

HB 1630-FN - AS INTRODUCED

2024 SESSION

24-3139

08/10

HOUSE BILL

1630-FN

AN ACT relative to extended producer responsibility.

SPONSORS: Rep. Parshall, Ches. 8; Rep. Caplan, Merr. 8; Rep. Germana, Ches. 1; Rep. Dutzy, Hills. 6; Rep. Bixby, Straf. 13; Sen. Altschiller, Dist 24

COMMITTEE: Environment and Agriculture

ANALYSIS

This bill creates a program to enact extended producer responsibility for packaging. It incentivizes the reduction of toxins and waste flow at the source, and provides relief to municipal waste disposal costs. It also provides for oversight and management of the program through the collection of stewardship fees from producers.

This bill is a request of the committee to study extended producer responsibility in order to provide relief to the cost of municipalities in solid waste disposal, established in 2023, 124:1.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT relative to extended producer responsibility.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Subdivision; Extended Producer Responsibility. Amend RSA 149-M by inserting after
2 section 63 the following new subdivision:

3 Extended Producer Responsibility

4 149-M:64 Definitions.

5 I. "Bio-plastic" means plastic produced from biological sources such as vegetable fats and
6 oils, polysaccharides, sugar, proteins, or other materials that are certified or are able to be certified
7 to be biodegradable.

8 II. "Brand" means any mark, word, name, symbol, design, device, or graphical element or a
9 combination thereof, including a registered or unregistered trademark, that identifies and
10 distinguishes a product from other products.

11 III. "Circular Economy" means a model of production and consumption, which involves
12 sharing, leasing, reusing, repairing, refurbishing and recycling existing materials and products as
13 long as possible. In this way, the life cycle of products is extended. In practice, it implies reducing
14 waste to a minimum.

15 IV. "Department" means the department of environmental services.

16 V. "Extended producer responsibility" or "EPR" means a mandatory type of product
17 stewardship that includes, at a minimum, the requirement that the producer's responsibility for
18 their product extends to post-consumer management of that product and its packaging. There are 2
19 features of EPR policy: (a) shifting financial and management responsibility, with government
20 oversight, upstream to the producer and away from the public sector; and (b) providing incentives to
21 producers to incorporate environmental considerations into the design of their products and
22 packaging.

23 VI. "Packaging" means a discrete material or category of material, regardless of
24 recyclability, including but not limited to such material types as paper, plastic, glass, metal, or
25 multi-material, that is used for the containment, protection, handling, delivery, transport,
26 distribution, or presentation of another product that is sold, offered for sale, imported, or distributed
27 in the state. Packaging does not include:

28 (a) Medical devices and packaging which are included with products regulated as a drug,
29 medical device, or dietary supplement by the United States Food and Drug Administration under the
30 Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 et seq., Sec. 3.2(E) of 21 U.S. Code of Federal
31 Regulations, or the Dietary Supplement Health and Education Act;

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1 (b) Animal biologics, including vaccines, bacterins, antisera, diagnostic kits, and other
2 products or biological origin, and other covered materials regulated by the United States
3 Department of Agriculture under the Virus, Serum, Toxin Act, 21 U.S.C. 151-159;

4 (c) Packaging regulated by the Federal Insecticide, Fungicide, and Rodenticide Act, 7
5 U.S.C. Sec. 136 et seq. or other applicable federal law, rule, or regulation; and

6 (d) Beverage containers subject to a returnable container deposit, if such program
7 should become broadly applicable.

8 VII. "Packaging reduction organization" or "PRO" means the non-profit entity or entities
9 contracted by the department and authorized to collect producer fees, assist producers with
10 compliance with the requirements of this subdivision, provide technical assistance to producers, and
11 implement the packaging reduction and recycling program.

12 VIII. "Packaging reduction and recycling program" means the program implemented by the
13 packaging reduction organization, and overseen by the department, to reduce packaging, assess and
14 collect information and payments from producers based on the amount of packaging used by the
15 producer to contain, protect, deliver, present, or distribute their products, in order to pay for the
16 development of packaging reduction programs including, but not limited to, reusable and refillable
17 packaging systems and infrastructure, reimbursements to local government to cover the cost of
18 packaging recycling, and investments in education and outreach.

