

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

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

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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.).