section, “mixed-color cullet” means cullet  
47 that does not meet the American Society for Testing and Materials

1 (ASTM) standard specifications for color mix of color sorted post-  
2 filled glass as raw material for the manufacture of glass containers.

3

4 5. Beginning January 1, 2022, each paper carryout bag sold or  
5 offered for sale in the State by a manufacturer shall:

6 a. contain at least 40 percent recycled content; except that a  
7 paper carryout bag that holds eight pounds or less shall contain at  
8 least 20 percent recycled content; and

9 b. have printed on the bag the name of the manufacturer, the  
10 country where the bag was manufactured, and the percentage of  
11 recycled content in the bag.

12

13 6. Each reusable carryout bag made of plastic film that is sold  
14 or offered for sale in the State shall meet the following  
15 requirements:

16 a. Beginning January 1, 2022, the reusable carryout bag shall  
17 contain at least 20 percent recycled content; and

18 b. Beginning January 1, 2025, the reusable carryout bag shall  
19 contain at least 40 percent recycled content.

20

21 7. a. Except as provided in subsection b. of this section,  
22 beginning January 1, 2022, each plastic trash bag sold or offered for  
23 sale in the State shall contain at least 10 percent recycled content.

24 b. The provisions of subsection a. of this section shall not  
25 apply to a bag that is designed and manufactured to hold, store, or  
26 transport hazardous waste or medical waste.

27

28 8. A manufacturer may apply to the department for a waiver  
29 from, or reduction in, the recycled content requirements of sections  
30 2 through 7 of this act. The department may approve, in writing, a  
31 waiver or other relief pursuant to this section if the manufacturer  
32 demonstrates, and the department finds, that it is not  
33 technologically feasible for the manufacturer to achieve the  
34 recycled content requirements, or the manufacturer cannot achieve  
35 the recycled content requirements due to a lack of available  
36 recycled material or other market conditions. The department shall  
37 develop a standardized form for manufacturers to apply for a waiver  
38 pursuant to this section.

39

40 9. a. Beginning January 1, 2022, no person shall sell or offer  
41 for sale in the State polystyrene loose fill packaging.

42 b. Nothing in subsection a. of this section shall be construed to  
43 prohibit a person from using polystyrene loose fill packaging to  
44 package a product sold or offered for sale by the person after  
45 January 1, 2022, if the person purchased the polystyrene loose fill  
46 packaging prior to January 1, 2022 and the person does not resell  
47 the polystyrene loose fill packaging.

48 c. As used in this section:

1       “Expanded polystyrene” means blown polystyrene and expanded  
2 and extruded foams that are thermoplastic petrochemical materials  
3 utilizing a styrene monomer and processed by any number of  
4 techniques including, but not limited to, fusion of polymer spheres  
5 (expandable bead foam), injection molding, foam molding, and  
6 extrusion-blown molding (extruded foam polystyrene). “Expanded  
7 polystyrene” shall not include rigid polystyrene.

8       “Polystyrene loose fill packaging,” commonly known as packing  
9 peanuts, means a void-filling packaging product made of expanded  
10 polystyrene that is used as a packaging fill.

11

12       10. a. On or before January 1 of each year, each manufacturer  
13 shall certify, in writing, to the department that the rigid plastic  
14 containers, plastic beverage containers, glass containers, paper  
15 carryout bags, reusable carryout bags made of plastic film, or  
16 plastic trash bags, as applicable, sold, offered for sale, or used in  
17 association with the sale or offer for sale of a product in the State,  
18 are in compliance with the requirements of this act, or are otherwise  
19 exempt or have been approved for a waiver or other relief under the  
20 provisions of this act. A manufacturer shall submit the certification  
21 in the form and manner determined by the department under penalty  
22 of perjury. The certification shall include the amount in pounds of  
23 virgin plastic, glass, or paper products and recycled content used by  
24 the manufacturer for its rigid plastic containers, plastic beverage  
25 containers, glass containers, paper carryout bags, reusable carryout  
26 bags made of plastic film, or plastic trash bags, as applicable, and  
27 any other information the department determines necessary in order  
28 to determine compliance with this act.

29       b. Each manufacturer shall maintain records that demonstrate,  
30 for all rigid plastic containers, plastic beverage containers, glass  
31 containers, paper carryout bags, reusable carryout bags made of  
32 plastic film, or plastic trash bags generated or produced by the  
33 manufacturer, whether and how the manufacturer has complied with  
34 the requirements of this act, or for what reason, if any, the  
35 manufacturer is exempt or has been approved for a waiver or other  
36 relief from the requirements of this act. The department may adopt  
37 specific requirements for the records required to be maintained  
38 pursuant to this subsection. A manufacturer shall submit its records  
39 to the department upon request. Any proprietary information or  
40 trade secrets included in the records submitted to the department  
41 shall not be made available to the general public. The department  
42 may audit or investigate any manufacturer to assess the  
43 manufacturer’s compliance with the requirements of this act.

44

45       11. a. Any person who violates the provisions of this act, or any  
46 rule or regulation adopted pursuant thereto, shall be subject to a  
47 civil administrative penalty of not more than \$10,000. If the  
48 violation is of a continuing nature, each day during which the



1 violation continues shall constitute an additional, separate, and  
2 distinct offense. The department may adopt a schedule of penalties  
3 to be applied pursuant to this section. In determining the amount  
4 of any penalty to be imposed, the commissioner shall consider the  
5 nature, circumstances, extent, and severity of the violation. No  
6 civil administrative penalty shall be imposed until after the person  
7 has been notified by certified mail or personal service. The notice  
8 shall include: a reference to the provision of this section, or any rule  
9 or regulation adopted pursuant thereto, violated; a concise statement  
10 of the facts alleged to constitute a violation; a statement of the  
11 amount of the civil administrative penalties to be imposed; and a  
12 statement of the person's right to a hearing. The person shall have  
13 20 days from receipt of the notice within which to deliver to the  
14 commissioner a written request for a hearing. Subsequent to the  
15 hearing and upon finding that a violation has occurred, the  
16 commissioner may issue a final order or civil administrative penalty  
17 after imposing the amount of the fine specified in the notice. If no  
18 hearing is requested, the notice shall become a final order or a final  
19 civil administrative penalty upon the expiration of the 20-day  
20 period. Payment of the penalty is due when a final order is issued  
21 or when the notice becomes a final order or a final civil  
22 administrative penalty. The authority to levy a civil administrative  
23 penalty shall be in addition to all other enforcement provisions in  
24 this act, and the payment of a civil administrative penalty shall not  
25 be deemed to affect the availability of any other enforcement  
26 provision in connection with the violation for which the penalty is  
27 levied. A civil administrative penalty imposed under this  
28 subsection may be compromised by the department upon the  
29 posting of a performance bond by the violator, or upon terms and  
30 conditions the department may establish by rule or regulation.

31 b. In addition to the assessment of a civil administrative  
32 penalty pursuant to subsection a. of this section, the department  
33 may, by administrative order, and upon an appropriate finding,  
34 assess a violator for the reasonable costs of any audit, investigation,  
35 or inspection which led to the establishment of the violation. The  
36 department may retain any amount it collects pursuant to this  
37 subsection.

38 c. In addition to, or in lieu of, assessing a civil administrative  
39 penalty pursuant to subsection a. of this section, the department  
40 may require a manufacturer to submit a corrective action plan to the  
41 department detailing how the manufacturer will come into  
42 compliance with the provisions of this act.

43  
44 12. There is established in the Department of the Treasury a  
45 special, nonlapsing account to be known as the "Recycling  
46 Enhancement Penalty Account." The account shall be credited with  
47 all penalties collected pursuant to subsection a. of section 11 of this  
48 act, and any interest or investment income earned on monies in the

1 account. Moneys in the account shall be expended, upon  
2 appropriation by the Legislature, for the sole purpose of supporting  
3 recycling in the State. The department may offer recommendations  
4 each year to the Legislature on appropriate uses of the moneys in  
5 the account, and shall transmit such recommendations to the  
6 chairpersons of the Senate Environment and Energy Committee and  
7 the Assembly Environment and Solid Waste Committee, or their  
8 successors, for their respective consideration.

9  
10 13. A municipality or county shall not adopt any rule,  
11 regulation, code, or ordinance regulating the recycled content of  
12 rigid plastic containers, plastic beverage containers, glass  
13 containers, paper carryout bags, reusable carryout bags made of  
14 plastic film, or plastic trash bags after the effective date of this act.  
15 The provisions of this act shall supersede and preempt any  
16 municipal or county rule, regulation, code, or ordinance regulating  
17 the recycled plastic content requirement for plastic beverage  
18 containers that was enacted prior to the effective date of this act.

19  
20 14. No later than 18 months after the effective date of this act,  
21 the department shall adopt, pursuant to the "Administrative  
22 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and  
23 regulations necessary for the implementation of this act.

24  
25 15. This act shall take effect immediately.

#### 26 27 28 STATEMENT

29  
30 This bill would establish recycled content requirements for  
31 plastic containers, glass containers, paper carryout bags, reusable  
32 carryout bags made of plastic film, and plastic trash bags sold or  
33 offered for sale in the State, and prohibit the sale of polystyrene  
34 loose fill packaging.

35 Specifically, under the bill, beginning January 1, 2022, each  
36 rigid plastic container sold, offered for sale, or used in association  
37 with the sale or offer for sale of a product in the State would be  
38 required to: (1) contain at least 35 percent recycled content; or (2)  
39 be made of a plastic that is being recycled in the State at a rate of 35  
40 percent. A rigid plastic container would be deemed to be made of a  
41 plastic that is being recycled in the State at a rate of 35 percent if:  
42 (1) rigid plastic containers, in the aggregate, are being recycled in  
43 the State at a rate of 35 percent; (2) the rigid plastic container is a  
44 specific resin type of rigid plastic container and that type of  
45 container is being recycled in the State at a rate of 35 percent; or (3)  
46 the container is a particular product-associated package and that  
47 type of product-associated package is being recycled in the State at

1 a rate of 35 percent. The bill exempts several types of rigid plastic  
2 containers from the recycled content requirements.

