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STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM  
COMMISSIONER

**TESTIMONY OF**  
**BRIAN BENESKI, SUPERVISOR, RECYCLING PROGRAMS**  
**MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**SPEAKING IN OPPOSITION TO L.D. 295**  
**AN ACT TO ENSURE ACCURATE RECYCLABILITY LABELING OF PLASTIC**  
**CONTAINERS AND PLASTIC PACKAGING MATERIAL**

**SPONSORED BY REPRESENTATIVE GRAMLICH**  
**BEFORE THE JOINT STANDING COMMITTEE**  
**ON**  
**ENVIRONMENT AND NATURAL RESOURCES**

**DATE OF HEARING:**

**JANUARY 24, 2024**

Senator Brenner, Representative Gramlich, and members of the Committee, I am Brian Beneski from the Bureau of Remediation and Waste Management, Division of Materials Management, at the Department of Environmental Protection, speaking in opposition to L.D. 295.

Although the Department supports the overall goals of this bill, there are several very similar or overlapping laws and programs that the Department believes can bring about these goals more efficiently.

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The Federal Trade Commission's Green Guides already assert that companies should not label a product as recyclable when it is not recyclable in at least 60% of the areas in which it is sold.<sup>1</sup> The purpose of the Green Guides is to help marketers ensure they are making true and substantiated claims that are not considered deceptive – and therefore illegal – under 15 U.S.C. 45, the *Federal Trade Commission Act*. It appears that recyclability of packages that don't meet L.D. 295's first two criteria for recyclability is already covered by federal law.

Both the remaining recyclability criteria and the process of defining recyclable materials in L.D. 295 are addressed by 38 M.R.S. § 2146, *Stewardship program for packaging*. This law requires the creation and maintenance of a list of readily recyclable materials. While it does not ban claims of recyclability on containers that are not considered to be readily recyclable, it requires that fees paid by packaging producers disincentivize the use of the chemicals regulated under 32 M.R.S. Chapter 26-A, 32 M.R.S. Chapter 26-B, and 38 M.R.S. Chapter 16-D. The fees assessed under this law must also address the nexus of labeling and consumer confusion on proper end-of-life management.

Additionally, P.L. 2019, Ch. 277, *An Act To Protect the Environment and Public Health by Further Reducing Toxic Chemicals in Packaging*, became effective, adding 32 M.R.S. Chapter 26-B: Toxic Chemicals in Food Packaging and updating the existing 32 M.R.S. Chapter 26-A. The statutory requirements include a chemical listing process for the purpose of assessing the chemicals currently used in food packaging and replacing those chemicals with safer alternatives when they are available. The statutes also prohibit large manufacturers from using food packaging to which PFAS has been added in situations where safer alternatives are available.

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<sup>1</sup> Federal Trade Commission, "Environmental Claims: Summary of the Green Guides" available at [Environmental Claims: Summary of the Green Guides | Federal Trade Commission \(ftc.gov\)](https://www.ftc.gov/enforcement/advocacy/2019/07/2019-07-environmental-claims-summary-of-the-green-guides).

The recyclability characterization study required in L.D. 295, although different in its goals, will likely be duplicative of current municipal recycling reporting requirements under 38 M.R.S. § 2133(7), and the auditing requirements under Maine's Extended Producer Responsibility Program for Packaging (EPR/Packaging Program) (38 M.R.S. § 2146(13)(A)(6)). It should be noted that the audits conducted for the EPR/Packaging Program will be funded by the producers of packaging shipped into Maine instead of directly by the State as proposed in this bill.

Passage of this proposed bill would require a fiscal note, as additional staffing to undertake the rulemaking, enforcement and reporting requirements that are specific to L.D. 295, would require additional Department resources. Primarily, this is because the Department would need to develop rules for enforcement procedures for labeling violations, and then would need to enforce those provisions. This type of labeling is typically not an area of expertise or regulation by the Department and implementation of these provisions in a consistent manner would take time, staffing, and data management systems. Given the existence of overlapping federal regulation and recently updated state laws that have yet to come into full effect, the Department recommends that the legislature wait before passing this bill into law to avoid requiring additional rulemaking and to avoid unintentional consequences of creating a duplicative or inconsistent program.

Thank you for the opportunity to provide testimony. I am available to answer questions of the Committee, both now and at work session.