

TO: New York Senate Finance Committee and Assembly Ways and Means Committee

FROM: American Beverage Association and its New York Bottlers

DATE: February 14, 2023

SUBJECT: Waste Reduction and Recycling Infrastructure Act Comments
(Executive TED Budget Part PP)

The beverage industry remains actively engaged in policy to promote a circular economy in New York and across the country. We have supported producer-funded recycling of packaging and printed paper from all households, in public places, and at locations served through municipal contracts. Not only do these programs relieve taxpayers of the obligations for funding these programs, but they put in place the incentives and structures to enhance performance of systems that have long underperformed, leading to poor quality and inadequate quantities of recycled inputs for new products.

Our industry has collaborated with stakeholders to shape this type of legislation to take advantage of the experiences of our member companies with extended producer responsibility or EPR programs around the globe. We have developed a set of best practices for these programs and know that deviating from those proven best practices will produce programs with disappointing environmental outcomes and less effective and efficient service for customers.

We support the intent of the Act proposed in the budget and support its approach as generally sound and consistent with those best practices in all but a few areas, which we have highlighted below.

Beverage Industry Background

The beverage industry plays an important role in advancing the circular economy. Our packaging is specifically designed and optimized for recycling. In particular, we produce PET bottles and aluminum cans that are recyclable, have a high commodity value, and, when collected and recycled, can become new bottles and cans.

With the launch of our Every Bottle Back campaign in late 2019, the beverage industry recognized that not enough of our bottles and cans were being collected and recycled and that more profound public policy changes were necessary to achieve our goals and braise the performance of all recycling in the country. We recognize our responsibility as producers and brand owners to lead on this issue. As a result, drawing on our industry's global experience with EPR systems, we developed principles and parameters for EPR programs, understanding that EPR has the potential to efficiently increase recovery of packaging but only if the program is designed and operated consistent with best practices. Our overarching goals for EPR call for the systems to:

- Generate strong environmental outcomes in an efficient and accountable manner
- Provide convenient service to consumers
- Create a financially sustainable model
- Offer producers access to recovered material for closed loop recycling

Many of our containers are already subject to the returnable container law in New York (the bottle bill) and those containers would be exempt from the system established under this act, but our remaining containers and other packaging would be subject to this new legislation.

Position on the Act in the Budget

We support the Act with amendments and have highlighted some of the most important issues below.

The Act expands beyond the scope of EPR and should be amended to focus only on residential, curbside municipal recycling. It should not address Industrial, Commercial, and Institutional (ICI) Recycling

This is our most significant concern with the proposed language. Inserting producers and producer funding into the vast and complex network of business to business and institutional recycling would be enormously disruptive.

- We recommend deleting “business or institution” in the definition of consumer (3401(3)) and deleting “... or by a private sector hauler” under recycling collection (3401(14)). Eligibility for producer funding should be linked to municipal responsibility to provide service. **This amended language maintains the focus of producer responsibility on relieving governments and taxpayers of the burden of funding recycling.**
- Producer-funded recycling is typically focused on municipally provided services to residences and on households through curbside and dropoff recycling. We support expanding recycling to all single and multi-family households as well as public spaces designated by producers in order to meet various performance goals. As with prior EPR proposals in NY, we also support extending producer support to all entities served by municipal contracts.
- The Act goes significantly further, mandating producer involvement in and funding of private recycling arrangements between commercial businesses and institutions and recycling companies and haulers. Few such programs exist around the world as the recycling relationship between businesses is diverse and complex.
- This would be disruptive to the business of carting and hauling companies who have private contracts with thousands of businesses across the state. A recycler picking up cardboard and other materials from a supermarket, for example, would be compelled to release its contractual terms and then establish a relationship with a producer organization to fund activity that is already underway and fully funded by the supermarket. This would be enormously disruptive to a commercial enterprise and in many cases simply create more work to recycle what is already being recycled.