3 Each year, the Department of Environmental Protection (DEP)  
4 would determine the recycling rate for rigid plastic containers. If,  
5 for any year, the DEP determines that the recycling rate for rigid  
6 plastic containers is less than 35 percent, the DEP would also be  
7 required to: (1) determine and publish on its Internet website  
8 whether the recycling rate for rigid plastic containers made from  
9 each of the seven major resin types is 35 percent or more; and (2)  
10 prepare and submit a report to the Legislature assessing the reasons  
11 why the recycling rate is below 35 percent, including a review of  
12 the status of collection programs in the State and the State's  
13 recycling capacity for rigid plastic containers. The DEP would not  
14 enforce the recycled content requirements for rigid plastic  
15 containers in the first full calendar year after it determines, for the  
16 first time, that the recycling rate for rigid plastic containers is less  
17 than 35 percent.

18 Under the bill, different recycled content requirements would  
19 apply to plastic beverage containers. Specifically, beginning  
20 January 1, 2022 through December 31, 2025, each plastic beverage  
21 container sold, offered for sale, or filled with a beverage sold or  
22 offered for sale in the State would be required to contain at least 10  
23 percent recycled content. Beginning January 1, 2026 through  
24 December 31, 2030, each plastic beverage container would be  
25 required to contain at least 25 percent recycled content. On and  
26 after January 1, 2031, each plastic beverage container would be  
27 required to contain at least 50 percent recycled content. However,  
28 the recycled content requirements would not apply to refillable  
29 plastic beverage containers.

30 Additionally, beginning January 1, 2022, each glass container  
31 sold, offered for sale, or filled with a food or beverage sold or  
32 offered for sale in the State would be required to contain at least 35  
33 percent recycled content. However, if a manufacturer demonstrates  
34 to the satisfaction of the DEP that its use of recycled content is  
35 made up of at least 50 percent mixed-color cullet, then the  
36 manufacturer would only be required to use at least 25 percent  
37 recycled content in the manufacturing of its glass containers.

38 Beginning January 1, 2022, each paper carryout bag sold or  
39 offered for sale in the State would be required to contain at least 40  
40 percent recycled content. However, a paper carryout bag that holds  
41 eight pounds or less would only be required to contain at least 20  
42 percent recycled content. Under the bill, a paper carryout bag  
43 would also be required to have printed on the bag the name of the  
44 manufacturer, the country where the bag was manufactured, and the  
45 percentage of recycled content in the bag.

46 Under the bill, each reusable carryout bag made of plastic film  
47 that is sold or offered for sale in the State would be required to  
48 contain at least 20 percent recycled content beginning January 1,

1 2022, and 40 percent recycled content beginning January 1, 2025.  
2 Beginning January 1, 2022, each plastic trash bag sold or offered  
3 for sale in the State would be required to contain at least 10 percent  
4 recycled content, but this provision would not apply to bags  
5 designed and manufactured to hold, store, or transport hazardous  
6 waste or medical waste.

7 Under the bill, a manufacturer would be permitted to apply to the  
8 department for a waiver from, or reduction in, the recycled content  
9 requirements of the bill. The department would be authorized to  
10 grant a waiver or other relief if the manufacturer demonstrates, and  
11 the department finds, that it is not technologically feasible for the  
12 manufacturer to achieve the recycled content requirements, or the  
13 manufacturer cannot achieve the requirements due to a lack of  
14 available recycled material or other anomalous market conditions.

15 Under the bill, beginning January 1, 2022, a person would be  
16 prohibited from selling, or offering for sale in the State, polystyrene  
17 loose fill packaging, commonly known as “packing peanuts.”

18 Under the bill , each manufacturer would be required to certify,  
19 in writing, to the DEP each year that the rigid plastic containers,  
20 plastic beverage containers, glass containers, paper carryout bags,  
21 reusable carryout bags made of plastic film, or plastic trash bags  
22 sold, offered for sale, or used in association with the sale or offer  
23 for sale of a product in the State are in compliance with the  
24 requirements of the bill, or are otherwise exempt or have been  
25 approved for a waiver or other relief. Each manufacturer would be  
26 required to maintain records that demonstrate, for all rigid plastic  
27 containers, plastic beverage containers, glass containers, paper  
28 carryout bags, reusable carryout bags made of plastic film, or  
29 plastic trash bags generated or produced by the manufacturer,  
30 whether and how the manufacturer has complied with the  
31 requirements of the bill, or for what reason, if any, the manufacturer  
32 is exempt or has been approved for a waiver or other relief. A  
33 manufacturer would be required to submit its records to the DEP  
34 upon request. The DEP would also be authorized to audit or  
35 investigate any manufacturer to assess its compliance with the  
36 requirements of the bill.

37 Any person who violates the provisions of the bill would be  
38 subject to a civil administrative penalty of not more than \$10,000,  
39 and each day during which the violation continues would constitute  
40 an additional, separate, and distinct offense. The DEP would be  
41 authorized to adopt a schedule of penalties to be applied under the  
42 bill. In addition to the assessment of a civil administrative penalty,  
43 the DEP would be authorized to assess a violator for the reasonable  
44 costs of any audit, investigation, or inspection which led to the  
45 establishment of a violation. Also, the DEP would be authorized to  
46 require a manufacturer to submit a corrective action plan detailing  
47 how the manufacturer will come into compliance with the bill.

1       The bill would establish a special, nonlapsing account in the  
2 Department of the Treasury to be known as the “Recycling  
3 Enhancement Penalty Account.” The account would be credited  
4 with all penalties collected under the bill, and any interest or  
5 investment income earned from the account. Moneys in the account  
6 would be used, upon appropriation by the Legislature, for the sole  
7 purpose of supporting recycling in the State. The DEP would make  
8 recommendations each year to the Legislature on appropriate uses  
9 of moneys in the account and transmit those recommendations to  
10 the appropriate legislative committees.

11       The bill would prohibit a municipality or county from adopting  
12 any rule, regulation, code, or ordinance regulating the recycled  
13 content of rigid plastic containers, plastic beverage containers, glass  
14 containers, paper carryout bags, reusable carryout bags made of  
15 plastic film, or plastic trash bags after the effective date of the bill.  
16 The bill would also supersede and preempt any municipal or county  
17 rule, regulation, code, or ordinance regulating the recycled content  
18 of those items.

ASSEMBLY ENVIRONMENT AND SOLID WASTE  
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 4676**

**STATE OF NEW JERSEY**

DATED: NOVEMBER 15, 2021

The Assembly Environment and Solid Waste Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 4676.

This committee substitute would establish postconsumer recycled content requirements for rigid plastic containers, glass containers, paper and plastic carryout bags, and plastic trash bags, and prohibit the sale of polystyrene loose fill packaging.

Specifically, beginning two years after the bill's effective date, all rigid plastic containers sold, offered for sale, or used in association with the sale or offer for sale of a product in the State by a manufacturer would be required to contain, on average, at least 25 percent postconsumer recycled content. Beginning five years after the effective date, and every three years thereafter, the percentage of postconsumer recycled content required for rigid plastic containers would increase by five percent, until reaching 50 percent. The bill provides exemptions from the postconsumer recycled content requirements for several types of rigid plastic containers.

Under the bill, separate requirements would apply to plastic beverage containers. Specifically, beginning two years after the bill's effective date, all plastic beverage containers sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 15 percent postconsumer recycled content. Beginning five years after the bill's effective date, and every three years thereafter, the percentage of postconsumer recycled content required would increase by five percent until reaching 50 percent. The recycled content requirements for plastic beverage containers would not apply to refillable beverage containers.

Beginning two years after the bill's effective date, all glass containers sold or offered for sale in the State would be required to contain, on average, at least 35 percent postconsumer recycled content. However, if a manufacturer certifies to the Department of Environmental Protection (DEP) that its use of postconsumer recycled content is made up of at least 50 percent mixed-color cullet, then the manufacturer's glass containers would only be required to contain, on average, 25 percent postconsumer recycled content.

Beginning two years after the bill's effective date, paper carryout bags sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 40 percent postconsumer recycled content, except that paper carryout bags that hold eight pounds or less would only be required to contain, on average, at least 20 percent postconsumer recycled content. All plastic carryout bags sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 20 percent postconsumer recycled content beginning two years after the bill's effective date, and 40 percent postconsumer recycled content beginning five years after the bill's effective date. Beginning two years after the bill's effective date, all plastic trash bags sold or offered for sale in the State would be required to contain, on average, at least 10 percent postconsumer recycled content, and this requirement would increase to 20 percent five years after the bill's effective date. The requirement would not apply to plastic trash bags designed to hold, store, or transport hazardous waste or medical waste.

Packages or containers that contain milk products, plant-based products with names that include the names of dairy foods such as "milk," medical food, or infant formula would be exempt from the postconsumer recycled content requirements of the bill. In addition, packages or containers that contain food, except for plastic beverage containers or glass beverage containers, would be exempt from the postconsumer recycled content requirements of the bill for a period of five years.

A manufacturer would be required to achieve compliance with the postconsumer recycled content requirements of the bill based on the average amount of postconsumer recycled content, by weight, contained in its products. A manufacturer would be required to calculate its average using data specific to its products sold or offered for sale in New Jersey, unless the manufacturer can demonstrate to the DEP that those data are unavailable and infeasible to generate, in which case the manufacturer could use nationwide data.

Under the bill, the DEP would be authorized to review and adjust any of the postconsumer recycled content requirements established in the bill through rule or regulation. In making an adjustment, the DEP would be required to consider various factors, including changes in market conditions, recycling rates, the availability of recycled material, the capacity of recycling or processing infrastructure, and progress made by the manufacturers in meeting the postconsumer recycled content requirements.

The bill provides that a manufacturer may apply to the DEP for a waiver from the postconsumer recycled content requirements. The DEP would be authorized to grant a waiver if the manufacturer demonstrates, and the DEP finds, in writing, that: (1) the manufacturer cannot achieve the postconsumer recycled content requirements and remain in compliance with another State or federal law, rule, or

regulation; (2) it is not technologically feasible for the manufacturer to achieve the requirements; (3) the manufacturer cannot comply with the postconsumer recycled content requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material; or (4) the manufacturer cannot comply for another reason as determined by the DEP pursuant to rule or regulation. In order to qualify for a waiver, a manufacturer would be required to submit documentation from a federal or State agency or certified third-party expert, as appropriate, demonstrating that the manufacturer cannot comply with the requirements for one of the reasons set forth above.

