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Date: (Filing No. H-)

ENVIRONMENT AND NATURAL RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1146, L.D. 1541, “An Act To Support and Improve Municipal Recycling Programs and Save Taxpayer Money”

Amend the bill by striking out everything after the enacting clause and inserting the following:

Sec. 1. 38 MRSA §1776, sub-§11, as enacted by PL 2013, c. 315, §7, is amended to read:

11. Exceptions. This section does not apply to products subject to section 1610, 1665-A, 1665-B, 1672, 2146, 2165 or 2166.

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

§2146. Stewardship program for packaging

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

- A. "Alternative collection program" means a program for the management of packaging material that is operated by an individual producer or group of producers and that has been approved by the department in accordance with subsection 8.
- B. "Brand" has the same meaning as in section 1771, subsection 1.
- C. "Collection" means the gathering of waste, including the preliminary sorting and storage of waste for the purposes of transport to a recycling establishment.
- D. "European article number" or "EAN" means a 13-digit barcode used for product identification purposes, also referred to as an international article number.
- E. "Franchisee" means a person that is granted a franchise by a franchisor authorizing the use of the franchisor's trade name, service mark or related characteristic and the sharing of the franchisor's proprietary knowledge or processes pursuant to an oral or written arrangement for a definite or indefinite period.

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- 1 F. "Franchisor" means a person that grants to a franchisee a franchise authorizing the
2 use of the person's trade name, service mark or related characteristic and the sharing of
3 the person's proprietary knowledge or processes pursuant to an oral or written
4 arrangement for a definite or indefinite period.
- 5 G. "Low-volume producer" means a producer that sold, offered for sale or distributed
6 for sale in or into the State during the prior calendar year products contained, protected,
7 delivered, presented or distributed in or using more than one ton but less than 15 tons
8 of packaging material in total.
- 9 H. "Municipality" means a city, town, county, township, village or plantation; a refuse
10 disposal district under chapter 17; or a regional association.
- 11 I. "Packaging material" means a discrete type of material, or a category of material
12 that includes multiple discrete types of material with similar management requirements
13 and similar commodity values, used for the containment, protection, delivery,
14 presentation or distribution of a product, including a product sold over the Internet, at
15 the time that the product leaves a point of sale with or is received by the consumer of
16 the product. "Packaging material" does not include a discrete type of material, or a
17 category of material that includes multiple discrete types of material, that is:
- 18 (1) Intended to be used for the long-term storage or protection of a durable product
19 and that can be expected to be usable for that purpose for a period of at least 5
20 years;
- 21 (2) A beverage container, as defined in section 3102, subsection 2, subject to the
22 requirements of chapter 33;
- 23 (3) A container for architectural paint, as defined in section 2144, subsection 1,
24 paragraph A, as long as a paint stewardship program is in operation, has been
25 approved by the department pursuant to section 2144 and the stewardship
26 organization operating that program:
- 27 (a) Has demonstrated to the department's satisfaction that it recycles at least
28 90% of the containers of architectural paint collected under the program; or
- 29 (b) Subject to the approval of the department, if unable to satisfy the
30 requirements of division (a), has demonstrated to the department's satisfaction
31 that it recycles at least 80% of the containers of architectural paint collected
32 under the program; or
- 33 (4) Excluded from the definition of "packaging material" by the department by rule
34 adopted pursuant to subsection 13, paragraph D.
- 35 J. "Packaging stewardship fund" or "fund" means a privately held account established
36 and managed by the stewardship organization pursuant to subsection 12.
- 37 K. "Packaging stewardship organization" or "stewardship organization" means the
38 entity contracted by the department under subsection 3 to operate the packaging
39 stewardship program.
- 40 L. "Packaging stewardship program" or "program" means the program implemented
41 under this section by the stewardship organization to assess and collect payments from
42 producers based on the amount, whether by weight or volume, of packaging material
43 sold, offered for sale or distributed for sale in or into the State by each producer and to

1 reimburse participating municipalities for certain municipal recycling and waste
2 management costs.

3 M. "Participating municipality" means a municipality that has complied with the
4 requirements of subsection 9 and is eligible for reimbursement of certain costs in
5 accordance with subsection 10.

6 N. "Post-consumer recycled material" means new material produced using material
7 resulting from the recovery, separation, collection and reprocessing of material that
8 would otherwise be disposed of or processed as waste and that was originally sold for
9 consumption. "Post-consumer recycled material" does not include post-industrial
10 material or pre-consumer material.

11 O. "Producer" means a person that:

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

15 (2) Is the sole entity that imports into the State for sale, offer for sale or distribution
16 for sale in or into the State a product contained, protected, delivered, presented or
17 distributed in or using packaging material that is branded by a person that meets
18 the requirements of subparagraph (1) and has no physical presence in the United
19 States.

