
OLR Bill Analysis

sHB 6664

AN ACT CONCERNING MANAGING WASTE AND CREATING A WASTE AUTHORITY.

SUMMARY

This bill creates the Connecticut Waste Authority (CWA) as a successor to the Materials Innovation and Recycling Authority (MIRA) through June 30, 2025, after which the Department of Administrative Services (DAS) becomes the successor to CWA.

The bill tasks CWA with (1) identifying the needs related to redeveloping certain MIRA properties, (2) temporarily operating MIRA's transfer stations, and (3) winding down MIRA's operations and activities. It establishes a new operating board for CWA and requires \$2 million of CWA resources to be used for the above purposes.

On behalf of, and with consent from, one or more municipalities, municipal authorities, or regional solid waste authorities, the bill allows the Department of Energy and Environmental Protection (DEEP) commissioner to (1) issue a request for proposals (RFP) from solid waste materials management services providers and (2) select and enter into agreements to manage the municipalities or authorities' solid waste (§ 3).

The bill increases funding for the state's sustainable materials management program by transferring to its associated account certain proceeds from the fee resources recovery facility owners pay and, among other things, explicitly allows funding for the program to support developing the infrastructure needed to manage solid waste materials at the facilities the commissioner selects through the RFP process (§§ 8-18).

Among other things, the bill does the following related to organic

materials and food scraps:

1. expands the scope of the law requiring certain organic materials generators to separate the materials and recycle them by including applying its requirements to hospitality, entertainment, health care, public education, and correctional institutions (§ 7);
2. allows municipalities to identify additional recyclable solid wastes for diversion (e.g., food scraps or processing residues, and yard waste) in an ordinance or other legal instrument (§ 4); and
3. requires municipalities, by October 1, 2028, to provide for food scrap separation and collection (§ 5).

Lastly, the bill (1) broadens the scope of a law on solid waste collector contracts (§ 9) and (2) establishes the following:

1. beginning July 1, 2025, post-consumer recycled content requirements for plastic beverage containers offered for sale or distributed in Connecticut (§ 2) and
2. a statewide stewardship program for managing packaging, packaging-like products, and paper materials, but not until a certain number of states with a total population of at least 20 million enact similar programs (§ 1).

EFFECTIVE DATE: July 1, 2023, except provisions on (1) municipal food scraps, the plastic beverage container recycled content requirements, and the packaging stewardship program take effect October 1, 2023; (2) CWA's termination are effective July 1, 2025; and (3) municipal recyclables, including food scraps and residues; liability and the transfer of permit or licenses related to the end of MIRA and CWA; MIRA funds; and changes to the sustainable materials management fund and program, are effective upon passage.

§§ 10-17 & 19-20 — MIRA WINDDOWN

Connecticut Waste Authority (§§ 10-11, 15-17 & 20)

The bill creates CWA as a successor quasi-public authority to MIRA. In addition to the duties and powers inherited from MIRA, the bill requires CWA to do the following:

1. identify the immediate environmental needs and knowledge needed for future redevelopment of the authority's properties at 300 Maxim Road and 100 Reservoir Road in Hartford;
2. continue to operate MIRA's transfer stations until DEEP determines that acceptable non-CWA operated alternatives have become available; and
3. orderly and responsibly wind down operations and activities, including marketing and selling surplus real and personal property.

The bill requires CWA to submit a report to the Office of Policy and Management (OPM) secretary and the Environment and Planning and Development committees, by January 1, 2024, that includes a plan and timeline for the above tasks. It allows CWA and any other state agency to enter memoranda of understanding (MOUs) to facilitate the duties and powers CWA assumes from MIRA. These MOUs terminate June 30, 2025.

The CWA terminates on July 1, 2025. On that date, its rights and properties are assumed by the state. The bill specifically makes DAS the successor agency to CWA and repeals the statutes and provisions in the bill creating and empowering MIRA and CWA, respectively, on that date.

CWA Board of Directors (§ 15)

Membership. Beginning July 1, 2023, the bill ends the terms of MIRA's board of directors and creates a new board.

Under current law, MIRA's board has 11 appointed members, three appointed by the governor and eight by the legislative leaders, generally each being a municipal official or someone with expertise in energy, finance, industry, or an environmental field. CWA's board instead

includes the following 11 members:

1. the governor or his designee;
2. the OPM secretary or his designee;
3. the commissioners of DAS, DEEP, Department of Economic and Community Development, and Department of Public Health, or their designees;
4. one each appointed by the Senate president pro tempore, House speaker, and the Senate and House minority leaders; and
5. one appointed by Hartford's mayor.

Under current law, the governor may appoint ad hoc members to MIRA's board to represent facilities operated by the authority. The bill eliminates this provision for CWA.

Like with MIRA, CWA board members are not paid, but are entitled to reimbursement for actual and necessary expenses when fulfilling their duties.

The governor or his designee serves as the board chairperson, who must, with the other directors' approval, appoint a CWA president. Like MIRA's president, the CWA president is a paid employee responsible for supervising CWA's administrative affairs and technical activities.

Under current law, it is not a conflict of interest for a trustee, director, partner, or officer of a person, firm, or corporation (or an individual having a financial interest in the person, firm, or corporation) to serve as a director. The bill eliminates this provision for CWA's board.

Director Removal. The bill allows an appointing authority to remove a director for inefficiency, neglect, or misconduct, after giving the director notice of the charges and an opportunity for a hearing. If a director is removed, the appointing authority must file with the secretary of the state a complete statement of the charges and proceeding record and the appointing authority's findings. Unlike for

MIRA board members, the bill does not have a mechanism for refilling an appointment.

Operations & Liability. Under the bill, six directors make a quorum to transact CWA business and the board acts by a majority of directors present at a meeting in which there is a quorum. The bill prohibits directors from designating representatives to perform in their absence.

The bill extends to CWA directors, members, and officers the personal immunity on bonds or notes that currently applies to MIRA directors, members, and officers (and those who execute the bonds or notes on their behalf). It similarly makes them immune from personal liability for damage or injury caused in the performance of their role, excluding wanton or willful damage or injury.