Under the bill, the DEP would be authorized to require a manufacturer that is temporarily exempt from the postconsumer recycled content requirements, or that has submitted a request for a waiver, to prepare and submit to the DEP an alternative compliance plan that demonstrates that the manufacturer is taking, and will continue to take, all feasible actions to ensure the reduction, collection, recycling, and reuse of packaging materials, and to ensure the use of postconsumer recycled content. The DEP would be required to adopt rules and regulations setting forth the substantive requirements for the alternative compliance plan, which could include sustainable materials management protocols, light weighting, lifecycle analyses, and other measures. The DEP would have the authority to approve or disapprove an alternative compliance plan, and to require a manufacturer to make any revisions or modifications to its plan as the DEP deems necessary, consistent with the bill and the DEP's rules and regulations.

Failure by a manufacturer to comply with an approved alternative compliance plan would constitute a violation of the provisions in the bill. The bill would authorize the DEP to enter into a contract or other legally binding agreement with one or more trade associations representing manufacturers, which would allow the trade association, in lieu of the manufacturers, to prepare and submit an alternative compliance plan, and to undertake the actions described in the plan.

Each year, manufacturers of products covered under the bill would be required to register with the DEP and pay an annual registration fee of \$1,000, except that a manufacturer who demonstrates to the DEP that their gross revenue is below \$5,000,000 would be exempt from paying this fee. A manufacturer that fails to register with the DEP would first receive a written warning and thereafter be subject to the penalties established pursuant to the bill. Each year, manufacturers would also be required to certify, in writing, to the DEP whether or not their products comply with the postconsumer recycled content requirements of the bill or are otherwise exempt or have been approved for a waiver. If the manufacturer claims an exemption, the manufacturer would be required to set forth the specific basis upon



which the exemption is claimed, and submit such proof as the DEP determined necessary.

Under the bill, each manufacturer would be required to maintain records that demonstrate, for all applicable products generated or produced by the manufacturer, whether and how the manufacturer has complied with the postconsumer recycled content requirements. The DEP would be authorized to establish specific requirements for the record and to request the records from a manufacturer at any time. The DEP would also be authorized to audit or investigate a manufacturer, at any time, to assess the manufacturer's compliance with the bill. The DEP would be required to publish a list of registered manufacturers, their compliance status, and other information the DEP deems appropriate, annually, on its Internet website.

Beginning two years after the bill's effective date, a person would be prohibited from selling or offering for sale in the State any polystyrene loose fill packaging, commonly known as packing peanuts.

A person who violates the provisions of the bill would be subject to a civil administrative penalty of between \$1,000 and \$25,000 for each violation, and each day during which the violation continues would constitute an additional, separate, and distinct offense. The amount of any civil administrative penalty would be assessed pursuant to rules and regulations adopted by the DEP for violations of similar type, seriousness, and duration. With respect to violations related to the amount of recycled content contained in a manufacturer's products, in lieu of the penalties described above, the DEP would assess a civil administrative penalty on a per-pound basis for each pound of virgin material that is used where recycled material is required. A person who violates the provisions of the bill, and any order issues pursuant thereto, or who fails to pay in full a civil administrative penalty, would be subject, upon order of a court, to a civil penalty not to exceed \$50,000, and each day during which the violation continues would constitute an additional, separate, and distinct offense. In addition to these penalties, a person who knowingly, purposely, or recklessly makes a false or misleading statement to the DEP on any certification or registration would be guilty of a crime of the third degree and subject to a fine of up to \$50,000 and restitution. The bill also establishes other remedies and enforcement mechanisms.

Under the bill, any proprietary information or trade secrets included in any registration, certification, or other document submitted to the DEP would not be made available to the general public under the open public records act.

The bill would require the DEP, in consultation with the Association of New Jersey Recyclers and the Clean Communities Program, to develop and implement a Statewide public information and education program to encourage, support, and increase the recycling of certain packaging products and containers.

Finally, the bill would preempt any municipal rule, regulation, code, or ordinance regulating postconsumer recycled content of certain packaging products and containers.

As reported by the committee, this committee substitute is identical to Senate Bill No. 2515 (SCS) (2R) as amended and also reported by the committee.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 4676**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: DECEMBER 13, 2021

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4676 (ACS), with committee amendments.

This bill, as amended by the committee, would establish postconsumer recycled content requirements for rigid plastic containers, glass containers, paper and plastic carryout bags, and plastic trash bags, and prohibit the sale of polystyrene loose fill packaging.

Specifically, beginning two years after the bill's effective date, all rigid plastic containers sold, offered for sale, or used in association with the sale or offer for sale of a product in the State by a manufacturer would be required to contain, on average, at least 25 percent postconsumer recycled content. Beginning five years after the effective date, and every three years thereafter, the percentage of postconsumer recycled content required for rigid plastic containers would increase by five percent, until reaching 50 percent. The bill provides exemptions from the postconsumer recycled content requirements for several types of rigid plastic containers.

Under the bill, separate requirements would apply to plastic beverage containers. Specifically, beginning two years after the bill's effective date, all plastic beverage containers sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 15 percent postconsumer recycled content. Beginning five years after the bill's effective date, and every three years thereafter, the percentage of postconsumer recycled content required would increase by five percent until reaching 50 percent. The recycled content requirements for plastic beverage containers would not apply to refillable beverage containers.

Beginning two years after the bill's effective date, all glass containers sold or offered for sale in the State would be required to contain, on average, at least 35 percent postconsumer recycled content. However, if a manufacturer certifies to the Department of Environmental Protection (DEP) that its use of postconsumer recycled content is made up of at least 50 percent mixed-color cullet, then the

manufacturer's glass containers would only be required to contain, on average, 25 percent postconsumer recycled content.

Beginning two years after the bill's effective date, paper carryout bags sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 40 percent postconsumer recycled content, except that paper carryout bags that hold eight pounds or less would only be required to contain, on average, at least 20 percent postconsumer recycled content. All plastic carryout bags sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 20 percent postconsumer recycled content beginning two years after the bill's effective date, and 40 percent postconsumer recycled content beginning five years after the bill's effective date. Beginning two years after the bill's effective date, all plastic trash bags sold or offered for sale in the State would be required to contain, on average, at least 10 percent postconsumer recycled content, and this requirement would increase to 20 percent five years after the bill's effective date. The requirement would not apply to plastic trash bags designed to hold, store, or transport hazardous waste or medical waste.

Packages or containers that contain milk products, plant-based products with names that include the names of dairy foods such as "milk," medical food, or infant formula would be exempt from the postconsumer recycled content requirements of the bill. In addition, packages or containers that contain food, except for plastic beverage containers or glass beverage containers, would be exempt from the postconsumer recycled content requirements of the bill for a period of five years.

A manufacturer would be required to achieve compliance with the postconsumer recycled content requirements of the bill based on the average amount of postconsumer recycled content, by weight, contained in its products. A manufacturer would be required to calculate its average using data specific to its products sold or offered for sale in New Jersey, unless the manufacturer can demonstrate to the DEP that those data are unavailable and infeasible to generate, in which case the manufacturer could use nationwide data.

Under the bill, the DEP would be authorized to review and adjust any of the postconsumer recycled content requirements established in the bill through rule or regulation. In making an adjustment, the DEP would be required to consider various factors, including changes in market conditions, recycling rates, the availability of recycled material, the capacity of recycling or processing infrastructure, and progress made by the manufacturers in meeting the postconsumer recycled content requirements.

The bill provides that a manufacturer may apply to the DEP for a waiver from the postconsumer recycled content requirements. The DEP would be authorized to grant a waiver if the manufacturer demonstrates, and the DEP finds, in writing, that: (1) the manufacturer

cannot achieve the postconsumer recycled content requirements and remain in compliance with another State or federal law, rule, or regulation; (2) it is not technologically feasible for the manufacturer to achieve the requirements; (3) the manufacturer cannot comply with the postconsumer recycled content requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material; or (4) the manufacturer cannot comply for another reason as determined by the DEP pursuant to rule or regulation. In order to qualify for a waiver, a manufacturer would be required to submit documentation from a federal or State agency or certified third-party expert, as appropriate, demonstrating that the manufacturer cannot comply with the requirements for one of the reasons set forth above.

Under the bill, the DEP would be authorized to require a manufacturer that is temporarily exempt from the postconsumer recycled content requirements, or that has submitted a request for a waiver, to prepare and submit to the DEP an alternative compliance plan that demonstrates that the manufacturer is taking, and will continue to take, all feasible actions to ensure the reduction, collection, recycling, and reuse of packaging materials, and to ensure the use of postconsumer recycled content. The DEP would be required to adopt rules and regulations setting forth the substantive requirements for the alternative compliance plan, which could include sustainable materials management protocols, light weighting, lifecycle analyses, and other measures. The DEP would have the authority to approve or disapprove an alternative compliance plan, and to require a manufacturer to make any revisions or modifications to its plan as the DEP deems necessary, consistent with the bill and the DEP's rules and regulations.

Failure by a manufacturer to comply with an approved alternative compliance plan would constitute a violation of the provisions in the bill. The bill would authorize the DEP to enter into a contract or other legally binding agreement with one or more trade associations representing manufacturers, which would allow the trade association, in lieu of the manufacturers, to prepare and submit an alternative compliance plan, and to undertake the actions described in the plan.

Each year, manufacturers of products covered under the bill would be required to register with the DEP and pay an annual registration fee of \$1,000, except that a manufacturer who demonstrates to the DEP that their gross revenue is below \$5,000,000 would be exempt from paying this fee. A manufacturer that fails to register with the DEP would first receive a written warning and thereafter be subject to the penalties established pursuant to the bill. Each year, manufacturers would also be required to certify, in writing, to the DEP whether or not their products comply with the postconsumer recycled content requirements of the bill or are otherwise exempt or have been approved for a waiver. If the manufacturer claims an exemption, the

manufacturer would be required to set forth the specific basis upon which the exemption is claimed, and submit such proof as the DEP determined necessary.

Under the bill, each manufacturer would be required to maintain records that demonstrate, for all applicable products generated or produced by the manufacturer, whether and how the manufacturer has complied with the postconsumer recycled content requirements. The DEP would be authorized to establish specific requirements for the record and to request the records from a manufacturer at any time. The DEP would also be authorized to audit or investigate a manufacturer, at any time, to assess the manufacturer's compliance with the bill. The DEP would be required to publish a list of registered manufacturers, their compliance status, and other information the DEP deems appropriate, annually, on its Internet website.

