The Business Council

S.4246-B (Harckham)/A. 5322-B (Glick)

STAFF CONTACT : Ken Pokalsky | Vice President | 518-694-4460

BILL
S.4246-A (Harckham)/A. 5322-A (Glick)
SUBJECT
"Packaging reduction organization" and packaging mandates and restrictions
DATE
February 12, 2024
OPPOSE

The Business Council strongly opposes this legislation. Its initial version would have required the producers of packaging and paper products to set up a "producer responsibility organization" to take responsibility for managing and financing material recovery, processing and recycling, and meet targets for reduced use of non-reusable packaging, recycling of materials and paper products, and post-consumer recycled content. This approach was comparable to EPR legislation recently adopted in California, Colorado and Oregon.

As amended, however, the bill takes a very different approach. It has a new focus on restricting the sale of plastic packaging and one-use products, and requires source reduction of all packaging types. In doing so, the bill disregards practical considerations and will adversely impact consumer choices and costs. (As example, it will significantly reduce safe packaging for food products including meat and dairy items, and will likely result in the reduction or elimination of smaller-sized (and lower cost) offerings, to allow for more product per volume of packaging.)

And rather than require the creation of a producer-led PRO, the bill basically creates two new state entities, one to manage recycling, reduction and reuse programs, and a second with authority – concomitant with the existing authority of the Department of Environmental Conservation (DEC) and Department of Law – to enforce compliance. The management entity, dubbed the "packaging reduction organization," has broad (as a practical matter, unlimited) authority to impose assessments on producers of packaging and single-use plastic products, and to disburse funds to municipalities and private waste management companies. The bill provides that the initial PRO would be designated through a competitive bid process offered by DEC, but the bill provides no upfront funding for initial PRO activities. And if the PRO fails to meet its contractual requirements, its authority can be rescinded and the DEC could be left with managing the PRO process itself.

And while these municipal payments would offset current municipal expenditures for managing packaging and single-use plastic product wastes, there is no requirement that municipalities pass on any benefit to municipal residents through tax reductions.

The packaging reduction organization would spend producer assessments on a range of activities, including “strategic investments” in reuse and recycling infrastructure and recycling market development. While individual producers will have no role in planning or directing these expenditures, they will be held civilly liable if the plan implementation does not support mandated levels of recycling.

The bill establishes mandatory source reduction, including those singling out plastic packaging, and recycling rate goals that are not consistent with other states and not based on any real-world data. It also imposes packaging reuse requirements that would be costly and even more packaging-intensive.

While the bill imposes absolute bans on the presence of twelve chemicals and three plastic types in packaging and single-use plastic products, it also creates a task force to make recommendations on additional substance bands, with the Department of Environmental Conservation mandated to adopt such recommendations by rule. Moreover, unlike existing New York State restriction on chemicals in packaging, this bill provides no de minimis exemption, meaning any level of detection constitutes a violation, regardless of any potential public health impact.

The Business Council and other business interests provided extensive recommendations regarding legislation to enhance recycling and promote material use reduction. The bill does include two of these recommendations. It allows DEC the ability adjustment mandatory targets by regulation, within limits, and allows credit for recent producer source reduction activity. However, the majority of our recommendations are not reflected in this legislation, and we believe that this legislation falls well short of our objective of having a fair, workable, consumer-protective packaging and material management system.

For these reasons, The Business Council strongly recommends against approval of S.4246-B/A.5322-B.

We welcome the opportunity to discuss these and other concerns, and our recommendations, with any Senate or Assembly member.