Outside Consultants (§ 19)

The bill repeals a law requiring any expenditure of at least \$50,000 for an outside consultant by MIRA (CWA, under the bill) to be approved by a two-thirds vote of the board, thus discontinuing the requirement for the CWA board actions.

Environmental Liabilities (§ 12)

The bill specifies that the assumption of MIRA's authority by CWA does not alter the liability of a person who (1) established a resources recovery facility, (2) created a condition or is maintaining a resources recovery facility or condition that may reasonably be expected to create a pollution source to the waters of the state, or (3) is the certifying party to a facility's transfer.

It also provides that any conveyance of real property or business operations under the bill's provisions from MIRA to CWA, or from CWA to DAS, is not considered a transfer of an establishment under the state's Transfer Act (i.e., property remediation law for locations involving hazardous waste or certain business operations).

Transfer of Permits or Licenses (§ 12)

Under the bill, when MIRA's ownership or oversight of a permitted facility transfers to CWA, the permits or licenses it holds are

correspondingly transferred to CWA and remain in effect. The same occurs when DAS takes over for CWA on July 1, 2025. The bill requires this notwithstanding existing law requiring the registration and acceptance of proposed transfers with DEEP.

Authority Funds (§§ 13 & 14)

The bill specifies that MIRA funds are not surplus revenues and requires them to be used to support its properties systems and facilities, including for environmental remediation. It also prohibits the funds from being distributed or redistributed to users of MIRA's services and makes the users liable for the environmental remediation costs if, and to the extent, funds were distributed or redistributed by MIRA to the users on or after January 1, 2023.

The bill transfers \$2 million from the CWA to a nonlapsing General Fund account the OPM secretary must establish to fulfill the bill's requirements related to MIRA's wind down.

§ 3 — SOLID WASTE MANAGEMENT RFP

The bill allows the DEEP commissioner, on behalf of one or more municipalities, municipal authorities, or regional solid waste authorities, to issue an RFP for proposals from providers of existing or proposed solid waste management services like reuse, recycling, and composting (e.g., anaerobic digestion, waste conversion, energy and fuel recovery).

From the proposals she receives, the bill allows the commissioner to select one or more providers and enter into agreement for the management of the municipalities' or authorities' solid waste at a facility of the existing or proposed services. The bill requires her to get consent from the municipalities and authorities when entering into these agreements for them.

The commissioner must consider all relevant information when considering whether to select a proposal, including the following:

1. the proposal's consistency with the state's solid waste management plan,

2. available capacity at an existing or proposed facility,
3. the fee charged for managing the waste, and
4. the proposed facility's location and likelihood that it will be authorized and constructed.

The bill requires that an agreement to manage solid waste at a proposed facility is contingent on the facility getting all necessary state and local permits authorizations and beginning operation by a date set in the agreement.

Under the bill, the selected project may be funded through the existing sustainable materials management program, for which the bill increases funding and allows the commissioner to pledge funds for revenue bonds (see § 18, below).

§§ 8 & 18 — SUSTAINABLE MATERIALS MANAGEMENT ACCOUNT & PROGRAM

By law, resources recovery facility owners pay a \$1.50 per ton fee for the solid waste they process, which are remitted quarterly to the revenue services commissioner. Beginning July 1, 2023, the bill requires \$2.8 million of the fees to be deposited by the revenue services commissioner into the General Fund, with the remainder to be deposited into the sustainable materials management account. (The bill appears to create a remitting gap for the calendar quarter beginning July 1, 2023, by changing the start of the reporting to October 1, 2023.)

PA 22-118, § 167, established the sustainable materials management account as a separate, nonlapsing General Fund account to be used for an associated program for solid waste reduction in the state. It already receives funding from energy alternative compliance payments (i.e., payments for failing to meet renewable energy requirements). The program must provide funding for programs and projects that promote affordable, sustainable, and self-sufficient waste management by reducing solid waste generation or diverting it from disposal.

In addition to using account funds for the above projects, the bill

allows the DEEP commissioner to pledge the funds for revenue bonds and use the proceeds to support waste infrastructure projects of the same type (but it is unclear if the bill provides, or DEEP has existing, bonding authority for this purpose). It specifically allows the program's funding to support the development of infrastructure needed to manage solid waste at upgraded, expanded, or proposed facilities the DEEP commissioner selects under the bill's RFP process (see § 3, above).

§ 7 — LARGE ORGANIC MATERIALS GENERATORS

The bill expands the scope of the law requiring certain organic materials generators to separate the materials and recycle them.

Under current law, commercial food wholesalers or distributors, industrial food manufacturers or processors, supermarkets, resorts, or conference centers located within 20 miles from a permitted source-separated organic material composting facility and generating an average projected volume of at least 26 tons of source-separated organic materials must (1) separate the materials from other solid waste and (2) recycle them at a permitted source-separated organic material composting facility that has available capacity and is willing to accept them. The bill additionally applies this requirement to these generators within 20 miles from an authorized transfer station or other collection location authorized to receive source-separated organic materials.

Beginning January 1, 2025, the bill also applies this requirement to institutions that provide hospitality, entertainment, or rehabilitation and healthcare services; hospitals; local or regional boards of education; and correctional facilities.

By law, generators may comply with the requirements by composting the organic materials or treating them with certain organic treatment equipment on-site.

§§ 4-6 — MUNICIPAL SOLID WASTE

By law, municipalities must provide for the safe and sanitary disposal of all solid waste generated within their boundaries. This includes the separation, collection, processing, and marketing of items designated by

the DEEP commissioner as recyclable (“designated recyclables,” e.g., bottles, cans, newspaper, cardboard) (CGS § 22a-220).

The bill allows municipalities to adopt an ordinance, or use another legal instrument to which it is a party, identifying additional recyclable solid wastes, like food scraps, food processing residues, yard waste, and other suitable recyclable organic material for diversion to recycling facilities designed to process and beneficially use the waste. Food scraps and processing residues do not include unused food that is suitable for sale or donation for human or animal consumption.