20 "Producer" includes a low-volume producer and a franchisor of a franchise located in
21 the State, but does not include the franchisee operating that franchise. "Producer" does
22 not include a nonprofit organization exempt from taxation under the United States
23 Internal Revenue Code of 1986, Section 501(c)(3).

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

25 Q. "Readily recyclable" means, with respect to a type of packaging material, that the
26 type of packaging material meets the criteria and standards for recyclability as
27 determined by the department by rule pursuant to subsection 13, paragraph A,
28 subparagraph (2).

29 R. "Recycling" has the same meaning as in section 1771, subsection 7.

30 S. "Reuse" has the same meaning as in section 1771, subsection 8.

31 T. "Similar municipalities" means 2 or more municipalities that, as determined by the
32 department by rule pursuant to subsection 13, paragraph A, subparagraph (3), have
33 similar population sizes and similar geographic locations and share other department-
34 specified criteria.

35 U. "Toxicity" means, with respect to packaging material, the presence in packaging
36 material or the use in the manufacturing, recycling or disposal of packaging material
37 of intentionally introduced metals or chemicals regulated pursuant to Title 32, chapter
38 26-A; food contact chemicals of high concern or priority food contact chemicals
39 regulated pursuant to Title 32, chapter 26-B; or chemicals of concern, chemicals of
40 high concern or priority chemicals identified pursuant to chapter 16-D.

41 V. "Universal product code" or "UPC" means a standard for encoding a set of lines and
42 spaces that can be scanned and interpreted into numbers for product identification

1 purposes. "Universal product code" includes any industry-accepted barcode used for
2 product identification purposes in a manner similar to a UPC, including, but not limited
3 to, an EAN.

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

7 A. The producer realized less than \$2,000,000 in total gross revenue during the prior
8 calendar year, except that, for the period beginning one calendar year following the
9 effective date of the contract entered into by the department and the stewardship
10 organization pursuant to subsection 3 and ending 3 years after that effective date, a
11 producer that realized less than \$5,000,000 in total gross revenue during the prior
12 calendar year is exempt from the requirements and prohibitions of this section;

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

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

19 A producer claiming an exemption under this subsection shall provide to the department
20 sufficient information to demonstrate that the producer meets the requirements for an
21 exemption under this subsection within 30 days of receiving a request from the department
22 to provide such information.

23 **3. Selection of stewardship organization; contract.** Consistent with the
24 requirements of this subsection, the department shall select and enter into a contract with a
25 packaging stewardship organization to operate the packaging stewardship program under
26 this section.

27 A. Consistent with applicable competitive bidding requirements under state
28 purchasing laws and following the initial adoption of rules by the department pursuant
29 to subsection 13 to implement this section, the department shall issue a request for
30 proposals for the operation of the packaging stewardship program by a packaging
31 stewardship organization. The proposals must be required to cover a 10-year operation
32 of the packaging stewardship program by the successful bidder and must be required
33 to include, at a minimum:

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

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

41 (b) The mechanism or process, to be developed with input from municipalities,
42 by which a participating municipality may request and receive assistance from
43 the stewardship organization in the reporting of required information and

1 regarding methods by which a municipality's recycling program may be
2 modified so as to increase access to and participation in the program;

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

7 (3) A description of how the bidder intends to establish and manage the packaging
8 stewardship fund consistent with subsection 12, including, but not limited to: the
9 staffing the bidder intends to use for management of the fund; a plan to ensure
10 equity of access to the fund for participating municipalities; a plan for providing
11 technical support to producers and municipalities regarding program requirements;
12 and a plan for administering payments to and reimbursements from the fund and
13 the financial mechanisms, including investment types, if any, the bidder intends to
14 use in managing the fund;

15 (4) A proposed financial assurance plan that ensures all funds held in the
16 packaging stewardship fund are immediately and exclusively forfeited and
17 transferred to or otherwise made immediately available to the department to
18 support waste diversion, reuse or recycling programs when the stewardship
19 organization's contract with the department is terminated by the department or
20 expires, unless the stewardship organization enters into a new contract with the
21 department in accordance with paragraph B prior to the expiration of the
22 stewardship organization's existing contract;

23 (5) A proposed budget outlining the anticipated costs of operating the packaging
24 stewardship program, including identification of any start-up costs that will not be
25 ongoing and a description of the method by which the bidder intends to determine
26 and collect producer payments during the initial start-up period of program
27 operation to fund the program's operational costs during that initial start-up period
28 and to reimburse or require additional payments by those producers subsequent to
29 that initial start-up period based on producer reporting of the actual amount of
30 packaging material sold, offered for sale or distributed for sale in or into the State
31 by each producer during that initial start-up period. The proposed budget under this
32 subparagraph may overestimate the cost of operating the program during its initial
33 start-up period of operation but must describe the method and basis for any
34 overestimate;

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

40 (7) A description of how the bidder will conduct a statewide recycling needs
41 assessment that, at a minimum, includes an evaluation of:

42 (a) Current funding needs affecting recycling access and availability in the
43 State;

1 (b) The capacity, costs and needs associated with the collection and
2 transportation of recyclable material in the State;

3 (c) The processing capacity, market conditions and opportunities in the State
4 and regionally for recyclable material; and

5 (d) Consumer education needs in the State with respect to recycling and
6 reducing contamination in collected recyclable material; and

7 (8) Any additional information required by the department.