Beginning two years after the bill's effective date, a person would be prohibited from selling or offering for sale in the State any polystyrene loose fill packaging, commonly known as packing peanuts.

A person who violates the provisions of the bill would be subject to a civil administrative penalty of between \$1,000 and \$25,000 for each violation, and each day during which the violation continues would constitute an additional, separate, and distinct offense. The amount of any civil administrative penalty would be assessed pursuant to rules and regulations adopted by the DEP for violations of similar type, seriousness, and duration. With respect to violations related to the amount of recycled content contained in a manufacturer's products, in lieu of the penalties described above, the DEP would assess a civil administrative penalty on a per-pound basis for each pound of virgin material that is used where recycled material is required. A person who violates the provisions of the bill, and any order issues pursuant thereto, or who fails to pay in full a civil administrative penalty, would be subject, upon order of a court, to a civil penalty not to exceed \$50,000, and each day during which the violation continues would constitute an additional, separate, and distinct offense. In addition to these penalties, a person who knowingly, purposely, or recklessly makes a false or misleading statement to the DEP on any certification or registration would be guilty of a crime of the third degree and subject to a fine of up to \$50,000 and restitution. The bill also establishes other remedies and enforcement mechanisms.

Under the bill, any proprietary information or trade secrets included in any registration, certification, or other document submitted to the DEP would not be made available to the general public under the open public records act.

The bill would require the DEP, in consultation with the Association of New Jersey Recyclers and the Clean Communities Program, to develop and implement a Statewide public information

and education program to encourage, support, and increase the recycling of certain packaging products and containers.

Finally, the bill would preempt any municipal rule, regulation, code, or ordinance regulating postconsumer recycled content of certain packaging products and containers.

As amended and reported by the committee, this bill is identical to Senate Bill No. 2515 (SCS) (3R) as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

The committee amendments to the bill revise the definition of “manufacturer” to clarify how the bill applies to licensees and add a definition for the term “licensee.”

FISCAL IMPACT:

The Office of Legislative Services (OLS) determines that there will be a marginal expenditure increase from the State General Fund by the Department of Environmental Protection (DEP) to implement the bill’s postconsumer recycling content requirements. The OLS determines that the requirements of this bill would require hiring additional personnel. The DEP assumes that the cost of hiring one additional person to fulfil the requirements of the bill would be \$80,000 annually.

The OLS notes that there may also be a marginal increase in State revenues from registration fees and civil penalties established pursuant to the bill. The precise revenue increase cannot be determined as it depends on the number of manufacturers that will be required to pay the registration fee and on the number of manufacturers that violate the provisions of the bill and are assessed penalties.

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR

**ASSEMBLY, No. 4676**

**STATE OF NEW JERSEY**

**219th LEGISLATURE**

DATED: JANUARY 6, 2022

## SUMMARY

- Synopsis:** Establishes postconsumer recycled content requirements for rigid plastic containers, glass containers, paper and plastic carryout bags, and plastic trash bags; prohibits sale of polystyrene loose fill packaging.
- Type of Impact:** Annual expenditure increase and revenue increase to the State General Fund.
- Agencies Affected:** Department of Environmental Protection.

### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>Annual State Expenditure Increase</b>		Marginal	
<b>Annual State Revenue Increase</b>		Indeterminate	

- The Office of Legislative Services (OLS) determines that there will be a marginal expenditure increase from the State General Fund by the Department of Environmental Protection (DEP) to implement the bill's postconsumer recycling content requirements. The OLS determines that the requirements of this bill would require hiring additional personnel. The DEP assumes that the cost of hiring one additional person to fulfil the requirements of the bill would be \$80,000 annually.
- The OLS notes that there may also be a marginal increase in State revenues from registration fees and civil penalties established pursuant to the bill. The precise revenue increase cannot be determined as it depends on the number of manufacturers that will be required to pay the registration fee and on the number of manufacturers that violate the provisions of the bill and are assessed penalties.



## **BILL DESCRIPTION**

This bill would establish postconsumer recycled content requirements for rigid plastic containers, glass containers, plastic beverage containers, paper and plastic carryout bags, and plastic trash bags, and prohibit the sale of polystyrene loose fill packaging.

Under the bill, the DEP would be authorized to review and adjust any of the postconsumer recycled content requirements established in the bill through rule or regulation. In making an adjustment, the DEP would be required to consider various factors, including changes in market conditions, recycling rates, the availability of recycled material, the capacity of recycling or processing infrastructure, and progress made by the manufacturers in meeting the postconsumer recycled content requirements.

The bill provides that a manufacturer may apply to the DEP for a waiver from the postconsumer recycled content requirements. The DEP would be authorized to grant a waiver if the manufacturer demonstrates, and the DEP finds, in writing, that: (1) the manufacturer cannot achieve the postconsumer recycled content requirements and remain in compliance with another State or federal law, rule, or regulation; (2) it is not technologically feasible for the manufacturer to achieve the requirements; (3) the manufacturer cannot comply with the postconsumer recycled content requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material; or (4) the manufacturer cannot comply for another reason as determined by the DEP pursuant to rule or regulation. In order to qualify for a waiver, a manufacturer would be required to submit documentation from a federal or State agency or certified third-party expert, as appropriate, demonstrating that the manufacturer cannot comply with the requirements for one of the reasons set forth above.

Under the bill, the DEP would be authorized to require a manufacturer that is temporarily exempt from the postconsumer recycled content requirements, or that has submitted a request for a waiver, to prepare and submit to the DEP an alternative compliance plan that demonstrates that the manufacturer is taking, and will continue to take, all feasible actions to ensure the reduction, collection, recycling, and reuse of packaging materials, and to ensure the use of postconsumer recycled content. The DEP would be required to adopt rules and regulations setting forth the substantive requirements for the alternative compliance plan, which could include sustainable materials management protocols, light weighting, lifecycle analyses, and other measures. The DEP would have the authority to approve or disapprove an alternative compliance plan, and to require a manufacturer to make any revisions or modifications to its plan as the DEP deems necessary, consistent with the bill and the DEP's rules and regulations.

Failure by a manufacturer to comply with an approved alternative compliance plan would constitute a violation of the provisions in the bill. The bill would authorize the DEP to enter into a contract or other legally binding agreement with one or more trade associations representing manufacturers, which would allow the trade association, in lieu of the manufacturers, to prepare and submit an alternative compliance plan, and to undertake the actions described in the plan.

Beginning six months after the effective date of the bill and annually thereafter, manufacturers would be required to register with the DEP and pay an annual registration fee of \$1,000, except that a manufacturer who demonstrates to the DEP that their gross revenue is below \$5 million would be exempt from paying this fee. A manufacturer that fails to register with the DEP would first receive a written warning and thereafter be subject to the penalties established pursuant to the bill. Three years and six months after the effective date of the bill and annually thereafter, manufacturers would also be required to certify, in writing, to the DEP whether or not their products comply with the postconsumer recycled content requirements of the bill or are otherwise exempt or have been approved for a waiver. If the manufacturer claims an exemption, the

manufacturer would be required to set forth the specific basis upon which the exemption is claimed, and submit such proof as the DEP determined necessary.

Under the bill, each manufacturer would be required to maintain records that demonstrate, for all applicable products generated or produced by the manufacturer, whether and how the manufacturer has complied with the postconsumer recycled content requirements. The DEP would be authorized to establish specific requirements for the record and to request the records from a manufacturer at any time. The DEP would also be authorized to audit or investigate a manufacturer, at any time, to assess the manufacturer's compliance with the bill. The DEP would be required to publish a list of registered manufacturers, their compliance status, and other information the DEP deems appropriate, annually, on its Internet website.

A person who violates the provisions of the bill would be subject to a civil administrative penalty of between \$1,000 and \$25,000 for each violation, and each day during which the violation continues would constitute an additional, separate, and distinct offense. The amount of any civil administrative penalty would be assessed pursuant to rules and regulations adopted by the DEP for violations of similar type, seriousness, and duration. With respect to violations related to the amount of recycled content contained in a manufacturer's products, in lieu of the penalties described above, the DEP would assess a civil administrative penalty on a per-pound basis for each pound of virgin material that is used where recycled material is required. A person who violates the provisions of the bill, and any order issued pursuant thereto, or who fails to pay in full a civil administrative penalty, would be subject, upon order of a court, to a civil penalty not to exceed \$50,000, and each day during which the violation continues would constitute an additional, separate, and distinct offense. In addition to these penalties, a person who knowingly, purposely, or recklessly makes a false or misleading statement to the DEP on any certification or registration would be guilty of a crime of the third degree and subject to a fine of up to \$50,000 and restitution. The bill also establishes other remedies and enforcement mechanisms.

Finally, the bill would require the DEP, in consultation with the Association of New Jersey Recyclers and the Clean Communities Program, to develop and implement a statewide public information and education program to encourage, support, and increase the recycling of certain packaging products and containers.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS determines that there will be an marginal annual expenditure increase from the State General Fund by the DEP to implement the bill, including the following additional administrative tasks: (1) reviewing and adjusting any of the postconsumer recycled content requirements established in the bill through rule or regulation; (2) granting waivers to a manufacturer from the postconsumer recycled content requirements; (3) adopting rules and regulations setting forth the substantive requirements for alternative compliance plans; (4) approving or disapproving alternative compliance plans; (5) auditing or investigating manufacturers to assess their compliance with the bill; (6) publishing a list of registered manufacturers, their compliance status, and other information the DEP deems appropriate, annually, on its Internet website; (7) establishing a per-pound penalty for each pound of virgin material used when recycled content is

required in a manufacturer's products; and (8) developing and implementing a Statewide public information and education program to encourage, support, and increase the recycling of certain packaging products and containers. The OLS determines that the requirements of this bill would require hiring additional personnel. The DEP assumes that the cost of hiring one additional person to fulfil the requirements of the bill would be \$80,000 annually.

The OLS notes that there may also be a marginal increase in State revenues from registration fees and civil penalties established pursuant to the bill. The precise revenue increase cannot be determined as it depends on the number of manufacturers that will be required to pay the registration fee and on the number of manufacturers that violate the provisions of the bill and are assessed penalties. Each manufacturer would be required to register with the DEP and pay an annual registration fee of \$1,000. This bill also establishes civil administrative penalty of between \$1,000 and \$25,000 for each violation, and an alternative penalty based on the amount of excess virgin material used for persons who violate the recycled content requirements of the bill, but otherwise conform to its provisions. In addition to these penalties, a person who knowingly, purposely, or recklessly makes a false or misleading statement to the DEP on any certification or registration would be guilty of a crime of the third degree and subject to a fine of up to \$50,000 and restitution.