Existing law also authorizes municipalities to designate (1) disposal areas for solid waste generated within their boundaries and (2) where certain recyclable items from residential properties must go for processing or sale (e.g., cardboard, glass, newspapers). The bill expands this list of recyclables to include food scraps and food processing residues.

Additionally, under the bill, each municipality, by October 1, 2028, must:

1. provide for food scrap separation and collection and
2. require the solid waste collectors that annually register with the municipality to separately collect and transport the source-separated food scraps to a facility authorized to process them in a way that promotes a beneficial use.

§ 9 — SOLID WASTE COLLECTION CONTRACTS

Current law sets requirements for commercial contracts between solid waste collectors and their business customers. Among other things, it requires each (1) commercial contract for solid waste collection to provide for designated recyclable item collection and (2) collector to give each business clear written or pictorial instructions on how to separate designated recyclable items.

The bill expands these requirements to contracts with any customers, not just business clients. It also increases items that must be collected

under these contracts to include nickel-cadmium batteries, grass clippings, and items designed for recycling by a municipal ordinance or other enforceable legal instrument to which a municipality is party.

§ 2 — PLASTIC BEVERAGE CONTAINER RECYCLED CONTENT

Post-Consumer Recycled Content Requirements

Under the bill, beginning July 1, 2025, plastic beverage containers offered for sale or distributed in Connecticut must contain at least 15% post-consumer recycled content. The bill expands this requirement by requiring these beverage containers to contain at least 25% post-consumer recycled content by July 1, 2028, and at least 50% by July 1, 2033. These requirements apply to “producers,” that the bill requires to annually register with DEEP and have a third-party certify the containers’ recycled content (see below).

However, by February 1, 2027, the bill requires the DEEP commissioner to submit a report to the Environment Committee that reviews the above content requirements, which must include the following:

1. a determination as to the achievability of the content requirements;
2. recommendations as to whether the percentages of recycled content must be adjusted; and
3. recommendations for expanding the content requirements to other packaging or product categories, including the associated percentage content requirements for each.

The bill establishes the method for calculating the recycled content requirement. A producer meets the requirements based on the portion of content, by weight, on average for each plastic beverage container. The calculation for the average may be based on a producer’s entire plastic beverage container product line or by the separate product lines, as long as all of the producer’s products are accounted for in the calculation and all individual products with post-consumer recycled content that are used in the calculation are sold in Connecticut. The bill

allows the weight and material content of liners, bladders, caps, lids, labels, and any other packaging part to be included in the calculation, but it must all be included in any required annual report.

“Post-consumer recycled content” is the amount of post-consumer recycled material used to manufacture or produce a new product. It does not include pre-consumer or post-industrial secondary waste material like materials and by-products generated from, and generally used as, part of original manufacturing and fabrication. “Post-consumer recyclable material” is a material or product households, or commercial, industrial, or institutional facilities generate that can no longer be used for its intended purpose or was returned from the distribution chain and is separated from the solid waste stream for collection and recycling purposes.

Scope of Content Mandate

The bill’s content requirements apply to individual, sealable, separate bottles, cans, jars, cartons, or other containers intended to hold a beverage of up to two gallons in capacity and made of plastic (i.e., a manufacturer or synthetic material made by linking monomers through a chemical reaction to create a polymer chain that can be molded or extruded into solid forms at high heat). They do not include refillable beverage containers, including those that are durable enough for multiple rotations of their original or similar purpose and that are intended for reuse.

The requirements apply to potable liquids for human consumption. But it exempts liquids for use as infant formula, medical food, or food for special dietary use as defined under federal law, or a medical beverage or a fortified oral nutritional supplement. (The bill does not define “medical beverage” or “fortified nutritional supplement.”)

The bill also allows producers to ask the DEEP commissioner for a waiver from the content and associated requirements. To do this, a producer must (1) give the specific reason for the waiver and any applicable timeframe for the request and (2) submit any proof the commissioner determines is needed.

Under the bill, a “producer” is (1) the owner or licensee of a brand or trademark for a plastic beverage container that is sold under its brand or trademark (regardless of trademark registration status); (2) the manufacturer of a plastic beverage container that does not identify its brand or manufacturer at the point of sale; or (3) if there is no person over which the state can exercise jurisdiction, the person that imports or distributes the beverage container in the state. The bill makes any person that produces or generates a plastic beverage container a “manufacturer,” but not a government agency, municipality, or other political subdivision of the state; federally tax-exempt nonprofit organization; or a producer that annually sells, offers for sale, distributes, or imports into the country for sale in Connecticut (1) less than one ton of plastic beverage containers each year or (2) these containers, in total, generate less than \$1 million in sales in the state.

Producer Registration

Beginning by July 1, 2025, the bill requires producers that offer for sale, sell, or distribute plastic beverage containers in the state to annually register with the DEEP commissioner as she prescribes. It allows them to do this individually or through a third-party representative that registers on behalf of a group of producers.

As part of the registration, the bill requires each producer or third-party representative to pay a fee to cover, and be used only for, DEEP’s cost to implement, administer, monitor, and enforce the recycled content and associated requirements. The commissioner determines the fee, which (1) must be scaled to reflect the producer’s or representative’s market share and (2) may be changed to reflect updated implementation costs.

Under the bill, the information that must be submitted to the commissioner as part of registration includes the following:

1. a list of producers and the brand names represented in the registration;
2. the average percentage of post-consumer recycled content for

plastic beverage containers sold into the state during the prior 12 months; and

3. proof of a third-party's certification of compliance with the recycled content requirements (presumably, this is not required for the first registration since the bill does not require producers to give the commissioner a certification of compliance until July 1, 2026, see below).

However, if the commissioner opts to participate in a related multistate clearinghouse, as described below, the bill allows for producers to register on a centralized portal offered by the clearinghouse instead of a state-specific portal as long as the registration will not be otherwise impacted by this use.

Third-Party Certification

Beginning by July 1, 2026, the bill requires each producer to annually submit to the DEEP commissioner for approval a third-party certification of the minimum post-consumer recycled content of all plastic beverage containers offered for sale in the state.