8 B. In accordance with applicable requirements of state purchasing laws, the
9 department shall enter into a contract with a bidder that has submitted a proposal in
10 accordance with the requirements of this subsection, the term of which must cover 10
11 years of operation of the packaging stewardship program by the stewardship
12 organization. The contract must, at a minimum, include provisions to ensure that the
13 stewardship organization will conduct the statewide recycling needs assessment
14 described in paragraph A, subparagraph (7) and report the results of that assessment to
15 the department within a reasonable time frame and operate the program in accordance
16 with all applicable statutory requirements and the rules adopted by the department
17 under this section.

18 If, at the close of the competitive bidding process under this subsection, the department
19 determines that no bidder has submitted, in accordance with this subsection, a proposal that
20 meets the requirements of this subsection, the department may reopen a new competitive
21 bidding process under this subsection.

22 **4. Prohibition; producer compliance information.** This subsection governs the sale
23 or distribution in the State of products with packaging not in compliance with the
24 requirements of this section and sets forth requirements for the collection and publication
25 of compliance information.

26 A. Except as provided in paragraph D, beginning one calendar year following the
27 effective date of the contract entered into by the department and the stewardship
28 organization pursuant to subsection 3:

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

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

39 B. The stewardship organization shall provide to the department a list of producers
40 that are participating in the program and a list of the UPCs of products for which the
41 producer has complied with the program's requirements and, if known to the
42 stewardship organization, a list of producers that are not participating in the program
43 and are not compliant with the program's requirements. The stewardship organization

1 shall provide to the department regularly updated producer compliance information
2 described in this paragraph.

3 C. Based on information provided to the department under paragraph B and any other
4 information considered by the department, the department shall make available on its
5 publicly accessible website a regularly updated list of UPCs of products for which the
6 department has determined the producer has complied with all applicable requirements
7 of this section and a list of producers and, where applicable, specific products and the
8 UPCs of those products for which the department has determined the producer has not
9 complied with all applicable requirements of this section. The department shall
10 conduct outreach to retailers to provide notification of the information made available
11 under this paragraph and any changes to that information.

12 D. Notwithstanding a producer's failure to comply with all applicable requirements of
13 this section for a type or types of packaging material used to contain, protect, deliver,
14 present or distribute a product, the department may authorize the sale or distribution
15 for sale in or into the State of another product or products of the producer that are
16 contained, protected, delivered, presented or distributed in or using a different type or
17 types of packaging material for which that producer has complied with all applicable
18 requirements of this section. In the event that the department provides such an
19 authorization, the department shall ensure that such information is included in the
20 information made available pursuant to paragraph C.

21 **5. Annual reporting by stewardship organization.** In accordance with rules adopted
22 by the department, the stewardship organization shall annually submit to the department
23 and make available on its publicly accessible website a report that includes, at a minimum,
24 the following information:

25 A. Contact information for the stewardship organization;

26 B. A list of participating producers and the brands and the UPCs of products associated
27 with those producers;

28 C. The total amount, whether by weight or volume, of each type of packaging material
29 sold, offered for sale or distributed for sale in or into the State by each participating
30 producer as reported in accordance with subsection 7;

31 D. As applicable, the total amount, whether by weight or volume, of each type of
32 packaging material collected and managed by each participating producer through
33 alternative collection programs approved by the department under subsection 8;

34 E. A complete accounting of payments made to and by the stewardship organization
35 during the prior calendar year, including information on how the stewardship
36 organization determined the amount of such payments in accordance with subsections
37 6 and 10 and the rules adopted under subsection 13, paragraph A, subparagraphs (1)
38 and (4);

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

42 G. A description of education and infrastructure investments made by the stewardship
43 organization in prior calendar years and an evaluation of how those investments were

1 designed to increase access to recycling in the State and to encourage the reuse of
2 packaging material;

3 H. A description of the results of the representative audits required pursuant to
4 subsection 13, paragraph A, subparagraph (6);

5 I. An assessment of the progress made toward the achievement of any program goals
6 required by the department by rule pursuant to subsection 13, paragraph A,
7 subparagraph (5);

8 J. An assessment of whether the payment schedule for producer payments adopted by
9 the department by rule pursuant to subsection 13, paragraph A, subparagraph (1) has
10 been successful in incentivizing improvements to the design of packaging material as
11 encouraged through the allowance of payment adjustments in accordance with
12 subsection 13, paragraph A, subparagraph (1), division (c);

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

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

19 M. An estimate of the annual greenhouse gas emissions effects in the State associated
20 with the operation of the stewardship program. As used in this paragraph, "greenhouse
21 gas" has the same meaning as in section 574, subsection 1; and