*Section: Environment, Agriculture, Energy, and Natural Resources*

*Analyst: Eric Hansen  
Associate Research Analyst*

*Approved: Thomas Koenig  
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 4676**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JANUARY 6, 2022

The Assembly Appropriations Committee reports favorably Assembly Committee Substitute for Bill No. 4676 (1R), with committee amendments.

This bill, as amended by the committee, would establish postconsumer recycled content requirements for rigid plastic containers, glass containers, paper and plastic carryout bags, and plastic trash bags, and prohibit the sale of polystyrene loose fill packaging.

Specifically, beginning two years after the bill's effective date, all rigid plastic containers sold, offered for sale, or used in association with the sale or offer for sale of a product in the State by a manufacturer would be required to contain, on average, at least 10 percent postconsumer recycled content. Beginning five years after the effective date, and every three years thereafter, the percentage of postconsumer recycled content required for rigid plastic containers would increase by 10 percent, until reaching 50 percent. The bill provides exemptions from the postconsumer recycled content requirements for several types of rigid plastic containers.

Under the bill, separate requirements would apply to plastic beverage containers. Specifically, beginning two years after the bill's effective date, all plastic beverage containers sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 15 percent postconsumer recycled content. Beginning five years after the bill's effective date, and every three years thereafter, the percentage of postconsumer recycled content required would increase by five percent until reaching 50 percent, except for plastic beverage containers that are filled using the "hot fill process," as defined by the bill, which would cap at 30 percent postconsumer recycled content. The recycled content requirements for plastic beverage containers would not apply to refillable beverage containers.

Beginning two years after the bill's effective date, all glass containers sold or offered for sale in the State would be required to contain, on average, at least 35 percent postconsumer recycled content.

However, if a manufacturer certifies to the Department of Environmental Protection (DEP) that its use of postconsumer recycled content is made up of at least 50 percent mixed-color cullet, then the manufacturer's glass containers would only be required to contain, on average, 25 percent postconsumer recycled content.

Beginning two years after the bill's effective date, paper carryout bags sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 40 percent postconsumer recycled content, except that paper carryout bags that hold eight pounds or less would only be required to contain, on average, at least 20 percent postconsumer recycled content. All plastic carryout bags sold or offered for sale in the State by a manufacturer would be required to contain, on average, at least 20 percent postconsumer recycled content beginning two years after the bill's effective date, and 40 percent postconsumer recycled content beginning five years after the bill's effective date. Beginning two years after the bill's effective date, all plastic trash bags sold or offered for sale in the State would be required to contain a certain percentage of recycled content, which would vary according to the thickness of the bag, as set forth in paragraph (1) of subsection a. of section 8 of the bill. Beginning five years after the bill's effective date, the recycled content requirements would increase, as set forth in paragraph (2) of subsection a. of section 8 of the bill. The requirement would not apply to plastic trash bags designed to hold, store, or transport hazardous waste or medical waste.

Packages or containers that contain milk products, plant-based products with names that include the names of dairy foods such as "milk," medical food, food for special dietary use, or infant formula would be exempt from the postconsumer recycled content requirements of the bill. In addition, packages or containers that contain food, except for plastic beverage containers or glass beverage containers, would be exempt from the postconsumer recycled content requirements of the bill for a period of five years.

A manufacturer would be required to achieve compliance with the postconsumer recycled content requirements of the bill based on the average amount of postconsumer recycled content, by weight or another metric, as determined by the DEP, contained in its products. A manufacturer would be required to calculate its average using data specific to its products sold or offered for sale in New Jersey, unless the manufacturer can demonstrate to the DEP that those data are unavailable and infeasible to generate, in which case the manufacture could use nationwide data.

Under the bill, the DEP would be authorized to review and adjust any of the postconsumer recycled content requirements established in the bill through rule or regulation. In making an adjustment, the DEP would be required to consider various factors, including changes in market conditions, recycling rates, the availability of recycled material, the capacity of recycling or processing infrastructure, and

progress made by the manufacturers in meeting the postconsumer recycled content requirements.

The bill provides that a manufacturer may apply to the DEP for a waiver from the postconsumer recycled content requirements. The DEP would be authorized to grant a waiver if the manufacturer demonstrates, and the DEP finds, in writing, that: (1) the manufacturer cannot achieve the postconsumer recycled content requirements and remain in compliance with another State or federal law, rule, or regulation; (2) it is not technologically feasible for the manufacturer to achieve the requirements; (3) the manufacturer cannot comply with the postconsumer recycled content requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material; or (4) the manufacturer cannot comply for another reason as determined by the DEP pursuant to rule or regulation. In order to qualify for a waiver, a manufacturer would be required to submit documentation from a federal or State agency or certified third-party expert, as appropriate, demonstrating that the manufacturer cannot comply with the requirements for one of the reasons set forth above.

Under the bill, the DEP would be authorized to require a manufacturer that is temporarily exempt from the postconsumer recycled content requirements, or that has submitted a request for a waiver, to prepare and submit to the DEP an alternative compliance plan that demonstrates that the manufacturer is taking, and will continue to take, all feasible actions to ensure the reduction, collection, recycling, and reuse of packaging materials, and to ensure the use of postconsumer recycled content. The DEP would be required to adopt rules and regulations setting forth the substantive requirements for the alternative compliance plan, which could include sustainable materials management protocols, light weighting, lifecycle analyses, and other measures. The DEP would have the authority to approve or disapprove an alternative compliance plan, and to require a manufacturer to make any revisions or modifications to its plan as the DEP deems necessary, consistent with the bill and the DEP's rules and regulations.

Failure by a manufacturer to comply with an approved alternative compliance plan would constitute a violation of the provisions in the bill. The bill would authorize the DEP to enter into a contract or other legally binding agreement with one or more trade associations representing manufacturers, which would allow the trade association, in lieu of the manufacturers, to prepare and submit an alternative compliance plan, and to undertake the actions described in the plan.

Each year, manufacturers of products covered under the bill would be required to register with the DEP and pay an annual registration fee of \$1,000, except that a manufacturer who demonstrates to the DEP that their gross revenue is below \$5,000,000 would be exempt from paying this fee. A manufacturer that fails to register with the DEP

would first receive a written warning and thereafter be subject to the penalties established pursuant to the bill. Each year, manufacturers would also be required to certify, in writing, to the DEP whether or not their products comply with the postconsumer recycled content requirements of the bill or are otherwise exempt or have been approved for a waiver. If the manufacturer claims an exemption, the manufacturer would be required to set forth the specific basis upon which the exemption is claimed, and submit such proof as the DEP determined necessary.

Under the bill, each manufacturer would be required to maintain records that demonstrate, for all applicable products generated or produced by the manufacturer, whether and how the manufacturer has complied with the postconsumer recycled content requirements. The DEP would be authorized to establish specific requirements for the record and to request the records from a manufacturer at any time. The DEP would also be authorized to audit or investigate a manufacturer, at any time, to assess the manufacturer's compliance with the bill. The DEP would be required to publish a list of registered manufacturers, their compliance status, and other information the DEP deems appropriate, annually, on its Internet website.

Beginning two years after the bill's effective date, a person would be prohibited from selling or offering for sale in the State any polystyrene loose fill packaging, commonly known as packing peanuts.

A person who violates the provisions of the bill would be subject to a civil administrative penalty of between \$1,000 and \$25,000 for each violation, and each day during which the violation continues would constitute an additional, separate, and distinct offense. The amount of any civil administrative penalty would be assessed pursuant to rules and regulations adopted by the DEP for violations of similar type, seriousness, and duration. With respect to violations related to the amount of recycled content contained in a manufacturer's products, in lieu of the penalties described above, the DEP would assess a civil administrative penalty on a per-pound basis for each pound of virgin material that is used where recycled material is required. A person who violates the provisions of the bill, and any order issues pursuant thereto, or who fails to pay in full a civil administrative penalty, would be subject, upon order of a court, to a civil penalty not to exceed \$50,000, and each day during which the violation continues would constitute an additional, separate, and distinct offense. In addition to these penalties, a person who knowingly, purposely, or recklessly makes a false or misleading statement to the DEP on any certification or registration would be guilty of a crime of the third degree and subject to a fine of up to \$50,000 and restitution. The bill also establishes other remedies and enforcement mechanisms.

Under the bill, any proprietary information or trade secrets included in any registration, certification, or other document submitted

to the DEP would not be made available to the general public under the open public records act.

The bill would require the DEP, in consultation with the Association of New Jersey Recyclers and the Clean Communities Program, to develop and implement a Statewide public information and education program to encourage, support, and increase the recycling of certain packaging products and containers. The bill would require the DEP to adopt rules and regulations to implement the bill's provisions, no later than two years after the bill's effective date. The bill would require the rules and regulations to establish incentives for manufacturers, recyclers, and retailers to collect and reuse polyethylene film, to the extent that funds are made available for this purpose.

Finally, the bill would preempt any municipal rule, regulation, code, or ordinance regulating postconsumer recycled content of certain packaging products and containers.

As amended and reported by the committee, Assembly Bill No. 4676 (ACS/1R) is identical to Senate Bill No. 2515 (SCS/4R), which also was amended and reported by the committee on this date.

#### COMMITTEE AMENDMENTS

The committee amendments to the bill:

1) provide that a manufacture may utilize a metric other than weight when determining the average amount of postconsumer recycled content in its products, if authorized by the DEP;

2) revise the bill's postconsumer recycled content requirements for rigid plastic containers, reducing the initial requirement from 25 percent to 10 percent, and increasing the amount by which the requirement increases (every three years beginning five years after the bill's effective date) from five percent to 10 percent;

3) provide that plastic beverage containers that are filled using a hot fill process would not be required to contain more than 30 percent postconsumer recycled content, under the bill, and add a definition of "hot fill process;"

4) revise the bill's postconsumer recycled content requirements for plastic trash bags, including making the requirement vary according to the thickness of the plastic bag;

5) exempt from the bill's postconsumer recycled content requirements packages and containers that contain "food for special dietary use," as that term is defined in the "Federal Food, Drug, and Cosmetic Act;" and

6) require the DEP to establish incentives for manufacturers, recyclers, and retailers to collect and reuse polyethylene film, to the extent that funds are made available for this purpose, when it adopts rules and regulations to implement the bill.