Under the bill, the certification must be in writing, specific to the producer's items sold in Connecticut, and be signed by an authorized representative of the producer. It must (1) be submitted under penalty of perjury and as the commissioner prescribes and (2) include (a) the amounts, in pounds, of plastic and post-consumer recycled material the producer used for any projects subject to the bill's requirements and (b) any other information the commissioner needs.

Under the bill, if the commissioner determines a certification is acceptable, she must approve it and publish it on the department's website.

Multistate Clearinghouse

The bill allows the DEEP commissioner to participate in the creation and implementation of a multistate clearinghouse to help carry out these requirements. The clearinghouse must do the following:

1. help coordinate reviews of producer registrations, waiver requests, and certifications;
2. recommend acceptable third-party certifications; and
3. implement state reporting activities and any other related functions.

§ 1 — CONSUMER PACKAGING STEWARDSHIP PROGRAM

General Requirements

The bill establishes a process for creating a statewide consumer packaging stewardship program for managing packaging, packaging-like materials, and paper materials (i.e., “covered materials”) to reduce the amount of these materials that reach the waste stream. The bill requires that any stewardship program develop fees to be assigned to “responsible parties” (i.e., the packaging manufacturer or other responsible party) to cover the costs of operating and administering the program.

Responsible parties must either act on their own or with a nonprofit organization or entity that assumes the responsibilities, obligations, and liabilities on their behalf (a “stewardship organization”), to register with DEEP and submit by January 1, 2026, a program plan for approval to manage covered materials. The bill (1) prohibits a registered stewardship organization from creating unreasonable barriers for responsible parties to participate in the organization and (2) allows a person who is not a responsible party to voluntarily participate in a stewardship organization if they abide by the bill’s requirements.

Among other things, a stewardship program plan must propose performance goals, describe the general process for collecting and transporting covered materials, describe educational and outreach efforts, and describe its funding. One of the purposes of the program must be minimizing public sector involvement in managing the covered material (see below).

Once a stewardship program is implemented, the bill generally prohibits the sale of a responsible party’s covered materials in the state

unless they are managed under an approved plan and the responsible party has submitted all required information and fees to any applicable stewardship organization authorized to operate and administer the program on the party's behalf. The stewardship organization must report new covered materials sold at retail or sold or distributed through remote sale after that date to the DEEP commissioner. The bill specifies that retailers and distributors do not violate the sale ban if, on the date they ordered the covered material, the responsible party was listed on DEEP's website.

Under the bill, a responsible party may only participate in one stewardship organization for each type of its covered material.

Among other things, the bill allows the DEEP commissioner to enforce program requirements, establishes audit and reporting requirements, and allows for interstate collaboration where there are similar programs outside of Connecticut.

Effective Date (Trigger Provision). These requirements, however, do not apply until the October 1 following the date the DEEP commissioner recognizes that:

1. four other states, at least one of which borders Connecticut, enact a mandatory consumer packaging stewardship law that is consistent with the bill's provisions and
2. the total population of these states located in the Northeast, according to 2020 census data, exceeds 20 million.

(The bill does not indicate how the commissioner makes and gives notice of this recognition. Additionally, if the recognition is made after dates in the bill have passed, presumably, the new dates to meet the bill's requirements (e.g., registration and plan submission) will be set proportionally to those in the bill.)

Alternative Programs. Alternatively, the bill allows DEEP to participate in a regional or national collaborative, instead of following the bill's requirements, if the regional or national program covers the

same or similar materials and purposes. It similarly allows DEEP to participate in an enforceable federal stewardship program instead of the bill's requirements if (1) it, within 180 days after the federal program takes effect, determines the applicability of the program to the bill's provisions and (2) the federal program covers the same or similar materials or purposes as the bill.

Program Scope

Covered Materials. The bill's packaging stewardship program applies to "covered materials," which are packaging, packaging-like products, and paper materials, but excludes material that could become unsafe or unsanitary to recycle because of the material's design or anticipated use, as described in the stewardship plan.

Under the bill, "packaging" is any container or material used to contain, protect, handle, deliver, or present goods intended for the consumer market, including through an online transaction. It does not include (1) a container or material used to protect or store a product over multiple years, (2) a beverage container subject to the state's beverage container redemption law ("bottle bill"), (3) a container for architectural paint that is recycled through the state's paint stewardship program, or (4) any other containers or materials collected under another stewardship program.

"Packaging-like products" include the following products intended for the consumer market, including through an online transaction, that are not packaging and are ordinarily discarded after a single or short-term use, regardless of reusability:

1. food containers (e.g., take-out containers);
2. foil and wraps;
3. bags and boxes;
4. straws, beverage stirrers, utensils, plates, bowls, and cups;
5. party supplies; and

6. objects bought by, or supplied to, consumers to protect, contain, or transport commodities or products.

“Paper materials” is paper that is not packaging and is printed with text or graphics or intended to be printed on for communicating information like newsprint and inserts; magazines and catalogs; paper for copying, writing, or other general uses; telephone directories; and flyers, brochures, and booklets. It is not bound reference, literary, or textbooks.

Responsible Parties. The bill applies to responsible parties of covered materials (1) sold, offered for sale, or distributed at a physical retail location in the state or (2) remotely sold or distributed in or into the state.

For covered materials at a physical retail location, the responsible party is the person who:

1. manufactures the covered material or good sold in covered material if the material or good is sold under the manufacturer’s own brand or is sold in covered materials that have no brand identification;
2. if the covered material or good is manufactured by a person other than the brand owner, is the licensee of a brand or trademark under which the covered material or good is used in a commercial enterprise, sold, offered for sale, or distributed in or into the state, regardless of registration status; or
3. if neither of the above, imports the covered material or good into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the material or good into the state.

For covered materials sold or distributed into the state through remote means, the responsible party is as follows:

1. for a covered material used to directly protect or contain a good (including if the good is a covered material), it is the same as those listed above for covered materials at a physical retail

location; and

2. for a covered material used to ship a good to a consumer (including if the good is a covered material), it is the person that offers the good for sale or distribution if there is no identified brand on the material.