22 N. Any additional information required by the department.

23 **6. Producer payments.** In accordance with the provisions of this subsection and the
24 rules adopted by the department, no later than 180 days after the effective date of the
25 contract entered into by the department and the stewardship organization pursuant to
26 subsection 3, and annually thereafter, a producer shall make payments to the stewardship
27 organization to be deposited into the packaging stewardship fund under subsection 12
28 based on the net amount, whether by weight or volume, of each type of packaging material
29 sold, offered for sale or distributed for sale in or into the State by the producer and not
30 managed by the producer under an approved alternative collection program. The
31 department shall adopt rules setting forth the manner in which such payments must be
32 calculated for packaging material that is readily recyclable and packaging material that is
33 not readily recyclable, which must be designed to incentivize the use by producers of
34 packaging material that is readily recyclable and disincentivize the use by producers of
35 packaging material that is not readily recyclable.

36 **7. Annual reporting by producers.** In accordance with rules adopted by the
37 department, a producer shall annually report to the stewardship organization the total
38 amount, whether by weight or volume, of each type of packaging material sold, offered for
39 sale or distributed for sale in or into the State by the producer in the prior calendar year.

40 **8. Alternative collection programs.** In accordance with the requirements of this
41 subsection and the rules adopted by the department, a producer or group of producers may
42 develop and operate an alternative collection program to collect and manage a type or types
43 of packaging material sold, offered for sale or distributed for sale in or into the State by the
44 producer or producers. A producer that manages a type of packaging material under an

1 approved alternative collection program through reuse, recycling and, where approved by
2 the department, management of that packaging material through incineration may wholly
3 or partially offset the producer's payment obligations under the packaging stewardship
4 program with respect to that same type of packaging material only.

5 A. Beginning on the effective date of the contract entered into by the department and
6 the stewardship organization pursuant to subsection 3, a producer or group of producers
7 seeking to implement an alternative collection program shall submit a proposal for the
8 establishment of that program to the department for approval. The department shall
9 approve or deny the proposal within 120 days of receipt and shall provide an
10 opportunity for public review and comment on the proposal prior to its approval or
11 denial. The department may approve an alternative collection program for a term of 5
12 years and, at the expiration of such term, the producer or group of producers operating
13 the program may submit an updated proposal to the department for approval.

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

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

19 (2) To what extent the alternative collection program intends to manage those
20 types of packaging material to be collected under the program through reuse for an
21 original purpose, through recycling or through disposal at an incineration facility.
22 The department may not approve an alternative collection program that proposes
23 management of a packaging material type through disposal at an incineration
24 facility unless that packaging material is not readily recyclable and the program
25 proposes a process to begin reuse or recycling of that type of packaging material
26 within a period of 3 years or less;

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

30 (4) How the alternative collection program intends to accurately measure the
31 amount, whether by weight or volume, of each packaging material type collected,
32 reused, recycled, disposed of at an incineration facility or otherwise managed under
33 the program; and

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

36 C. A proposed modification to an approved alternative collection program must be
37 submitted to the department for written approval. The department shall approve or
38 deny a proposed modification based on application of the criteria described in
39 paragraph B. The department may waive payment of any fees associated with review
40 and approval of a proposed modification to an approved alternative collection program
41 if the review of the proposed modification does not require significant department staff
42 time.

1 D. In accordance with rules adopted by the department, a producer or producers
2 managing an approved alternative collection program shall report annually to the
3 stewardship organization and to the department the following information:

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

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

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

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

16 E. If the department determines that an approved alternative collection program is not
17 operating in a manner consistent with the proposal approved under this subsection or
18 the provisions of this subsection, the department shall provide written notice to the
19 producer or producers operating the alternative collection program regarding the nature
20 of the deficiency, the actions necessary to correct the deficiency and the time by which
21 such actions must be implemented. If the department determines that the producer or
22 group of producers have failed to implement the actions described in the written notice
23 within the required time frame, the department shall notify the producers or group of
24 producers as well as the stewardship organization in writing that the producer or group
25 of producers are ineligible to offset payment obligations under the packaging
26 stewardship program based on packaging material managed under the alternative
27 collection program.

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

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

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

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

1 **10. Municipal reimbursements.** In accordance with the rules adopted by the
2 department pursuant to subsection 13, paragraph A, subparagraph (4), the stewardship
3 organization shall annually disburse to participating municipalities from the packaging
4 stewardship fund established under subsection 12 reimbursement payments for the median
5 per-ton cost of managing packaging material that is readily recyclable and reimbursement
6 payments for the median per-ton cost of managing packaging material that is not readily
7 recyclable. For the purposes of this subsection, the cost to a municipality of managing
8 packaging material may include, but is not limited to, the costs associated with the
9 collection, transportation and processing of packaging material, whether readily recyclable
10 or not readily recyclable, and the costs associated with the disposal of packaging material
11 that is not readily recyclable.