**FISCAL IMPACT**

The Office of Legislative Services (OLS) determines that there will be a marginal expenditure increase from the State General Fund by the Department of Environmental Protection (DEP) to implement the bill's postconsumer recycling content requirements. The OLS determines that the requirements of this bill would require hiring additional personnel. The OLS assumes that the cost of hiring one additional person to fulfil the requirements of the bill would be \$80,000 annually.

The OLS notes that there may also be a marginal increase in State revenues from registration fees and civil penalties established pursuant to the bill. The precise revenue increase cannot be determined as it depends on the number of manufacturers that will be required to pay the registration fee and on the number of manufacturers that violate the provisions of the bill and are assessed penalties.

# Governor Murphy Takes Action on Legislation

01/18/2022

**TRENTON** – Governor Murphy today signed the following bills:

**S-384/A-1964 (Weinberg, Singleton/Stanley, Munoz, McKeon, Sumter, Lampitt, Vainieri Huttie, Wimberly, Mosquera, Downey, Chiaravalloti)** – Expands training for judges, law enforcement officers and assistant county prosecutors concerning handling of domestic violence cases

**S-386/A-1763 (Weinberg, Singleton/Munoz, Vainieri Huttie, Downey, Mosquera, Lampitt, Benson)** - Establishes mandatory domestic violence training for municipal prosecutors

**S-396/A-4903 (Weinberg, Addiego/Johnson, Mukherji)** – Adjusts statute of limitations on damage claim for construction defect in common interest communities

**S-705/A-1077 (Ruiz, Cunningham/Speight, Vainieri Huttie, Downey)** – Requires DOH to develop and implement plan to improve access to perinatal mood and anxiety disorder screening

**SCS for S-844 and 2533/ACS for A-4635 (Pou, Greenstein/Zwicker, Lopez)** – Revises reporting requirements for charitable organizations and non-profit corporations

**S-867/A-2316 (Pou/Jimenez, Giblin, Johnson)** – Permits physical therapists to perform dry needling under certain circumstances

**S-896/A-2396 (Pou, Turner/Wimberly, Timberlake, Murphy)** – Expands Office of Public Defender representation of juveniles; repeals section 4 of P.L.1968, c.371

**S-969WGR/ACS for A-2687 (Ruiz, Turner/Mazzeo, Lampitt, Moen)** – Establishes loan redemption program for certain teachers to redeem loan amounts received under New Jersey College Loans to Assist State Students Loan Program through employment in certain schools; makes annual appropriation of \$1 million

**S-994/A-6248 (Sweeney, Singleton/Lopez)** – Requires State agencies and political subdivisions to make good faith effort to purchase five percent of goods and services from Central Nonprofit Agency

**SCS for S-1016/ACS for A-2070 (Smith, Bateman/Calabrese, Mukherji, Benson)** – Restricts use of neonicotinoid pesticides

**S-1020/AS for ACS for A-1184 and 4414 (Ruiz, Gopal/Zwicker, Conaway, Verrelli, Caputo)** – Requires School Report Card to include demographic breakdown of students who receive disciplinary actions; requires Commissioner of Education to establish Statewide database concerning certain disciplinary actions

**S-1559/A-1659 (Scutari, Diegnan/Quijano, Bramnick, Mukherji, Sumter, Downey, Dancer)** – “New Jersey Insurance Fair Conduct Act”

**S-1771/A-1489 (Madden, Turner/Moriarty, Mosquera, Vainieri Huttie)** – Expressly prohibits invasive examination of unconscious patient by health care practitioner without patient’s prior informed written consent

**S-2160wGR/A-5701 (Sweeney, Oroho, Singer/Carter, Lampitt, Jasey)** – Creates special education unit within the Office of Administrative Law; requires annual report

**SCS for S-2515/ACS for A-4676 (Smith, Greenstein/Quijano, Jasey, McKeon)** – Establishes postconsumer recycled content requirements for rigid plastic containers, glass containers, paper and plastic carryout bags, and plastic trash bags; prohibits sale of polystyrene loose fill packaging

**S-2723/A-2614 (Sweeney, Turner/Murphy, Benson, Timberlake)** – “21st Century Integrated Digital Experience Act”

**S-2830/A-5291 (Ruiz, Singleton/Quijano)** – Requires educator preparation program to report passing rates of students who complete certain tests and to disseminate information on test fee waiver programs, and permits collection of student fee for certain testing costs

**S-2835/A-5292 (Ruiz, Cunningham/Quijano, Lampitt, Jasey)** – Requires compilation of data and issuance of annual reports on New Jersey teacher workforce

**S-2921/A-5554 (Gopal, Greenstein/Houghtaling, Downey, Mukherji)** – Allows municipalities to designate outdoor areas upon which people may consume alcoholic beverages

**S-3009/A-4847 (Vitale, Gopal, Gill/Vainieri Huttle, Quijano, Verrelli)** – Authorizes expanded provision of harm reduction services to distribute sterile syringes and provide certain support services to persons who use drugs intravenously

**S-3081/A-5219 (Singleton/McKeon, Dunn)** – Repeals law concerning excess rates and charges for title insurance; makes agreement to use services of title or settlement service company subject to attorney review

**S-3164/A-4987 (Gopal, Singleton/Houghtaling, Vainieri Huttle, Giblin)** – Creates NJ Legislative Youth Council

**S-3265/A-5074 (Diegnan, Greenstein/DeAngelo, Dancer, Mukherji)** – Permits members of SPRS to purchase service credit for prior public employment with federal government or another state

**S-3342/A-5463 (Codey, Singleton/Jasey, Giblin, Timberlake)** – Directs NJT to erect statue in honor of A. Philip Randolph; appropriates \$90,000

**S-3465/A-4336 (Oroho, Sweeney/Houghtaling, Space)** – Directs Department of Agriculture to pay annual premiums to enrolled dairy farmers for certain coverage under the federal Dairy Margin Coverage Program; appropriates \$125,000

**S-3488wGR/A-5537 (Sweeney, Gopal, O'Scanlon/Burzichelli, Dancer, Spearman)** – Modifies certain procedures pertaining to school district regionalization; establishes grant program for cost reimbursement of conducting regionalization feasibility studies; and provides financial incentives for regionalization

**S-3493/A-5458 (Vitale, Gill/Vainieri Huttle, Mukherji, McKnight)** – Permits expungement of possession or distribution of hypodermic syringe or needle offense in cases of previous expungement; repeals criminal offense of possession of syringe

**S-3539/A5409 (T. Kean, Gopal/Houghtaling)** – Directs DEP to establish grant program for local governments to support development of community gardens

**S-3594/A-5509 (Singleton, Scutari/Zwicker, Reynolds-Jackson, Verrelli)** – Provides that in personal

injury or wrongful death lawsuits, calculations of lost or impaired earnings capacity not be reduced because of race, ethnicity, gender identity or expression, or affectional or sexual orientation

**S-3672/A-6009 (Singleton, Turner, Moen, Johnson, McKnight)** – Permits exemption from civil service examination requirement for entry-level law enforcement officers, sheriff's officers, and State and county correctional police officers; permits hiring or appointment of such officers under certain conditions, and makes appropriation

**S-3673/A-6219 (Gopal, Greenstein/Burzichelli)** – Authorizes limited breweries and craft distilleries to sell at retail and offer for sampling purposes product bottled and stored off-site under certain circumstances

**S-3685/A-5576 (Ruiz, Codey/Jasey, Lampitt, Mukherji)** – Permits teacher and professional staff member who provides special services retired from TPAF to return to employment for up to two years without reenrollment in TPAF if employment commences during 2021-2022 and 2022-2023 school years

**S-3707/A-5673 (Vitale, Ruiz/Vainieri Huttle, Downey, Zwicker)** – Repeals statute criminalizing sexual penetration while infected with venereal disease or HIV under certain circumstances; requires that in prosecutions for endangering another by creating substantial risk of transmitting infectious disease, name of defendant and other person be kept confidential

**S-3764/A-3369 (Gopal, Weinberg/Johnson, Stanley, Karabinchak)** – Establishes Commission on Asian American Heritage in DOE

**S-3810/ACS for A-5862 (Sweeney, Addiego, Greenstein/Benson, Quijano)** – "Responsible Collective Negotiations Act"

**S-3968/A-5930 (Singleton, Beach/Sumter, Karabinchak)** – Increases purchasing threshold permitting Director of Division of Purchase and Property to delegate authority to agencies; increases bid advertising threshold on certain contracts by same scale

**S-3975/A-5963 (Greenstein, Oroho/Benson, Vainieri Huttle, DeAngelo)** – Establishes requirements to commence screening newborn infants for congenital cytomegalovirus infection; establishes public awareness campaign

**S-4004wGR/A-5950 (Weinberg, Greenstein/Sumter, Benson, Reynolds-Jackson)** – Establishes database of certain appointed positions and elected offices

**S-4020/A-5867 (Gopal, Cunningham/Chiaravalloti, Jasey, Carter)** – Expands bonding authority of New Jersey Educational Facilities Authority to permit financing for general funding needs at New Jersey's institutions of higher education

**S-4021/A-6100 (Gopal, Ruiz/Mukherji, Jasey, Timberlake, Stanley)** – Requires school districts to provide instruction on history and contributions of Asian Americans and Pacific Islanders as part of implementation of New Jersey Student Learning Standards in Social Studies

**S-4043/A-6005 (Cunningham/Jasey, Greenwald)** – Raises statutory threshold for certain public bidding, permits bidder disqualification due to prior negative experience, adds exemptions to public bidding requirement under "State College Contracts Law," and establishes process for cooperative pricing system

**S-4063/A-6220 (Sweeney/Giblin, Egan)** – Removes New Jersey Maritime Pilot and Docking Pilot Commission from appropriations act provision that limits compensation and health benefits; clarifies PERS and SHBP eligibility for members of commission

**S-4068/ACS for A-6110 and 6185 (Sarlo, Oroho/Benson, Mukherji, Bramnick)** – Revises elective pass-through entity business alternative income tax

