



# 130th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2021

---

Legislative Document

No. 1541

H.P. 1146

House of Representatives, April 22, 2021

---

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

---

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

A handwritten signature in black ink that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

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

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 38 MRSA §2146** is enacted to read:

3 **§2146. Stewardship program for packaging**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
5 following terms have the following meanings.

6 A. "Alternative collection program" means a program for the management of  
7 packaging material that is operated by an individual producer or group of producers  
8 and that has been approved by the department in accordance with subsection 8.

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

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

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

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

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

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

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

33 (1) Intended to be used for the long-term storage or protection of a durable product  
34 and that can be expected to be usable for that purpose for a period of at least 5  
35 years;

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

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

1                   (a) Has demonstrated to the department's satisfaction that it recycles at least  
2                   90% of the containers of architectural paint collected under the program; or  
3                   (b) Subject to the approval of the department, if unable to satisfy the  
4                   requirements of division (a), has demonstrated to the department's satisfaction  
5                   that it recycles at least 80% of the containers of architectural paint collected  
6                   under the program.

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

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

12                  K. "Packaging stewardship program" or "program" means the program implemented  
13                  under this section by the stewardship organization to assess and collect payments from  
14                  producers based on the weight of packaging material sold, offered for sale or  
15                  distributed for sale in or into the State by each producer and to reimburse participating  
16                  municipalities for certain municipal recycling and waste management costs.

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

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

25                  N. "Producer" means a person that:

26                         (1) Has legal ownership of the brand of a product sold, offered for sale or  
27                         distributed for sale in or into the State contained, protected, delivered, presented or  
28                         distributed in or using packaging material; or

29                         (2) Imports into the State for sale, offer for sale or distribution for sale in or into  
30                         the State a product contained, protected, delivered, presented or distributed in or  
31                         using packaging material that is branded by a person that meets the requirements  
32                         of subparagraph (1) and has no physical presence in the United States.

33                  "Producer" includes a low-volume producer and a franchisor of a franchise located in  
34                  the State, but does not include the franchisee operating that franchise. "Producer" does  
35                  not include a nonprofit organization exempt from taxation under the United States  
36                  Internal Revenue Code, Section 501(c)(3).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 subparagraph may overestimate the cost of operating the program during its initial  
2 start-up period of operation but must describe the method and basis for any  
3 overestimate;

4 (6) A certification that the bidder will not share, except with the department,  
5 information provided to the bidder by a producer that is proprietary information  
6 and that is identified by the producer as proprietary information. The certification  
7 must include a description of the methods by which the bidder intends to ensure  
8 the confidentiality of such information;

9 (7) A description of how the bidder will conduct representative audits of recyclable  
10 material processed and sold by facilities that process recyclable material generated  
11 in the State, which must include, but is not limited to:

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

14 (b) A description of how those audits, at a minimum, will be designed to solicit  
15 information regarding the extent to which recyclable material processed and  
16 sold by those facilities reflects the tons of each type of packaging material  
17 collected in the State for recycling and the tons of each type of packaging  
18 material recycled in the State, as well as the ultimate destination of and  
19 intended use for that recycled material;

20 (c) A description of how those audits will be designed so that information  
21 obtained through the audit of one facility will not be used to infer information  
22 about a different facility that uses different processing equipment, different  
23 sorting processes or different staffing levels to conduct such processing; and

24 (d) A description of the process by which a facility will be allowed to request  
25 and receive an audit if it can credibly demonstrate that an audit result being  
26 applied to its material output is not representative of its current operations;

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

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

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

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

40 (9) Any additional information required by the department.

41 B. In accordance with applicable requirements of state purchasing laws, the  
42 department shall enter into a contract with a bidder that has submitted a proposal in  
43 accordance with the requirements of this subsection, the term of which must cover 10

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

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

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

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

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

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

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

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

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

44                  A. Contact information for the stewardship organization;

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

3 C. The total weight of each type of packaging material sold, offered for sale or  
4 distributed for sale in or into the State by each participating producer as reported in  
5 accordance with subsection 7;

6 D. As applicable, the total weight of each type of packaging material collected and  
7 managed by each participating producer through alternative collection programs  
8 approved by the department under subsection 8;

9 E. A complete accounting of payments made to and by the stewardship organization  
10 during the prior calendar year, including information on how the stewardship  
11 organization determined the amount of such payments in accordance with subsections  
12 6 and 10 and the rules adopted under subsection 13, paragraph A, subparagraphs (1)  
13 and (4);