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

15 (1) Information provided by participating municipalities to the stewardship
16 organization in accordance with subsection 9, paragraph B regarding the costs
17 incurred by those municipalities in managing packaging material that is readily
18 recyclable and packaging material that is not readily recyclable, which may include
19 costs associated with the management of packaging material collected in public
20 spaces and schools;

21 (2) Information provided to the department by recycling establishments pursuant
22 to section 2145 and made available by the department to the stewardship
23 organization, including the tons of recyclable material received by each recycling
24 establishment from each municipality and the tons of processed recyclable material
25 sold by each recycling establishment;

26 (3) Information provided to the department by recycling establishments not
27 located in the State or by participating municipalities and made available by the
28 department to the stewardship organization regarding the tons of recyclable
29 material brokered by those municipalities to those recycling establishments and
30 processed and sold by those recycling establishments;

31 (4) Information obtained by the stewardship organization through the audits of
32 facilities that process recyclable material generated in the State as required by
33 subsection 13, paragraph A, subparagraph (6); and

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

35 B. In accordance with procedures and requirements adopted by the department by rule,
36 the stewardship organization shall use the information described in paragraph A to
37 determine the total tons of each packaging material type recycled by all municipalities
38 at each recycling establishment and the percentage of those total tons attributable to
39 each participating municipality. In the case of 2 or more municipalities that jointly send
40 recyclable material to a recycling establishment, the stewardship organization shall
41 assume that an equal amount of the jointly sent material is attributable to each resident
42 of each municipality unless those municipalities by agreement identify an unequal per
43 capita division of that jointly sent material for the purposes of this subsection.

1 **11. Investments in education and infrastructure.** In accordance with the provisions
2 of this subsection and the rules adopted by the department, the stewardship organization
3 shall make investments in education and infrastructure that support the recycling of
4 packaging material in the State.

5 A. The stewardship organization shall submit any proposed investment in education or
6 infrastructure to the department for approval prior to making any expenditure for such
7 investment. The proposal must incorporate any input received by the stewardship
8 organization regarding the proposed investment from producers, recycling
9 establishments and participating municipalities.

10 B. The department shall adopt rules setting forth the criteria for evaluation and approval
11 or denial of investments in education and infrastructure proposed by the stewardship
12 organization. The department shall approve or deny a proposed investment within 90
13 days of receipt of the proposal from the stewardship organization.

14 C. The department shall ensure that preference for funding is given to proposals that
15 support the State's solid waste management hierarchy under section 2101, promote a
16 circular economy for packaging material types for which producers were required to
17 make payments under subsection 6, increase the recyclability of packaging material
18 that is not readily recyclable, increase access to recycling infrastructure in the State,
19 improve consumer education in the State regarding recycling and recyclability and
20 equitably support recycling and education efforts in participating municipalities,
21 particularly in those participating municipalities that have received minimal or no prior
22 funding pursuant to this paragraph.

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

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

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

34 C. To pay to the department all applicable fees required under subsection 13, paragraph
35 B, including reimbursement of any costs incurred by the department in adopting rules
36 and in administering and enforcing this section prior to the effective date of the contract
37 entered into by the department and the stewardship organization pursuant to subsection
38 3; and

39 D. To support investments in education and infrastructure made in accordance with
40 subsection 11.

41 **13. Administration and enforcement; rulemaking; fees; department report.** The
42 department shall administer and enforce this section and shall adopt rules as necessary to
43 implement, administer and enforce this section. The department shall solicit input from
44 interested parties in the development of any draft rules to implement this section, solicit

1 public comment on the draft rules for a period of at least 30 days and hold a public hearing
2 on the draft rules in the same manner as a public hearing must be conducted under Title 5,
3 section 8052. Rules adopted pursuant to this section are routine technical rules as defined
4 in Title 5, chapter 375, subchapter 2-A.

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

7 (1) A process for annually determining a schedule of producer payments required
8 under subsection 6, which must include, but is not limited to, provisions regarding
9 the timing of producer payments and the timing of and information required to be
10 provided in the annual producer report required by subsection 7.

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

16 (b) For producers other than low-volume producers, the payment schedule
17 adopted under this subparagraph must be based on and cover the cost of
18 managing the amount of each type of packaging material sold, offered for sale
19 or distributed for sale in or into the State by a producer and not managed under
20 an approved alternative collection program, adjusted as applicable in
21 accordance with the adjustment criteria adopted pursuant to division (c).

22 (c) For producers other than low-volume producers, the payment schedule
23 adopted under this subparagraph must delineate criteria to be used to adjust
24 producer payments in a manner that incentivizes: the use of recycled content
25 in and increased recyclability of packaging material, lower toxicity in
26 packaging material, a reduction of the amount of packaging material used, a
27 reduction of litter from packaging material, increased reuse of packaging
28 material and labeling of packaging material to reduce consumer confusion and
29 creates other incentives consistent with generally accepted industry standards.