**S-4074wGR/A-6000 (Ruiz, Beach/Verrelli, Lampitt, Carter)** – Allows alternative evaluation in place of basic skills testing requirements for certain teacher certification

**SCS for S-4102/A-6230 (Sweeney, Ruiz/Benson, Mejia, Zwicker)** – Establishes Direct Support Professional Career Development Program; appropriates \$1,000,000

**S-4128/A-6231 (Sweeney, Pou/Houghtaling, Conaway, Dancer)** – Requires that only fruits and vegetables grown and packaged in NJ may be labeled by food retailers as local to State

**S-4207/A-6119 (Sweeney, Beach/Mukherji, Egan, Pintor Marin)** – Concerns apprenticeship programs of public works contractors

**S-4210/A-6062 (Sweeney, Greenstein/Greenwald, McKnight, Mukherji)** – Requires EDA to establish loan program to assist certain businesses with funding to provide reasonable accommodations for employees with disabilities

**S-4211/A-6228 (Sweeney, Corrado/Benson, Speight, Zwicker)** – Establishes county college-based adult centers for transition for individuals with developmental disabilities; makes annual appropriation of \$4.5 million

**S-4218/A-6256 (Scutari/Reynolds-Jackson, Wimberly, Mukherji)** – Appropriates \$2 million to CRDA to support costs associated with hosting NAACP National Convention in Atlantic City

**S-4233/A-6229 (Scutari, Gopal/Mukherji, Jimenez)** – Limits fees charged to patients and authorized third parties for copies of medical and billing records

**S-4252/A-6182 (Madden/Murphy, Chaparro)** – Limits extension of mandatory retirement to 90 days from State Police Retirement System during emergencies

**A-259/S-2224 (DeAngelo, Mukherji, Benson/Gopal, Pennacchio)** – Provides civil service preference to military service members who did not serve in theater of operation but received campaign or expedition medal

**A-798/S-52 (Verrelli, Vainieri Huttel, Armato/Singer, Greenstein)** – Establishes local drug overdose fatality review teams

**A-802/S-1352 (Verrelli, Reynolds-Jackson, Murphy/Turner, Pou)** – Requires certain retailers to train employees on gift card fraud

**A-862wGR/S-962 (Chiaravalloti, Karabinchak/Pennacchio, Pou)** – Permits municipalities to refund excess property taxes paid by a taxpayer who wins an assessment appeal as a property tax credit

**A-953/S-4031 (Karabinchak, Houghtaling/Pou)** – Requires architects disclose insurance coverage

**ACS for A-998 and 2349/S-4312 (Moen, Downey, Houghtaling, Benson, Vainieri Huttel/Ruiz, Beach, Singleton)** – The “New Jersey Social Innovation Act”; establishes social innovation loan pilot program and study commission within EDA

**A-1121/S-1871 (Murphy, Dancer, Stanley/Lagana, Pennacchio)** – Upgrades certain crimes of misrepresenting oneself as member or veteran of US Armed Forces or organized militia

**A-1219wGR/S-1054 (Chaparro, McKnight/Stack)** – Requires owner notification of rabies testing protocol prior to testing of owner’s animal for rabies

**A-1229wGR/S-2161 (Schaer, Mosquera, Tucker, Lampitt, Vainieri Huttle, Quijano, Wimberly, Pintor Marin, Jasey/Turner, Singleton)** – Requires DCA to make information on homeless prevention programs and services available on its Internet website

**A-1293/S-3977 (Greenwald, Burzichelli, Mukherji/Greenstein, Gopal)** – Establishes advisory council for the brewery, cidery, meadery, and distillery industries in NJ and provides for funding through certain alcoholic beverage tax receipts

**A-1663/S-1842 (Quijano, Vainieri Huttle, Karabinchak/Cryan, Scutari)** – Establishes “New Jersey Nonprofit Security Grant Program”

**A-2186/S-1599 (Mukherji, Chaparro, McKnight/Codey, Pou)** – Establishes Statewide database of beds in shelters for the homeless

**A-2360/S-3285 (Chaparro, Karabinchak, Johnson/Greenstein, Stack)** – Requires electric public utility to charge residential rate for service used by residential customer for electric vehicle charging at charging stations within certain designated parking spaces

**A-2685wGR/S-4209 (Armato, Mazzeo, Mukherji/Stack)** – Concerns information on property condition disclosure statement

**A-2772/S-1040 (Downey, Houghtaling, Benson/Gopal)** – Authorizes certain Medicaid recipients residing on post-secondary school campus to participate remotely in meetings of non-medical nature regarding Medicaid benefits

**A-2877/S-1149 (Dancer, Vainieri Huttle, Reynolds-Jackson/Ruiz)** – Requires registration of certain vacant and abandoned properties with municipalities and provides enforcement tools related to maintenance of these properties

**A-3007/S-3127 (Lampitt, Dunn, Benson/Lagana, Gopal)** – Requires institutions of higher education to provide students with access to mental health care programs and services and to establish a hotline to provide information concerning the availability of those services

**A-3392/S-1219 (Reynolds-Jackson, Timberlake, Jasey/Turner, Beach)** – Requires student representative be appointed to each board of education of school district and board of trustees of charter school that includes grades nine through 12

**A-3804/S-1590 (Armato, Murphy, S. Kean/Beach, A.M. Bucco)** – Designates 9-1-1 operators or dispatchers as 9-1-1 first responder dispatchers

**A-3870/S-2807 (Karabinchak, Johnson, Mukherji/Greenstein, Pou)** – “Defense Against Porch Pirates Act”; amends theft statute

**A-3950wGR/S-3180 (Verrelli, Benson, Zwicker/Greenstein, Turner)** – Prohibits employer use of tracking device in vehicle operated by employee under certain circumstances

**A-4002wGR/S-2257 (Caputo, Dancer, Murphy/Gopal, Sarlo)** – Allows deduction of promotional gaming credit from gross revenue on sports wagering

**A-4232/S-4231 (Houghtaling, Dancer, Wirths/Oroho, Smith)** – Creates program in Department of Agriculture for deer fencing on certain farmland

**A-4238/S-2561 (Chiaravalloti, Schaer, Benson/Gopal, Singer)** – Establishes minimum Medicaid reimbursement rate for adult medical day care services

**A-4241/S-2894 (Downey, Vainieri Huttle, Murphy/Pou)** – Requires DHS to conduct biennial survey of SNAP experience

**ACS for A-4253/S-3233 (Conaway, Pinkin, Jimenez/Cryan)** – Requires certain electronic medical programs to include demographic data entry feature; requires laboratories to record certain patients' demographic information; requires certain hospitals and laboratories to implement cultural competency training program

**A-4366/S-2801 (Taliaferro, Sumter, Mukherji/Pou, Greenstein)** – Requires Police Training Commission to contract with crisis intervention training center to provide mental health training to police officers and establish curriculum specific to persons experiencing economic crisis or substance use disorder

**A-4434wGR/S-2716 (Greenwald, Lampitt, Mukherji/Beach, Ruiz)** – Establishes Student Wellness Grant Program in DOE

**A-4478/S2759 (Vainieri Huttle, Speight, Schepisi, DeCroce/Vitale, Madden)** – Establishes additional requirements for DOH to assess sanctions and impose penalties on nursing homes; revises reporting requirements for nursing homes

**A-4569/S-3535 (Reynolds-Jackson, Benson, Karabinchak/Turner)** – Requires BPU, electric power suppliers, and gas suppliers to publish certain information related to filing of customer complaints

**ACS for A-4655/S-3595 (Reynolds-Jackson, Wimberly, Carter/Turner)** – Limits police presence at polling places and ballot drop boxes; prohibits electioneering within 100 feet of ballot drop box

**A-4771/S-2951 (Downey, Armato, Mukherji/Gopal, Singleton)** – Expands offenses eligible for expungement upon successful discharge from drug court

**A-4856/S-3094 (Lampitt, Benson, Caputo/Ruiz, Beach)** – Requires Internet websites and web services of school districts, charter schools, renaissance schools, and the Marie H. Katzenbach School for the Deaf to be accessible to persons with disabilities

**A-5033wGR/S-3279 (Benson, Dancer, Verrelli/Gopal)** – Authorizes motor vehicle dealers to sell motor vehicles online and obtain electronic signatures for motor vehicle transactions

**ACS for A-5075wGR/S-4001 (Burzichelli, Dancer, Johnson/Sweeney, A.M. Bucco)** – Removes Fire Museum and Fallen Firefighters Memorial from auspices of DEP and establishes museum as independent organization; makes \$200,000 supplemental appropriation

**A-5160/S-3324 (DeAngelo, Conaway, Zwicker/Smith, Bateman)** – Establishes minimum energy and water efficiency standards for certain products sold, offered for sale, or leased in the State

**A-5294/S-3418 (Speight, Vainieri Huttle, Verrelli/Gopal, Madden)** – Provides fast track hiring and advancement employment opportunities by State for persons with significant disabilities

**A-5296/S-3426 (Speight, Vainieri Huttle, McKnight/T. Kean, Schepisi)** – Provides for employment by State of certain persons with disabilities

**A-5322/S-3433 (Mosquera, Vainieri Huttle, DePhillips/Cruz-Perez, T. Kean)** – Provides for process to vacate and expunge certain arrests, charges, complaints, convictions, other dispositions, and DNA

records, associated with violations by certain human trafficking victims

**A-5336wGR/S-3441 (Benson, Freiman, Vainieri Huttie/Diegnan, Madden)** – Requires DHS to establish payment programs for purchase of transportation services from private sector and government transportation service providers

**A-5439/S-3760 (Caputo, Dancer, Murphy/Gopal, Beach)** – Changes deadline for New Jersey Racing Commission's annual report from end of calendar year to end of State fiscal year

**A-5694/S-3783 (Houghtaling, Downey, Dancer/Gopal, Madden)** – Permits dependents of military member to enroll in school district in advance of military member's relocation to district

**A-5814/S-3851 (Swain, Tully, Benson/Lagana, Diegnan)** – Creates Office of School Bus Safety in Department of Education; appropriates \$200,000

**A-5864wGR/S-3939 (Speight, Pintor Marin, Chaparro, McKnight, DeAngelo, Bergen/Gopal, Cryan)** – Allows law enforcement officers to review body worn camera recordings prior to creating initial report