14 F. A list of producers that are not participating in the program that are required to  
15 participate in the program and any product-specific noncompliance, if known by the  
16 stewardship organization;

17 G. A description of education and infrastructure investments made by the stewardship  
18 organization in prior calendar years and an evaluation of how those investments were  
19 designed to increase access to recycling in the State and to encourage the reuse of  
20 packaging material;

21 H. A description of the results of the representative audits required pursuant to  
22 subsection 3, paragraph A, subparagraphs (7) and (8);

23 I. An assessment of the progress made toward the achievement of any program goals  
24 required by the department by rule pursuant to subsection 13, paragraph D;

25 J. An assessment of whether the payment schedule for producer payments adopted by  
26 the department by rule pursuant to subsection 13, paragraph A, subparagraph (1) has  
27 been successful in incentivizing improvements to the design of packaging material as  
28 encouraged through the allowance of payment adjustments in accordance with  
29 subsection 6, paragraph D;

30 K. Any proposals for changes to the packaging stewardship program or investments  
31 in education and infrastructure designed to reduce the amount of packaging material  
32 used, increase access to recycling, increase the recycling of or recyclability of  
33 packaging material, reduce program costs or otherwise increase program efficiency,  
34 which may include an analysis of best practices for municipal recycling programs;

35 L. The results of a 3rd-party financial audit of the stewardship organization; and

36 M. Any additional information required by the department.

37 **6. Producer payments.** In accordance with the provisions of this subsection and the  
38 rules adopted by the department, no later than 180 days after the effective date of the  
39 contract entered into by the department and the stewardship organization pursuant to  
40 subsection 3, and annually thereafter, a producer shall make payments to the stewardship  
41 organization to be deposited into the packaging stewardship fund under subsection 12  
42 based on the net weight of each type of packaging material sold, offered for sale or  
43 distributed for sale in or into the State by the producer and not managed by the producer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10          B. In accordance with procedures and requirements adopted by the department by rule,  
11          the stewardship organization shall use the information described in paragraph A to  
12          determine the total tons of each packaging material type recycled by all municipalities  
13          at each recycling establishment and the percentage of those total tons attributable to  
14          each participating municipality. In the case of 2 or more municipalities that jointly send  
15          recyclable material to a recycling establishment, the stewardship organization shall  
16          assume that an equal amount of the jointly sent material is attributable to each resident  
17          of each municipality unless those municipalities by agreement identify an unequal per  
18          capita division of that jointly sent material for the purposes of this subsection.

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

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

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

35          C. After determining the total amount of funds required for investment in accordance  
36          with paragraph A and considering the input received pursuant to paragraph B, the  
37          department shall direct the stewardship organization to award funds to applicants that  
38          submitted proposals pursuant to paragraph B. The department shall ensure that  
39          preference for funding is given to proposals that support the State's solid waste  
40          management hierarchy under section 2101, promote a circular economy for packaging  
41          material types for which producers were required to make payments under subsection  
42          6, increase the recyclability of packaging material that is not readily recyclable,  
43          increase access to recycling infrastructure in the State, improve consumer education in  
44          the State regarding recycling and recyclability and support recycling and education  
45          efforts in financially challenged or otherwise disadvantaged municipalities or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 B. At the time that the stewardship organization submits its annual report to the  
36 department pursuant to subsection 5, the stewardship organization shall pay to the  
37 department a reasonable annual fee established by the department, not to exceed  
38 \$300,000, to cover the department's actual costs for review of the stewardship  
39 organization's annual report and the department's costs in the prior fiscal year for its  
40 oversight, administration and enforcement of the packaging stewardship program. In  
41 accordance with subsection 12, paragraph C, the annual fee required under this  
42 paragraph may include reimbursement of any costs incurred by the department in  
43 adopting rules and in administering and enforcing this section prior to the effective date

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

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

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

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

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

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

40 **14. Antitrust exclusions.** A producer or stewardship organization, including a  
41 producer's or stewardship organization's officers, members, employees and agents that  
42 organize a packaging stewardship program or an alternative collection program under this  
43 section, is immune from liability for the producer's or stewardship organization's conduct  
44 under state laws relating to antitrust, restraint of trade, unfair trade practices and other  
45 regulation of trade or commerce only to the extent necessary to plan and implement the

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

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

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

## 21 SUMMARY

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

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