19 IX. "Post-consumer recycled material" means new material produced using material
20 resulting from the recovery, separation, collection and reprocessing of material that would otherwise
21 be disposed of or processed as waste and that was originally sold for consumption.

22 X. "Producer" means:

23 (a) A person or entity that manufactures or uses in commercial enterprise a product
24 sold, offered for sale, contained, protected, delivered, presented, or distributed in or using packaging
25 into the state under the brand of the manufacture;

26 (b) If subparagraph (a) does not apply, a person or entity that is not the manufacturer of
27 the product, but is the owner or licensee of a trademark, regardless of whether the trademark is
28 registered, under which a product is sold, offered for sale, contained, protected, delivered, presented,
29 or distributed in or using packaging; or

30 (c) If subparagraphs (a) and (b) do not apply, a person or entity that imports a product
31 that is contained, protected, delivered, or presented in packaging, into the United States or the state
32 for use in commercial enterprise in the state. Producer includes a franchisor of a franchise located in
33 the state but does not include the franchisee operating that franchise.

34 XI. "Product stewardship" means minimizing health, safety, environmental and social
35 impacts, and maximizing economic benefits of a product and its packaging throughout all lifecycle
36 stages.

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1 XII. "Recyclable" means a product or packaging material (a) that can be sorted by entities
2 that process post-consumer materials generated in the state; (b) that has a consistent regional
3 market for purchase by end users in the production of new products, and (c) which can be recycled
4 with minimal losses of material during processing and manufacturing.

5 XIII. "Recycled" means the use of discarded packaging materials or products in the
6 production of a new product or packaging in place of virgin materials. Material shall not be
7 considered "recycled" if it is used as landfill cover. "Recycled" material does not include
8 contaminants, residues, and other process losses.

9 XIV. "Recycling rate" means the percentage of any given packaging type that is ultimately
10 recycled. The recycling rate for any packaging material shall be calculated as the total weight of
11 packaging that is recycled in a given year divided by the total weight of packaging generated.
12 Material losses (contaminants and residues) accruing during collection, processing and
13 manufacturing new products do not count as recycled and should not be in the numerator of the
14 equation.

15 XV. "Reuse" means the return of packaging back into the economic stream for use in the
16 same kind of application intended for the original packaging, without effectuating a change in the
17 original composition of the package, the identity of the product, or the components thereof.

18 XVI. "Reuse and refill system" means a program or set of mechanisms designed to facilitate
19 multiple uses of packaging; Mechanisms may include, but are not limited to, deposits, incentives,
20 curbside collection, collection kiosks, refill stations, dishwashing facilities, and re-distribution
21 networks.

22 XVII. "Toxic substance" means a chemical or chemical class identified by a state agency,
23 federal agency, international intergovernmental agency, accredited research university, or other
24 scientific entity deemed authoritative by the department on the basis of credible scientific evidence
25 as being one or more of the following:

26 (a) A chemical or chemical class that is a carcinogen, mutagen, reproductive toxicant,
27 immunotoxin, neurotoxicant, or endocrine disruptor.

28 (b) A chemical or chemical class that is persistent or bioaccumulative.

29 (c) A chemical or chemical class that may harm the normal development of a fetus or
30 child or cause other developmental toxicity in humans or wildlife.

31 (d) A chemical or chemical class that may harm organs or cause other systemic toxicity.

32 (e) A chemical or chemical class that may have adverse air quality impacts, adverse
33 ecological impacts, adverse soil quality impacts, or adverse water quality impacts.

34 (f) A chemical or chemical class that the Department has determined has equivalent
35 toxicity to the above criteria.

36 XVIII. "Unit" means each discrete component of a package or container, including material
37 that is used for the containment, protection, handling, delivery, transport, distribution, and

1 presentation of a product that is sold, offered for sale, imported, or distributed in the state, including
2 through Internet transactions.

3 149-M:65 Packaging Reduction and Recycling.