Program Exemptions. The bill exempts a responsible party from the bill's requirements if it (1) is a municipality, (2) is responsible for less than one ton of covered materials per year in the state, or (3) has a gross annual revenue of less than \$2 million.

Purposes of a Packaging Stewardship Program

Under the bill, a packaging stewardship program must (1) minimize public sector involvement in managing covered materials; (2) provide for convenient and accessible statewide collection of covered materials that are at least as convenient as collection methods used on October 1, 2023; (3) to the greatest extent technologically feasible and economically practicable, manage them according to the state's sustainable materials management priority (i.e., prioritizing source reduction over recycling, recycling over resource recovery and waste-to-energy, and resource recovery and waste-to-energy over incineration and landfilling); and (4) minimize greenhouse gas (GHG) emissions from covered materials' life cycles and from operating the program.

Other requirements for a program include the following:

1. negotiating and executing agreements to collect, transport, and process covered materials using environmentally sound management practices;
2. ensuring meaningful and continuous program improvement;
3. developing and equitably assigning a fee that is enough to cover the program's operating and administrative costs;
4. supplying technical help to municipalities, regional associations, waste and recycling collectors, transporters, processors, and

- other entities that participate in the program, for purposes of complying with the performance goals;
5. investing in existing and future reuse programs, recycling infrastructure, and end-market development in Connecticut, for purposes of complying with the performance goals;
 6. providing consistent and ongoing outreach, education, and communication to Connecticut consumers about program participation; and
 7. ensuring (a) compliance of covered materials with the state's laws on packaging toxicity and (b) continuous and meaningful reductions in toxicity.

Registration with DEEP

Requirement. The bill requires any responsible party or stewardship organization authorized to operate and administer a program on the party's behalf that intends to seek DEEP approval for a stewardship plan to register with DEEP by January 1, 2025. But it also allows parties and stewardship organizations to submit a registration for approval after that date.

The bill requires a registration to be on a DEEP-prescribed form and it must do the following:

1. identify each responsible party that intends to authorize the stewardship organization to operate and administer a program on its behalf;
2. have the name, address, and contact information for someone who is responsible for ensuring the responsible party and stewardship organization's (including the responsible parties that authorized the organization to operate a program on their behalf) compliance with the bill; and
3. describe a scope of work (see below) for a study (a) completed by a third-party to assess the state's recycling and covered materials

management needs and (b) that will be funded by the responsible party or stewardship organization.

Scope of Work: Content & Process. Under the bill, the DEEP commissioner must review the scope of work for the study to ensure that it meets the bill's provisions. And after the commissioner approves it, the study must be done.

The bill allows the scope of work described in the registration to build on the state's existing statewide solid waste management plan to assess the following:

1. current recycling rates for each covered material and, to the extent possible, taking into consideration the performance goals (but the goals are proposed in the plan that is submitted after the study);
2. current funding needs affecting access to, and availability of, recycling in Connecticut;
3. capacity, costs, and needs for collecting, transporting, and processing covered materials in the state;
4. net end-of-life management cost of discarded covered materials, including the cost to collect, transport, and process recyclables and municipal solid waste that is incinerated or landfilled (regardless of location inside or outside the state);
5. availability of opportunities in the recycling and reuse systems for minority- and women-owned businesses;
6. barriers to (a) recycling access and availability in the state and (b) marketability of recyclable materials generated in the state;
7. opportunities to create packaging reuse and refill programs in Connecticut; and
8. consumer education needs concerning recycling and reducing contamination in collected covered materials.

Commissioner Decision. The bill allows the commissioner to consider prior registrations when deciding to approve a scope of work. If she disapproves a scope of work because it does not meet the bill's requirements, she must give the responsible party or stewardship written notice of her reasons. The scope of work must then be revised and resubmitted to the commissioner within 30 days, and she has 30 days after receiving the resubmitted scope of work to review it, decide whether to approve or disapprove it, and give a notice of determination of her decision.

The bill limits resubmitting a revised scope of work for approval to one occasion. If the responsible party or stewardship organization fails to submit a scope of work that is acceptable, the bill requires the commissioner to modify it so that it conforms to the bill's requirements and approve it.

Advisory Committee

Within 180 days after it registers with DEEP, the bill requires the responsible party or stewardship organization to create, and nominate members to, an advisory committee that must advise and comment on a stewardship program plan, plan revisions, or substantive program changes before they are submitted to DEEP for approval. The bill specifies that the committee assumes these responsibilities for subsequent responsible parties and stewardship organizations.

Under the bill, an advisory committee must at least include the following 14 members:

1. the DEEP commissioner or her designee;
2. a representative of responsible parties;
3. a representative from a municipal association or municipal government and a representative of a regional or municipal waste management program;
4. a representative for each of (a) a materials recycling facility located in Connecticut and (b) waste haulers or a regional waste

- management and recycling organization;
5. a representative for each of a (a) state-wide retail association, (b) packaging manufacturer, and (c) material supplier;
 6. a representative for each of a (a) nonprofit environmental advocacy organization, (b) community-based organization or an organization that represents equity and underrepresented stakeholders, and (c) nonprofit organization dedicated to litter cleanup;
 7. a person with expertise in environmental and human health; and
 8. someone with expertise in recycling market development.

All nominations must be approved by the DEEP commissioner. She may also add committee members. But the bill prohibits her from approving a member to meet more than one membership category.

The bill requires an advisory committee to meet at least annually.

Required Plan Contents

A plan submitted for approval must be on a DEEP-prescribed form and identify (1) each responsible party that authorized the stewardship organization to operate and administer the program on its behalf and (2) the brands and types of the responsible parties' covered materials participating in the program. It must also have the name, address, and contact information of each person responsible for ensuring that the organization and the parties that authorized the organization to operate a program on their behalf comply with the bill's requirements.

