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 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 and 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.