4 I. There is established the packaging reduction program by which producers who sell, offer
5 for sale, or distribute products contained, protected, delivered, presented, or distributed in packaging
6 shall pay fees based on the quantity and type of packaging used in the state. The fees shall be used
7 to fund the administration of this program. Producers shall also be required to make changes to the
8 design of their products in order to meet packaging reduction and recycling requirements.

9 II. The department shall contract with an established non-profit packaging reduction
10 organization, which shall collect packaging reduction, generation, and recycling information and fee
11 payments, as described in RSA 149-M:71, from participating producers. The payments collected
12 from producers shall be deposited into the packaging reduction fund established in RSA 149-M:72 to
13 reimburse local governments for the costs associated with reducing and managing packaging waste,
14 reimburse the department for their administration of the program, and to support eligible projects
15 that reduce packaging waste by investing in packaging reduction and elimination, reuse and refill
16 systems and programs, recycling infrastructure, and comprehensive multi-media educational
17 programs.

18 III. No later than 18 months after the effective date of this section, the department shall
19 conduct a statewide packaging reduction, reuse, and recycling needs assessment as described in RSA
20 149-M:70 to determine the current state of packaging reuse, recycling, and disposal, and to identify
21 barriers and opportunities to reduce the amount of packaging discarded and disposed of, and to
22 increase the reusability and recyclability of packaging.

23 IV. The state comptroller shall conduct an annual audit of the program, including but not
24 limited to: the amount of money received; the amount of money sent to local governments; the
25 amount of money used to invest in reduction recycling and reuse programs and services by the
26 packaging reduction organization and any state offices; the amount of discarded packaging
27 generated, reduced, and recycled; any recommendations for improvement of the program. The audit
28 shall be a public document.

29 149-M:66 Producer Responsibilities and Exemptions.

30 I. One year after the selection of the packaging reduction organization in accordance with
31 RSA 149-M:67, a producer shall not sell, offer for sale, or distribute into the state a product
32 contained, protected, delivered, presented, or distributed in packaging unless the producer is:

- 33 (a) Registered with the packaging reduction organization; and
34 (b) In full compliance with all requirements of this subdivision.

35 II. A producer shall annually report to the packaging reduction organization:

36 (a) The total amount, in units and by weight, of each type of packaging material sold,
37 offered for sale, or distributed for sale into the state by the producer in the prior calendar year; and

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1 (b) All information necessary for producer and the packaging reduction organization to
2 meet its obligations required pursuant to Section 5 of this Act.

3 III. A producer shall submit, in a manner and format to be determined by the department,
4 all fees assessed on the producer by the packaging reduction organization.

5 IV. A producer shall annually submit, to both the department and the packaging reduction
6 organization, a written declaration signed by the chief executive officer, verifying the producer's
7 compliance with:

8 (a) The packaging reduction requirements of RSA 149-M:73;

9 (b) The packaging recycling requirements of RSA 149-M:74;

10 (c) The toxic substance reduction requirements of RSA 149-M:75.

11 V. A producer is exempt from the requirements and prohibitions of this subdivision in a
12 calendar year in which:

13 (a) The producer realized less than \$1,000,000 in total gross revenue during the prior
14 calendar year; or

15 (b) The producer sold, offered for sale, or distributed for sale products contained,
16 protected, delivered, presented, or distributed in or using less than one ton of packaging material in
17 total during the prior calendar year.

18 VI. A producer claiming an exemption pursuant to paragraph IV shall provide the
19 department with sufficient information to demonstrate that the claimant is eligible for an
20 exemption.

21 149-M:67 Selection of the Packaging Reduction Organization.

22 I. Within one year after the adoption of rules pursuant to RSA 149-M:77, the department
23 shall select and enter into a contract with a non-profit organization to act as the packaging reduction
24 organization in order to operate the packaging reduction and recycling program for a period of 10
25 years.