Under the bill, the plan must describe the following:

1. the results from the study about the state's recycling and covered materials management needs and how the responsible party or stewardship organization intends to address program needs evaluated in the study (see *Registration with DEEP*, above);
2. how the program will fund the net costs to collect, transport,

- process, and market covered materials, including paying reasonable rates to public and private entities;
3. the general process for statewide, year-round, convenient and accessible collection and transportation of covered materials, including from residences, multi-family apartment buildings, public spaces, transfer stations, and other residential recycling collection locations, but it must be at least as convenient as the system used on October 1, 2023, free for collection at the residences and apartment buildings, and arrange for the diverse physical and language needs of the population;
 4. proposed statewide performance goals (see below), and a reason for each goal, for each type of covered material sold in the state;
 5. how collected covered materials will be marketed, including the names of contracted facilities and end markets (see below);
 6. how the program will give technical help to municipalities; regional associations; waste and recycling collectors, transporters, and processors; and other participating entities;
 7. how it will stop litter from covered materials, which may include things like grants to nonprofits for litter collection programs; advising the nonprofits; sponsorships; and litter prevention, reduction, and education programs; but not payments for litter cleanup;
 8. how the program will provide consistent and ongoing outreach, education, and communication to consumers about program participation (see below);
 9. how it intends to invest in existing and future reuse programs, recycling infrastructure, and end-market development in the state;
 10. how each responsible party or stewardship organization intends to collaborate with other responsible parties or stewardship organizations if more than one party or organization registers

with the commissioner to operate a program;

11. if a stewardship organization ceases to exist or the commissioner suspends or revokes its approved plan, a closure plan to ensure that funds held by the organization will (a) stay in a separate fund until the commissioner renews approval of a plan or (b) be transferred to a successor stewardship organization; and
12. any other information the DEEP commissioner requires.

Performance Goals. Under the bill, performance goals must be technologically feasible, economically practicable, and achievable within five years after the program's implementation date. The goals must include minimum rates for the following:

1. reduction rate, measured as the total reduction in weight of each covered material type;
2. reuse rate, measured as the total weight of each covered material type exempted from the program through transition to a reuse program;
3. recovery rate, measured as the total weight of each covered material type divided by the tons of each type the program recovers through collection;
4. recycling rate, measured as the total weight of each covered material type divided by the tons of each type managed by recycling;
5. post-consumer recycled content rate, measured as the percentage of total tons of each covered material type manufactured by using post-consumer recycled content over a year; and
6. contamination in recycling collection rate, measured as the percentage of total covered materials collected divided by the weight of covered materials disposed of after collection.

Marketing Materials. For materials that will be marketed for use

through a method other than mechanical recycling, the bill requires the plan to:

1. describe how it will affect the (a) materials' ability to be recycled into feedstock (i.e., raw material) for manufacturing new products and (b) types and amounts of plastic recycled for food and pharmaceutical-grade applications;
2. include any applicable air, water, and waste permitting compliance requirements; and
3. analyze the method's environmental impacts, compared to those of mechanical recycling, incineration, and landfill disposal as solid waste.

Consumer Outreach and Educational Materials. The bill requires that the educational materials for the program must, to the greatest extent feasible, have consistent branding and be consistent with RecycleCT Foundation's educational messaging and materials. The materials must also be applicable to all state residents, including those (1) with varying methods of collecting covered materials, (2) with multilingual needs, (3) who live in single or multi-family housing, or (4) underserved by traditional communication methods.

Plan Approval Process

Timeframe. Under the bill, the stewardship plan must be submitted to DEEP by January 1, 2026. (This assumes the law has been triggered by DEEP recognizing other states' laws as mentioned previously.) The bill requires the DEEP commissioner to determine whether to approve a plan within 180 days after its submission, but after she posts the plan on DEEP's website and solicits public comments.

If the commissioner disapproves a plan because it fails to meet the bill's requirements, she must give the responsible party or stewardship organization involved a notice of determination describing her reasons. The party or organization, as applicable, must revise and resubmit its plan within 60 days after receiving the disapproval notice. The commissioner then has 45 days after receiving the revised plan to review

and either approve or disapprove it and give a notice of determination (which in the case of disapproval, includes the reasons why). The bill restricts resubmitting a revised plan for approval to no more than two occasions. If the party or organization fails to submit an acceptable plan, the commissioner must modify a submitted plan to make it conform to the bill's requirements and approve this plan.

The bill (1) requires a plan to be implemented within 180 days after the commissioner approves it and (2) gives the commissioner the authority to rescind plan approval at any time.

The bill also specifies that it does not prevent additional responsible parties or stewardship organizations authorized to administer a program on their behalf from submitting plans to DEEP for approval after January 1, 2025.

Considerations. The bill allows the commissioner to consider the following when deciding to approve a plan:

1. the extent to which the plan includes (a) advisory committee advice and comments about the plan and (b) the process by which the advice and comments will be included for future expansions and improvements to the program;
2. the performance goals' ambition and achievability, considering the specific material types and performance goals from other jurisdictions;
3. its timeliness and effectiveness to meet the bill's requirements;
4. if its funding mechanism is reasonable and adequate to fund the program's costs; and
5. the extent to which it adequately promotes the state's sustainable materials management priority (i.e., prioritizing source reduction over recycling, recycling over resource recovery and waste-to-energy, and incineration and landfiling last) and moves covered materials higher up in the priority hierarchy.

Changes to a Program or its Plan

Substantial or Material Program Changes. The bill requires a responsible party or stewardship organization to submit substantial proposed program changes to the DEEP commissioner for approval. They must also be presented to the applicable advisory committee for its comments. Under the bill, a “substantial change” is a (1) change in the processing facilities used for collected covered materials or (2) material change to the system for collecting, transporting, or processing them.

The bill also requires a responsible party or organization to notify the commissioner of other material program changes on an ongoing basis and without resubmitting the plan for approval. These changes include things like changes to the party’s or organization’s composition, officers, or contact information.

Performance Goals. Within three years after a program’s implementation, the responsible party or stewardship organization must submit to the commissioner updated performance goals that are based on the program’s experience during its first three years.

The bill also allows the DEEP commissioner to require a plan to be reviewed or revised at any time if she (1) believes the performance goals are not being met or followed or are insufficient to increase program improvement or (2) determines there is a change of circumstances that warrants it.