30 (d) The rule must require as part of the annual producer reporting under
31 subsection 7 the provision by a producer of all information necessary for the
32 determination of the producer's payment obligation and the determination of
33 the producer's compliance with respect to its products.

34 (i) For producers other than low-volume producers, the rule must require
35 the producer to provide a description of the methods it used to determine
36 the amount reported for each type of packaging material associated with
37 its products, a description of the characteristics of each type of packaging
38 material that are relevant to the adjustment criteria adopted pursuant to
39 division (c) and a list of the producer's brands and the UPCs of the products
40 associated with each type of packaging material.

41 (ii) For low-volume producers, the rule must require the reporting of only
42 the information necessary for a calculation of the flat fee described in
43 division (a) and a determination of the producer's compliance with the
44 requirements of this section.

1 (iii) The rule must authorize a producer that is unable to fully satisfy the
2 reporting requirements due to a failure to obtain sufficient information
3 regarding the characteristics of the packaging material of products of the
4 producer that are sold, offered for sale or distributed for sale in or into the
5 State to alternatively report to the stewardship organization an estimate of
6 the total amount of that packaging material based on unit quantities as long
7 as such alternative reporting includes a description of the methods used by
8 the producer to calculate the estimate. When a producer alternatively
9 reports an estimate in accordance with this subdivision, unless otherwise
10 determined by the department, the estimate must be adjusted using the
11 least favorable adjustment criteria adopted pursuant to division (c);

12 (2) A process for determining on an annual basis those types of packaging material
13 that are readily recyclable, which must involve consultation with the stewardship
14 organization and recycling establishments and must include a transitional period
15 between the time that a type of packaging material is determined to be readily
16 recyclable or to not be readily recyclable and the time that such determinations will
17 be effective for the purposes of calculating producer payments and municipal
18 reimbursements in accordance with this section;

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

21 (4) A process for determining municipal reimbursements, including a description
22 of the information required from participating municipalities under subsection 9, a
23 method for calculating the reimbursements required under subsection 10 and the
24 timing for participating municipality reporting and payments to participating
25 municipalities. The method for calculating reimbursements must include the
26 median per-ton cost of managing packaging material that is readily recyclable and
27 the median per-ton cost of managing packaging material that is not readily
28 recyclable, including any disposal costs for packaging material that is not readily
29 recyclable. The method for calculating reimbursements must involve consultation
30 with participating municipalities and be designed to incentivize municipal waste
31 management activities that represent higher priorities on the solid waste
32 management hierarchy;

33 (5) Requirements for the assessment of program performance, including the
34 setting of program goals used to inform the producer payment schedule determined
35 pursuant to subparagraph (1) and the investments in infrastructure and education
36 made pursuant to subsection 11, which must include, but are not limited to,
37 program goals supporting an overall reduction by producers in the amount of
38 packaging material used, an increased reuse by producers of packaging material
39 and an increased amount of post-consumer recycled content in packaging material
40 used by producers; packaging material litter reduction goals; recycling access and
41 collection rate goals for municipalities; and overall program and material-specific
42 recycling rate goals.

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

- 1 (a) Sorted glass is considered recycled if it does not require further processing
2 before entering a glass furnace or before use in the production of filtration
3 media, abrasive materials, glass fiber insulation or construction materials;
- 4 (b) Sorted metal is considered recycled if it does not require further processing
5 before entering a smelter or furnace;
- 6 (c) Sorted paper is considered recycled if it does not require further processing
7 before entering a pulping operation; and
- 8 (d) Plastic separated by polymer is considered recycled if it does not require
9 further processing before entering a pelletization, extrusion or molding
10 operation or, in the case of plastic flakes, does not require further processing
11 before use in a final product;
- 12 (6) Requirements for the stewardship organization to conduct representative audits
13 of recyclable material processed and sold by facilities that process recyclable
14 material generated in the State, of municipal solid waste disposed of in the State
15 and of waste littered in the State, which must include, but are not limited to:
- 16 (a) Provisions regarding the sampling techniques to be used in those audits,
17 which must include random sampling;
- 18 (b) For audits of recyclable material, provisions regarding:
- 19 (i) How those audits must be designed to collect information regarding
20 the extent to which recyclable material processed and sold by those
21 facilities reflects the tons of each type of packaging material collected in
22 the State for recycling and the tons of each type of packaging material
23 recycled in the State, as well as the ultimate destination of and intended
24 use for that recycled material;
- 25 (ii) How those audits must be designed so that information collected
26 through the audit of one facility will not be used to infer information about
27 a different facility that uses different processing equipment, different
28 sorting processes or different staffing levels to conduct processing; and
- 29 (iii) The process by which a facility will be allowed to request and receive
30 an audit if it can credibly demonstrate that an audit result being applied to
31 its material output is not representative of its current operations;
- 32 (c) For audits of municipal solid waste, provisions regarding how the audits
33 will be designed to collect information regarding the types and amount,
34 whether by weight or volume, of packaging material in the waste stream and
35 the percentage by weight and volume of the waste stream that is composed of
36 packaging material; and
- 37 (d) For audits of waste littered in the State, provisions regarding how the audits
38 will be designed to collect information regarding the packaging material type
39 by amount, whether by weight or volume, in sampled litter, identification of
40 the producer or producers of the packaging material in sampled litter, if
41 identifiable, and an evaluation based on those audits regarding the areas of the
42 State in which litter accumulation is greatest;

