

TO: Members of the New York Senate Finance Committee and Assembly Ways and Means Committee

FROM: American Beverage Association

DATE: February 1, 2022

SUBJECT: Comments of the American Beverage Association on the Governor's FY 2023 Executive Budget Title 33: The Extended Producer Responsibility Act February 1, 2022 Environmental Conservation Hearing

On behalf of the American Beverage Association and our local New York State bottlers, we appreciate the opportunity to testify on the proposed creation of an extended producer responsibility (EPR) program for packaging and paper in New York. In partnership with World Wildlife Fund (WWF), our industry has developed principles based on global best practices and legislation around this important issue. EPR is a policy that we believe can bring much-needed improvements to the state's recycling programs if the policy is well designed and operated.

The non-alcoholic beverage industry in New York consists of local beverage manufacturers and distributors. Our industry provides good jobs to nearly 15,000 New York residents and we have a wide footprint with facilities located throughout the state. We are proud of the products we make, our commitment to local communities, and our commitment to the environment. We strongly believe our beverage packaging and bottles demonstrate this commitment.

The beverage industry plays an important role in the circular recycling economy. Our packaging is specifically designed and optimized for recycling. We make PET bottles and aluminum cans that are 100% recyclable, those containers have a high commodity value, and, when collected and recycled, can become new bottles and cans. The industry has invested in local and regional recycling infrastructure for more than 40 years.

The companies have also made commitments to collect and recycle packaging waste, to incorporate more recycled content into our PET bottles, and to reduce the amount of new plastic in our bottles. At a national and local level, we are working to get every bottle back to meet these ambitious goals and support a circular economy for our beverage containers.

The industry's Every Bottle Back program, announced in late 2019, asserted beverage companies' commitment to reduce new plastic use and increase collection of their valuable bottles. The program, launched by The Coca-Cola Company, Keurig Dr Pepper, and PepsiCo, represents collaboration among competitors. Collectively, they support the circular plastics economy by reinforcing to consumers the value of 100 percent recyclable plastic bottles and caps while taking steps to ensure they don't end up as waste in oceans, rivers, or landfills. This program is executed in conjunction with two of the country's most prominent environmental nonprofits and the leading investment firm focused on the development of the circular economy. The World Wildlife Fund (WWF) provides strategic scientific advice to help measure the industry's progress in reducing its plastic footprint and The Recycling Partnership and Closed

Loop Partners assist with deploying our investments in community recycling infrastructure for the initiative. More information can be found at <https://www.innovationnaturally.org/plastic/> .

Core Principals of an EPR Program

Our industry has publicly expressed its support for S.1185C (Kaminsky). We believe that legislation embodies nearly all of the principles we have identified for a well-designed and operated EPR program for packaging and paper. While the proposed Title 33 in the Governor's Executive Budget contains much of the same language as S.1185C, there are a number of key differences that prevent us from being able to support this section of the Governor's budget as written.

Many of our containers are already subject to the returnable container law in New York, a deposit return system, and Title 33 exempts those containers from the new EPR system, but our remaining containers and other packaging would be subject to this new legislation. We would also like to emphasize that many of the principles underlying EPR would serve as excellent guiding principles for reform of New York's deposit program, resulting in higher redemption and recycling rates for deposit material.

We are actively engaged with the Governor's office and other stakeholders to amend the proposed budget language to fall more in line with our core principles for EPR. Those principles are for a program that will:

- Generate strong environmental outcomes in an efficient, transparent, and accountable manner
- Provide convenient service to consumers
- Create a financially sustainable model that is fully funded and managed by producers
- Offer producers access to recovered material for closed loop recycling

Our primary concern is that, for a producer responsibility law, the proposed language places an inordinate level of responsibility on state government, in particular the Department of Environmental Conservation. Thus, this proposal eliminates the central tenant of a producer responsibility model by significantly reducing the ability of the producer to responsibly participate in and guide an efficient recycling program. Specifically, this proposal takes control away from producers in two critical areas – setting targets for performance and reimbursing local governments' costs for recycling. Additional concerns include:

- The important needs assessment (Section 3303) is taken out of the control of the producer responsibility organization (PRO) and would be conducted by DEC; used by an appointed Advisory Committee to set targets for collection, recycling, and recycled content; codified in rulemaking by DEC; and the results imposed on producers without their input. Given that the Advisory Committee will have limited ability to modify the recommendations, the program's targets are effectively set by DEC and its consultant. We cannot support such an approach and we believe a better course is outlined in S.1185C.
- The other key responsibility shifted away from producers is the essential task of setting reimbursement rates for local governments providing recycling services, either directly or through contracts with service providers. S.1185C establishes a process for

producers to compile data on current costs and costs of closing gaps in recycling access and capabilities and then translating those costs into reimbursement schedules for different types of programs. This should all occur in consultation with the Advisory Committee culminating in the proposed Plan submitted for DEC review and approval. The Governor's budget section provides no clarity on the basis for reimbursement.

- The scope of materials covered is vague. S.1185C contains requirements to establish a designated recyclables list for various regions of the state. Such a list is not included in this proposal. Moreover, the affected materials and products are referred to by a confusing mix of terms. Additional vague language appears to make producers responsible for not only recycling costs, but disposal costs as well. This is far beyond the scope of best practices for EPR, and we cannot support this overreach.
- This proposal creates burdensome and impractical hurdles for producers to overcome in the PRO's internal process of assessing fees on member producers. While we support the use of eco-modulation factors in fee setting, this proposal bogs that process down under multiple layers of mandatory fee adjustments, some of which would be conflicting. This is another example of removing discretion for producers in an area that should be largely left to producers that are paying for the entire system.
- Finally, this language adds a number of extra-topical responsibilities onto producers. The core purpose of EPR is to fund improvements to the recycling system. The net cost of recycling and how it is financed should be the focus of the legislation; this should not be a vehicle for packaging regulations and standards. As proposed, the language imposes labeling mandates, provisions on litter control, composting and source reduction instructions, and other requirements that go far beyond the scope of an EPR program.

Conclusion

The beverage industry has invested significant time and effort into a proactive position in support of EPR for packaging and paper and we are committed to continuing that work in New York and in many other states around the country.

We want our containers back to make them into new bottles and cans, and we know that policy changes are necessary to improve the collection and processing systems in place in New York and elsewhere. That said, we have experience with EPR around the world and know that real improvements will only occur where the program is well-designed and meets our core principles. The Executive Budget version of EPR does not meet those criteria.

We will continue to work with the Legislature and Executive to help shape the best possible EPR program in New York and are available as a resource to help get to that goal.