Program Fees

Fee Structure. Under the bill, the stewardship organization must set a fee to cover, but not exceed the costs to (1) develop the plan, (2) operate and administer the program, and (3) maintain a financial reserve that is sufficient to operate the program over multiple years in a fiscally prudent and responsible manner. The bill allows the stewardship organization to update the fee schedule, but no more than once a year as needed, or as the DEEP commissioner directs if she finds that it is insufficient to incentivize redesign of the program or covered materials.

Under the bill, the fee schedule must incorporate the following:

1. a responsible party's share of covered materials sold in the state;
2. a flat-fee option (assessed on a tiered basis) so that any responsible party, other than an exempt one, that generates less than 15 tons of covered materials in a calendar year pays no more than \$500 per ton to the stewardship organization, regardless of material type; and
3. the cost to collect, process, and market the type of covered material sold in the state by a responsible party that is not exempt from the fee.

The bill requires the fee structure to also include changes to payments that incentivize, through reduced fees, the following circumstances:

1. using covered materials that (a) have a longer life span, (b) do not disrupt recycling processes, (c) have lower associated greenhouse gas (GHG) emissions, or (d) are recycled in a country that is a member of the Organization for Economic Cooperation and Development (there are 38 current members, including Canada, Mexico, and the United States);
2. using post-consumer recycled content in covered materials;
3. increasing covered materials' recyclability;
4. reducing the amount of covered materials used;
5. lowering the toxicity in covered materials;
6. reducing the amount of covered materials in litter; and
7. labeling covered materials in a way that reduces consumer confusion.

The bill specifies that it does not prohibit a stewardship organization for having private agreements or contracts with third parties that require payments of other fees associated with a covered material's

supply chain.

Fee Reduction for High Recycling Rate. The bill allows a stewardship organization to reduce the fees a responsible party owes if the party can show to the organization's satisfaction that a covered material type sold in the state by the responsible party had an 85% or greater recycling rate in the state during the prior calendar year. It limits the reduction to an amount that represents no more than the costs to collect and transport that type of covered material for recycling in the state, but keeps the right to adjust the fee if needed.

Under the bill, "recycling" is the transformation or remanufacturing of a covered material or its parts and by-products into usable or marketable materials. It does not include landfilling, incineration, energy recovery or energy produced by combustion, or final conversion to a fuel. Plastics recycling includes a feedstock that is converted into a raw material to manufacture new products. In general, a material is considered "recycled" when it does not require further processing so that it can be used to make a new product.

Fee Exemption for Viable Reuse Programs. The bill requires the DEEP commissioner to exempt a covered material from the fee payment if its responsible party can show that it is managed through a viable reuse program. These covered materials must be designed for reuse and refilled within their life cycle to the break-even point with a comparable discarded covered material. The "break-even point" is the minimum times that a covered material may be reused for it to be preferred environmentally over a comparable covered material intended to be discarded after a single use.

Under the bill, the reuse program must meet or exceed any recovery, recycling, and reuse performance goals set as part of the stewardship program. To get the exemption, the responsible party must give the commissioner, on a form she prescribes, information that shows (1) the viability, necessity, and environmental benefit and (2) how the responsible party intends to recover and recycle unused material at the end of the material's life. Substantive changes to the reuse program

must also be reported to the commissioner and she may rescind an exemption if the program ceases to conform to the submitted information.

“Reuse” of a covered material means the following:

1. the material can be refilled or reused for its original purpose and the responsible party or a designated third party provides a program for refilling it (presumably, also reusing it); and
2. the responsible party or a designated third party provides a program for the material to be collected and refilled or reused by the responsible party or another responsible party.

DEEP Administrative Fees. The bill also requires the DEEP commissioner, by July 1, 2024, to set reasonable fees for administering the program. The fees must (1) be based on factors related to the costs of program administration and (2) fully cover, but not exceed, the commissioner’s program implementation costs, including fees related to ensuring that packaging does not contain certain contaminants as provided under existing law.

Municipal Participation

The bill allows municipalities to continue to operate a transfer station or, directly or through a contract with private service providers, provide for the collection, transport, processing, or marketing of covered materials services without reimbursement through the program. It also allows municipalities to be reimbursed at a reasonable rate by a responsible party or stewardship organization operating or administering a program.

For municipalities choosing to do neither of the above, the bill requires a responsible party or stewardship organization to (1) contract with a private service provider and (2) calculate and disperse funding at a reasonable rate for the service provider’s collection, transport, processing, and marketing services.

Under the bill, the “reasonable rate” is the funding rate calculated

and dispersed by a responsible party or stewardship organization using a DEEP-approved formula. The rate may vary for a:

1. municipality electing to manage (e.g., collect, transport, process) covered materials through its own crew or fleet;
2. municipality electing to provide for management of covered materials through a service provider contract; or
3. service provider that manages covered materials through a subscription.

The rate for a municipality includes considerations for the (1) costs to manage the materials, and collect and transport them, rent containers, and fund transfer station staff and (2) municipality's population density.

The bill prohibits stewardship program costs from including covered materials collected and managed through a municipal solid waste disposal program, but it requires them to cover the costs of materials collected and disposed of from facilities that process them for recycling. It allows a stewardship organization to set standards for collecting, processing, and marketing covered materials (either under a municipal or private contract or agreement).

Reporting Requirements

Annual Program Report. Annually by October 15, the bill requires each responsible party or stewardship organization that is authorized to operate and administer a stewardship program in the state to report to the DEEP commissioner, on a form she prescribes, certain information about the program, as described below.

Under the bill, the report must include the following information about the program's covered materials:

1. a list of responsible parties and their brands and types of covered materials participating in the stewardship organization;
2. the tonnage, by type, of covered materials sold in Connecticut by responsible parties during the prior year;

3. the tonnage, by type, of covered materials managed through (a) recycling, (b) disposal, and (c) any other method; and
4. an identification of covered materials that could be redesigned as refillable or reusable.