1 (7) A schedule by which the stewardship organization must annually report to the
2 department pursuant to subsection 5 and a schedule by which a producer or group
3 of producers operating an approved alternative collection program must annually
4 report to the stewardship organization and to the department pursuant to subsection
5 8, paragraph D; and

6 (8) A process by which the stewardship organization will develop and submit for
7 department review and a process by which the department shall review and approve
8 or deny a proposed investment in education and infrastructure pursuant to
9 subsection 11. The process must set forth the manner in which the stewardship
10 organization is required to solicit and incorporate input in the development of
11 proposed investments from producers, recycling establishments and participating
12 municipalities.

13 B. At the time that the stewardship organization submits its annual report to the
14 department pursuant to subsection 5, the stewardship organization shall pay to the
15 department a reasonable annual fee established by the department, not to exceed
16 \$300,000, to cover the department's costs for review of the stewardship organization's
17 annual report and the department's costs in the prior fiscal year for its oversight,
18 administration and enforcement of the packaging stewardship program. In accordance
19 with subsection 12, paragraph C, the annual fee required under this paragraph may
20 include reimbursement of any costs incurred by the department in adopting rules and
21 in administering and enforcing this section prior to the effective date of the contract
22 entered into by the department and the stewardship organization pursuant to subsection
23 3.

24 C. A producer or group of producers, when submitting a proposal to the department
25 for the establishment of an alternative collection program or submitting a proposal to
26 the department for modifications to an approved alternative collection program under
27 subsection 8, shall pay to the department a reasonable fee established by the department
28 to cover the department's actual costs for review of the proposal or proposed
29 modifications. A producer or group of producers operating an approved alternative
30 collection program under subsection 8 shall pay to the department a reasonable annual
31 fee established by the department, not to exceed \$10,000 per participating producer, to
32 cover the department's costs for review of the producer's or group's annual report and
33 the department's costs for the oversight, administration and enforcement of the
34 alternative collection program, which may be waived by the department if those
35 activities by the department do not require significant department staff time.

36 D. The department shall review packaging material associated with certain federally
37 regulated products to determine whether that packaging material should be excluded
38 from the definition of "packaging material" under subsection 1, paragraph I. In making
39 such a determination, the department shall, at a minimum, consider whether the
40 packaging material for such products is required by federal law or regulation to meet
41 specific content or construction standards that may preclude or significantly diminish
42 the producer's ability to increase the recyclability or reduce the volume of the
43 packaging material. If the department determines that any such product or its
44 associated packaging material should be excluded from the definition of "packaging
45 material," the department shall adopt an exclusion by rule. At a minimum, the

1 department shall conduct a review in accordance with this paragraph of the packaging
2 material associated with the following federally regulated products:

3 (1) Material that is used for the containment, protection, delivery, presentation or
4 distribution of a drug, as that term is defined under Section 321 of the federal Food,
5 Drug, and Cosmetic Act, as regulated by the United States Food and Drug
6 Administration under the federal Food, Drug, and Cosmetic Act or as collected
7 under a stewardship program in the State that has been approved for operation by
8 the department and has been established to collect and dispose of such drugs,
9 including, but not limited to, prescription and nonprescription drugs, drugs in
10 medical devices and combination products, branded and generic drugs and drugs
11 for veterinary use;

12 (2) Material that is a medical device or a biological product, or is used for the
13 containment, protection, delivery, presentation or distribution of a medical device
14 or a biological product, as regulated by the United States Food and Drug
15 Administration under 21 Code of Federal Regulations, Parts 200, 300 and 800;

16 (3) Material that is used for the containment, protection, delivery, presentation or
17 distribution of an over-the-counter human drug product for which tamper-evident
18 packaging is required, as regulated by the United States Food and Drug
19 Administration under 21 Code of Federal Regulations, Section 211.132; and

20 (4) Material that is used for the containment, protection, delivery, presentation or
21 distribution of a substance regulated by the United States Consumer Product Safety
22 Commission pursuant to the federal Poison Prevention Packaging Act of 1970 for
23 which special packaging is required under 16 Code of Federal Regulations, Part
24 1700.

25 E. Beginning February 15, 2024, and annually thereafter, the department shall submit
26 a report to the joint standing committee of the Legislature having jurisdiction over
27 environment and natural resources matters regarding the packaging stewardship
28 program and alternative collection programs implemented pursuant to this section.