The Act Should Require a Single Producer Responsibility Organization (PRO) to Launch the Program

- Developing and launching a new EPR system is complex and costly, especially across a jurisdiction as large and diverse as New York. The Act contemplates establishment of multiple PROs, each of which would have its own list of recyclables and develop its own plan. The potential for a balkanized, inconsistent system, requiring costly coordination undermines key advantages that a producer responsibility program can offer: a single managing entity with consistency across jurisdictions and the ability to achieve scale and efficiency in its operations.
- Requiring a single PRO, at least initially, does not imply that recycling will function the same way from the North Country to Long Island – it simply cannot. But it allows coordination in the investments and strategies employed to meet statewide goals, while also allowing for regional differences in markets and materials.
- EPR best practices are for a single PRO initially that is recognized by the Department to develop the five-year plan. If there are compelling reasons for allowing competing PROs in future years, the Department can allow that later.

Clarify Definitions of Recovery, Recycling, and Source Reduction of Virgin Materials

- The key metrics for recycling system performance in the Act are recovery and recycling, but the definitions of these terms are not clear.
- We recommend that recovery be based on material as it is collected from households and public spaces – typically described as what is delivered to a materials recovery facility (MRF) or similar facility.
- We recommend that recycling be based on material sold to end markets (*i.e.*, what is shipped from MRFs or similar facilities. This allows for monitoring contamination levels in collected materials, facilitating both better communication and education of consumers and better separation and processing at MRFs.
- We also support reporting on end markets to which the recycled material is shipped. It is appropriate for producers to be able to document how materials are being used and that the markets receiving the material are responsible ones.
- Requiring reporting on the output of materials reclaimers and processors (downstream of the MRFs) is challenging because these entities fall outside the purview of the PRO, many are located outside the state, and information on their processes is likely proprietary and would not be available to a PRO for reporting.
- Source Reduction should focus on driving circularity and moving from virgin to recycled material use. It should complement EPR and support other goals in the budget including increasing the use of postconsumer recycled content. Therefore, the definition of Source Reduction should be amended to:

“Source reduction” means any action which causes the elimination of or a net reduction in the generation of solid waste and includes, but is not limited to, reducing the use of nonrecyclable materials, replacing disposable materials and products with recycled, reusable or refillable materials and products, reducing packaging, and increasing the efficiency of the use of materials through recycling and reuse.

Limit Services and Funding to Materials Collected for Recycling

Both the definition of EPR Program (3401(5)) and Plan requirements at 3409(3)(l) ambiguously refer to “end of life management” of packaging and paper products. While this is appropriate for managing material collected for recycling (*i.e.*, residuals and contamination are the responsibility of the producers), it could be construed to make producers responsible for collection and disposal of material bound for disposal (*i.e.*, trash). These references should be clarified to refer only to end of life management of materials collected for recycling.

Over-Regulation

We are highlighting several sections of the bill that impose overly prescriptive requirements on producers, to little or no environmental or social benefit. These and other suggestions for simplifying language are included in our markup of the bill language.

- Adjustments to program charges (3409(3)(e)(ii)): In addition to setting producer fees based on net costs to recycle each material type, the Act lists at least 10 parameters that should be used to create incentives or disincentives for various types of materials and products. At some point, layering on criteria creates a system too complex to administer, where incentives for some attributes are offset by disincentives for others. We recommend a pared-back list of attributes (recyclability, recycled content, disruptors), especially as the program is beginning and simply calculating the basic costs will be a significant challenge for the PRO.
- Detailed description of packaging changes (3411(2)(m)): In its annual report, the PRO is charged with overly prescriptive reporting on the actions of thousands of producers of tens or hundreds of thousands of types of packaging. Not only are changes in packaging constantly ongoing, they result from many considerations beyond EPR mandates; isolating the impact of this legislation on those changes and on system costs is unrealistic and unproductive.
- Excess audit requirements (3411(3)): The Act requires all data compiled by the PRO from producers and from the recycling system to be independently audited. This duplicates the verification work the PRO is already obliged to do to perform its due diligence for its membership. The PRO and its members have a vested interest in the integrity of data coming into the system. To require external audit of virtually every piece of data is enormously wasteful.

Addressing the scope, governance, and metrics issues above would bring the proposal more closely in line with best practices. We look forward to collaborating with various stakeholders in developing a successful, effective Act.