Regarding the program's fee schedule, the report must detail the (1) schedule the responsible party or stewardship organization developed for the prior year and how the fees incentivized collecting, processing, or redesigning covered materials and (2) estimated schedule for the upcoming year, including expected fee rate changes based on changes in material value.

The bill requires the report to include the following about a program's performance goals:

1. information about progress toward achieving the goals and an evaluation of the methods and processes used to meet them and
2. if the performance goal evaluation shows that goals are not being met, a description of how the stewardship organization intends to improve the program to meet them.

The report must also explain how the program managed its covered materials. Specifically, it must:

1. describe how the processes, methods, and end-markets used to manage each covered material type promoted the state's sustainable materials management priority (i.e., preferring source reduction over recycling, recycling over resource recovery or waste-to-energy, and lastly incineration and landfilling);
2. detail any strategic investment in reuse and recycling infrastructure and end-market development in Connecticut;
3. describe litter abatement activities taken by, on behalf of, or funded by, the applicable responsible party or stewardship organization; and

4. describe the efforts made to (a) minimize environmental and human health impacts throughout the program's operation and covered material life cycle and (b) increase covered materials' reusability or recyclability at the end of the life cycle.

Lastly, the annual report must include (1) a description of the responsible party's or stewardship organization's outreach, education, and communication actions; (2) recommendations for program changes; and (3) any other information the DEEP commissioner requests.

DEEP Review. The bill requires the DEEP commissioner to submit a report to the Environment Committee within three years after a stewardship plan is approved that (1) describes the packaging stewardship program's results and (2) recommends any needed changes to improve its function and efficiency.

Posting Information for the Public

The bill sets several requirements for posting stewardship program information so that it is publicly available.

First, by the date a program is implemented, DEEP must list the names of responsible parties participating in the program and the brands the program covers on its website. DEEP must also maintain online public records of (1) registered stewardship organizations and their approved plans and plan amendments, (2) the annual reports it submits to the legislature, and (3) any other information it deems relevant. And the bill requires the DEEP commissioner to post on the department's website the annual program reports from responsible parties and stewardship organizations.

The bill similarly requires each responsible party or stewardship organization that operates and administers an approved stewardship program to maintain a public website with at least the following:

1. each responsible party with a stewardship organization to operate and administer the program for it and the brands and types of covered materials of the parties participating in the organization and

2. all applicable approved plans, annual reports, and audit results (see below).

However, the bill prohibits the DEEP commissioner from requiring the disclosure of any information that she finds to be confidential. This specifically includes any information that would (1) divulge competitive business information, methods, or processes entitled to protection as trade secrets of a responsible party or stewardship organization or (2) reasonably hinder the party or organization's competitive marketplace advantage.

Audit Requirements

Program Audits. Two years after program implementation, and then biennially, the responsible party or stewardship organization must have and pay for an independent program audit. The bill also allows the commissioner to request an audit, but in no case can there be more than one audit in a year.

Under the bill, a program audit must (1) review the accuracy of the party's or organization's program data and (2) have any other program-related information the commissioner requests.

Audited Financial Statements. Existing law requires any product stewardship organization operating in the state to, annually by May 1, submit to DEEP certified audited financial statements and the name of any contractor or organization that has a contract with it valued at \$2,000 or more (CGS § 22a-905g). This requirement applies to a stewardship organization operating a program for materials covered by the bill.

Record Retention

The bill requires responsible parties and stewardship organizations to keep for at least three years all records related to a stewardship program, specifically including independent audits and the annual reports submitted to DEEP.

Penalties: Civil Enforcement

Injunctive Relief. The bill allows the DEEP commissioner to ask the

attorney general to bring an action for injunctive relief in Hartford Superior Court if the commissioner believes that a person has engaged in, or is about to engage in, an act, practice, or omission, that violates the bill's requirements. It permits the court to issue a permanent or temporary injunction, restraining order, or other appropriate order, including taking remedial measures or directing compliance.

Penalty. Anyone who violates the bill's provisions is subject to a civil penalty of up to \$25,000 per offense, which the Superior Court assesses. The bill specifies that each violation is a separate and distinct offense and each day that a violation continues is considered a separate and distinct offense. It requires the attorney general to bring an action in Hartford Superior Court to recover the penalty if the DEEP commissioner asks.

Additional Provisions. The bill requires the above actions by the attorney general to take precedence over other actions in the order of trial. It also applies joint and several liability to violations committed by more than one person.

Penalties: Administrative Actions

The bill allows DEEP to suspend or revoke an approved plan if it determines that (1) there was a violation or repeated violations of the bill's requirements or (2) a violation materially impacted a plan's implementation and administration.

Liability Protection

The bill gives a responsible party, retailer, or stewardship organization, including its officers, members, employees, and agents, that organizes a packaging stewardship program immunity from liability for conduct under state laws on antitrust, trade restraint, unfair trade practices, and any other trade or commerce regulation. It does this only to the extent needed to plan and implement its program according to the bill's requirements.

Interstate Collaboration

The bill allows a stewardship organization to collaborate with other

states that have similar stewardship programs for covered materials or similar materials to conserve efforts and resources. However, the collaboration must be consistent with the bill's requirements.

Conflicting Municipal Ordinances

The bill prohibits local governments from adopting an ordinance on stewardship programs for materials covered by the bill, and beginning on the date the program takes effect, any local ordinance or regulation that violates this provision is null and void. It also explicitly states that Connecticut intends to occupy the regulatory field for a covered material's stewardship program (i.e., state law will regulate these programs).

BACKGROUND

Related Bills

sHB 5577 (File 266), favorably reported by the Environment Committee, requires the DEEP commissioner (1) by January 1, 2024, to require municipalities to separate source-separated organic materials and have them recycled and (2) by October 1, 2023, to amend DEEP regulations to include food scraps as designated recyclables.

sSB 1046 (File 105), favorably reported by the Children's Committee, requires certain school districts to separate organic materials from other solid waste and recycle it at composting facilities (i.e., those that meet existing law's 26-ton and 20-mile triggers).

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute
Yea 21 Nay 12 (03/24/2023)