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

40 (2) Beginning February 15, 2027, and every 5 years thereafter, the report under
41 this paragraph must describe the results of a comprehensive review of the rules
42 adopted by the department pursuant to this section and must include
43 recommendations by the department for any legislative changes to this section
44 determined necessary as a result of that review, including, but not limited to,
45 changes to the flat fee that may be paid by a low-volume producer pursuant to

1 subsection 13, paragraph A, subparagraph (1), division (a), as well as a description
2 of any changes to those rules that the department intends to propose in future
3 rulemaking.

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

6 **14. Antitrust exclusions.** A producer or stewardship organization, including a
7 producer's or stewardship organization's officers, members, employees and agents that
8 organize a packaging stewardship program or an alternative collection program under this
9 section, is immune from liability for the producer's or stewardship organization's conduct
10 under state laws relating to antitrust, restraint of trade, unfair trade practices and other
11 regulation of trade or commerce only to the extent necessary to plan and implement the
12 producer's or stewardship organization's packaging stewardship program or alternative
13 collection program consistent with the provisions of this section.

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

19 **Sec. 3. Department of Environmental Protection; stewardship program**
20 **for packaging; routine technical rulemaking.** On or before December 31, 2022, the
21 Department of Environmental Protection shall initiate routine technical rulemaking
22 consistent with the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A to adopt
23 rules necessary for the implementation, administration and enforcement of a stewardship
24 program for packaging pursuant to Title 38, section 2146. Notwithstanding any provision
25 of law to the contrary, the department may use funds within the Maine Solid Waste
26 Management Fund established pursuant to Title 38, section 2201 to support its activities
27 required by this section except that, if the department uses funds within the Maine Solid
28 Waste Management Fund as authorized under this section, the department shall deposit
29 back into that fund the same amount of funds withdrawn once reimbursed pursuant to Title
30 38, section 2146, subsection 13, paragraph B.

31 **Sec. 4. Appropriations and allocations.** The following appropriations and
32 allocations are made.

33 **ENVIRONMENTAL PROTECTION, DEPARTMENT OF**
34 **Maine Environmental Protection Fund 0421**

35 Initiative: Provides funding for 2 Environmental Specialist III positions and related All
36 Other costs.

37 GENERAL FUND	2021-22	2022-23
38 POSITIONS - LEGISLATIVE COUNT	2,000	2,000
39 Personal Services	\$126,006	\$176,002
40 All Other	\$5,286	\$6,756
41		
42 GENERAL FUND TOTAL	\$131,292	\$182,758

43

1 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
2 number to read consecutively.

3 **SUMMARY**

4 This amendment, which is the majority report of the committee, makes the following
5 changes to the bill.

6 1. It includes new definitions for "European article number" or "EAN" and "universal
7 product code" or "UPC" and makes other clarifying changes to certain definitions in the
8 bill. It requires the stewardship organization to provide information to the department
9 regarding producer compliance under the packaging stewardship law based on product
10 UPC.

11 2. It provides that a number of criteria relating to the implementation and
12 administration of the packaging stewardship program and the time frame for such
13 implementation must be determined by the Department of Environmental Protection by
14 rule.

15 3. It provides that, for a period of 3 years following the effective date of the contract
16 between the department and the stewardship organization, a producer is exempt from the
17 requirements of the packaging stewardship law if the producer realized less than
18 \$5,000,000 in total gross revenue in any calendar year. After that time, the exemption only
19 applies to producers with less than \$2,000,000 in total gross revenue, as provided for in the
20 bill.

21 4. It requires the stewardship organization to conduct a statewide recycling needs
22 assessment to inform the development of the program.

23 5. It authorizes the department to allow a producer that has failed to comply with all
24 applicable requirements for a type or types of packaging material on one of its products to
25 continue to sell or distribute in the State other products that use a different type or types of
26 packaging material for which the producer has complied with all applicable requirements.

27 6. It requires the stewardship organization's annual report to the department to include
28 an estimate of the annual greenhouse gas emissions effects in the State associated with the
29 operation of the program.

30 7. It requires the department to provide for input from interested parties in the
31 development of draft rules to implement the program and to solicit public comment on and
32 hold a public hearing on those draft rules prior to initiating a formal rule-making process.

33 8. It clarifies producer reporting requirements and the method by which a producer's
34 payment obligation under the program is to be calculated.

35 9. It provides for department review of packaging material associated with certain
36 federally regulated products to determine whether that packaging material should be
37 excluded by rule from the definition of "packaging material."

38 10. It delays the date by which the department must initiate routine technical
39 rulemaking to implement the packaging stewardship law from May 1, 2022 to December

COMMITTEE AMENDMENT “ ” to H.P. 1146, L.D. 1541

1 31, 2022 and clarifies the use of existing funds at the department to support that activity
2 and other activities related to implementation.

3 11. It adds an appropriations and allocations section.

4 **FISCAL NOTE REQUIRED**

5 **(See attached)**