**A-5997/S-4084 (Coughlin, Lopez/Sweeney, O'Scanlon)** – Removes requirement for Legislature, DOE, free public libraries, and historical societies to purchase "Manual of the Legislature of New Jersey"

**A-6012/S-4076 (Moen, Murphy, Freiman/Sarlo, Gopal)** – Appropriates \$500,000 for USS New Jersey Commissioning Committee to support commissioning of boat and assigned personnel

**A-6020/S-4114 (Conaway, Jimenez, Vainieri Huttie/Codey)** – Establishes requirements for certain tobacco product retailers to stock and sell nicotine replacement therapy products

**A-6060/S-4272 (Tucker, Caputo, Mukherji/Cunningham)** – Makes supplemental appropriation of \$8 million to DHS to increase reimbursement for funeral, burial, and crematory services provided to certain beneficiaries of Work First New Jersey and Supplemental Security Income programs

**A-6073/S-4140 (Verrelli/Vitale)** – Temporarily waives certain basic life support services crewmember requirements

**A-6093/S-4201 (Stanley, Benson, Timberlake/Greenstein, Gopal)** – Mandates periodic cancer screening examinations for firefighters enrolled in SHBP

**A-6108wGR/S-4247 (DeAngelo, Egan, Houghtaling/Madden)** – Updates licenses offered by and certain licensure requirements from Board of Examiners of Electrical Contractors

**A-6132/S-4235 (Schaer, Greenwald, Conaway/Singer, Gopal)** – Permits volunteer paramedics to operate within mobile intensive care units

**A-6133/S-4251 (Bramnick, Mukherji, Downey/Scutari)** – Allows certain persons not yet appointed as administrator of estate to pursue lawsuit for damages for wrongful death on behalf of deceased's survivors

**A-6150/S-4119 (DeAngelo, Karabinchak, Wirths/Oroho, Pou)** – Revises penalties for transfer of certain professional and occupational licenses

**A-6159/S-4236 (Coughlin, McKnight/Vitale, Ruiz)** – Revises and renames Office of Food Insecurity Advocate

**A-6162/S-4246 (Benson, Stanley/Gopal)** – Requires certain motor vehicle dealers to maintain certain



requirements for business premises

**A-6205/S-4270 (Coughlin, McKeon/Pou)** – Amends certain requirements concerning insurance holding companies

**A-6206wGR/S-4260 (Wimberly/Diegnan, Oroho)** – Codifies right of real estate broker-salespersons and salespersons to define relationship with broker as one between broker and independent contractor or employee and enforces current and previous written agreements addressing relationship

**A-6207/S-4222 (Greenwald, Lampitt, Benson/Sweeney)** – Eliminates requirement for DOE to set certain tuition rates for approved private schools for students with disabilities in certain cases

**A-6208/S-4151 (Mosquera, DeAngelo, Armato/Greenstein, Cruz-Perez)** – Appropriates \$60,940,361 from constitutionally dedicated CBT revenues to State Agriculture Development Committee for farmland preservation purposes

**A-6209/S-4154 (Freiman, Spearman, Egan/Turner, Oroho)** – Appropriates \$18 million from constitutionally dedicated CBT revenues to State Agriculture Development Committee for county planning incentive grants for farmland preservation purposes

**A-6210/S-4150 (Taliaferro, Moriarty, Burzichelli/Cruz-Perez, Greenstein)** – Appropriates \$4.5 million from constitutionally dedicated CBT revenues to State Agriculture Development Committee for municipal planning incentive grants for farmland preservation purposes

**A-6211/S-4149 (Houghtaling, Reynolds-Jackson, Downey/Cruz-Perez, Greenstein)** – Appropriates \$440,240 from constitutionally dedicated CBT revenues to State Agriculture Development Committee for grants to certain nonprofit organizations for farmland preservation purposes

**A-6212/S-4148 (Jimenez, Swain, Timberlake/Codey, Corrado)** – Appropriates \$54.5 million from constitutionally dedicated CBT revenues for recreation and conservation purposes to DEP for State capital and park development projects

**A-6213/S-4155 (Kennedy, Carter, Tully/Bateman, Smith)** – Appropriates \$49.932 million from constitutionally dedicated CBT revenues to DEP for State acquisition of lands for recreation and conservation purposes, including Blue Acres projects, and Green Acres Program administrative costs

**A-6214/S-4153 (Danielsen, Zwicker, Conaway/Greenstein, Smith)** – Appropriates \$80,539,578 from constitutionally dedicated CBT revenues and various Green Acres funds to DEP for local government open space acquisition and park development projects

**A-6215/S-4152 (Stanley, Murphy, Jasey/Smith, Greenstein)** – Appropriates \$14,687,510 to DEP from constitutionally dedicated CBT revenues for grants to certain nonprofit entities to acquire or develop lands for recreation and conservation purposes

**A-6246/S-4295 (Karabinchak/Sweeney)** – Concerns changes in control of hotels and disruptions of hotel services

**A-6257/S-4311 (McKnight/Sweeney, Singleton)** – Imposes surcharge on casino hotel occupancies to fund public safety services

**A-6262/S-4314 (Burzichelli, Reynolds-Jackson, Mukherji/Sweeney, Oroho, T. Kean)** – Permits PERS retiree to return to employment in NJ Legislature after retirement under certain circumstances

**A-6263/S-4315 (Burzichelli, Reynolds-Jackson, Mukherji/Sweeney, Oroho, T. Kean)** – Appropriates \$2 million to Legislative Services Commission

**Governor Murphy pocket vetoed the following bills:**

**S-73/A-4580 (Bateman, Sarlo/Zwicker, Thomson, McKnight)** – Establishes requirements for sale of cottage food products

**S-995/A-6172 (Sweeney, A.M. Bucco/Downey, McKnight)** – Requires DOLWD and DHS to conduct assessment of community rehabilitation programs and community businesses

**S-1934/A-1158 (Sweeney, Pou, Cryan/Freiman, Lopez, Murphy)** – Authorizes use of disability benefits for transportation provided by transportation network companies

**S-2679/A-1979 (Beach, Smith/Stanley, Lopez, Kennedy)** – Requires paint producers to implement or participate in paint stewardship program

**S-2768/A-4664 (Singleton, Ruiz/Reynolds-Jackson, Stanley, Sumter)** – Authorizes State Chief Diversity Officer to conduct disparity study concerning utilization of minority-owned and women-owned businesses in State procurement process

**S-3458/A-6245 (Lagana, Gopal/Coughlin, Jimenez, Mukherji)** – Revises out-of-network arbitration process

**S-3529/A-5442 (Addiego, Diegnan/DeAngelo, Dancer, Dunn)** – Clarifies that member of SPRS may receive accidental disability benefit under certain circumstances

**S-3715/A-5804 (Cryan/Quijano, Mukherji)** – Modifies certain definitions related to transient accommodation taxes and fees

**S-4189/A-6112 (Vitale, Cruz-Perez/Lopez)** – Permits PERS retiree to return to elective public office after retirement under certain circumstances

**A-1073/S-3432 (Speight, Pintor Marin, McKnight, Timberlake/Ruiz, O'Scanlon)** – Establishes requirements to screen certain people who are pregnant and who have given birth for preeclampsia

**A-1269/S-3490 (Greenwald, Giblin, Calabrese/Cruz-Perez, Beach)** – Eliminates one percent tax on purchasers of Class 4A commercial property transferred for consideration in excess of \$1 million

**A-4958/S-3740 (Tully, Armato, Zwicker/Lagana, Oroho)** – Provides temporary exemption under sales and use tax for winterizing certain small business operations

**A-5334/S-3442 (Lopez, Mazzeo, Stanley/Diegnan, T. Kean)** – Requires DOT, NJT, and DHS to study and implement transportation mobility and accessibility improvements for persons with autism and developmental disabilities

**A-5484/S-3817 (Dancer, Caputo, Houghtaling/Lagana)** – Requires New Jersey Racing Commission to adopt procedures to enforce internal controls; requires annual audit

**A-6033/S-4194 (Bramnick/Sweeney, T. Kean)** – Classifies golf caddies as independent contractors for purposes of State employment laws

**A-6157/S-4202 (Speight, Moen/Ruiz, Beach)** – Prohibits circumventing intergovernmental transfer process for law enforcement officers in certain circumstances





## **SAY GOODBYE TO PACKING PEANUTS IN NEW JERSEY - MURPHY SIGNS PLASTIC RECYCLING BILL INTO LAW**

January 19, 2022 | Record, The (Hackensack, NJ)

Author: Scott Fallon, NorthJersey.com | Section: News | 382 Words

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More recycled plastic, glass and paper will be used in everyday products -- from trash bags to beer bottles -- under a new law Gov. Phil Murphy signed Tuesday.

The law also prohibits the sale of polystyrene packing peanuts in New Jersey within two years -- a move supporters say will help keep the easily blown pieces of lightweight plastic out of the litter stream.

"With this new law, more plastic will get recycled, more will get turned into consumer packaging, and less will end up in our oceans, waves, and beaches," said John Weber, a regional manager for the environmental group Surfrider Foundation.

Plastic pollution has become an increasing problem in New Jersey. More than 80% of litter picked up by volunteers for Clean Ocean Action at annual beach cleanups from Cape May to Sandy Hook has been plastic in recent years.

Murphy previously signed a law that will ban or place constraints on disposable plastic products including drinking straws and carryout bags, as well as polystyrene cups, plates and takeout cartons and other food containers made of the material, often called Styrofoam.

But that law never targeted packing peanuts, whose shock absorption makes for effective shipping filler but whose light weight and inability to biodegrade make it an environmental problem.

Although some businesses and special recycling events accept packing peanuts, much of it ends up in a landfill or incinerator. Few if any New Jersey towns have curbside pickup

for packing peanuts because they weigh so little, making them far less valuable as a recycled product, and take up so much room to transport.

The heart of the new law will require manufacturers to incorporate more recycled plastic, glass and paper into containers and bags.

Most plastic containers must have at least 10% to 15% recycled materials within two years. The percentages would increase over the years until such containers contain 50% recycled content.

Most glass containers would be required to contain at least 35% recycled material.

Paper carryout bags sold in New Jersey would be required to have 20% to 40% recycled material depending on their size.

A fiscal analysis by the Office of Legislative Services said the state Department of Environmental Protection would likely have to hire one employee at \$80,000 a year to fulfill the requirements of the bill.

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