26 II. Consistent with applicable competitive bidding requirements under state purchasing
27 laws and following the initial adoption of rules by department under RSA 149-M:77, the department
28 shall issue a request for a proposal for the operation of the packaging reduction and recycling
29 program. The proposals shall cover the 10-year operation of the program by the successful bidder
30 and shall include, at a minimum, the following information:

31 (a) A description of how the bidder will administer the packaging reduction and
32 recycling program, including the mechanisms and processes for providing assistance to producers to
33 comply with the reporting requirements of this subdivision;

34 (b) The mechanisms and processes the bidder will use to compile information from
35 participating producers;

36 (c) How the bidder intends to establish and manage the packaging reduction fund,
37 including, but not limited to, public participation, the staffing the bidder intends to use for

1 management of the fund, and the plan for providing technical support to interested persons
2 regarding use of the funds;

3 (d) A financial assurance plan that ensures all funds held in the packaging reduction
4 fund are immediately and exclusively forfeited and transferred to or otherwise made immediately
5 available to the department if the packaging reduction organization contract with the department is
6 terminated by the department, or expires;

7 (e) A proposed budget outlining the anticipated costs of operating the producer
8 responsibility program, including identification of any start-up costs that will not be ongoing and a
9 description of the method by which the bidder intends to determine and collect producer payments
10 during the initial startup period;

11 (f) A certification that the bidder will not share, except with the department,
12 information provided to the bidder by a producer that is proprietary information and that is
13 identified by the producer as proprietary information. The certification shall include a description of
14 the methods by which the bidder intends to ensure the confidentiality of such information; and

15 (g) Any other additional information required by the department.

16 III. If, at the close of the competitive bidding process under this subsection, the department
17 determines that no bidder has submitted a proposal that meets the requirements of this subsection,
18 the department shall operate the program by itself or designate another state agency to operate the
19 program.

20 149-M:68 Responsibilities of the Packaging Reduction Organization.

21 I. The packaging reduction organization shall:

22 (a) Register all producers;

23 (b) Collect and compile data from producers;

24 (c) Collect fees due from producers;

25 (d) Reimburse the department and the state comptroller for the costs associated with
26 conducting needs assessments;

27 (e) Distribute funds to reimburse local governments and private companies for the costs
28 associated with the implementation of reduction and refill and reuse programs, collection,
29 transportation, and recycling of packaging materials as required by RSA 149-M:72;

30 (f) Make recommendations to the department regarding investments toward packaging
31 reduction, reuse, and recycling as required by RSA 149-M:72 ; and

32 (g) Offer technical support to participating producers, with an emphasis on support to
33 small businesses, to assist them with compliance with the requirements of this subdivision,
34 including information about procuring affordable alternatives to non-compliant packaging and
35 reducing packaging.

36 II. Annually, the packaging reduction organization shall submit a report to the department
37 that, at a minimum, shall include the following information:

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1 (a) Contact information for the packaging reduction organization;

2 (b) A list of all participating producers, brand(s), and products identified by the
3 Universal Product Code that the producer sells, offers for sale, or distributes into the state that are
4 contained, protected, delivered, presented, or distributed in or using packaging;

5 (c) The total amount, by both weight and number of units of each type of packaging
6 material used to contain, protect, handle, deliver, transport, distribute, or present products sold,
7 offered for sale, or distributed into the state by each individual producer during the prior calendar
8 year;

9 (d) The total amount, by both weight and number of units, of each type of packaging
10 material used to contain, protect, handle, deliver, transport, distribute, or present products sold,
11 offered for sale, or distributed into the state by all producers during the prior calendar year;

12 (e) A complete accounting of all payments made to and by the packaging reduction
13 organization during the prior calendar year;

14 (f) A list of producers believed to be out of compliance with the requirements of this
15 subdivision, and the reason the packaging reduction organization believes the producer to be out of
16 compliance. Information on non compliant companies shall be provided to the attorney general in a
17 timely fashion and for possible enforcement action by that office;

18 (g) A description of the educational and outreach efforts made by the packaging
19 reduction organization in the prior calendar year, and how those efforts were designed to reduce
20 packaging waste, and increase reuse and recycling of packaging materials;

21 (h) An assessment of whether the fee structure adopted by the department pursuant to
22 RSA 149-M:71 has been effective in incentivizing improvements to the design of packaging material,
23 including actual reduction of packaging, increases in reusable and refillable packaging, recycling
24 rates for packaging materials, and decreases in the amount of packaging;

25 (i) A description of the reimbursements and expenditures made pursuant to RSA 149-
26 M:72 ; and

27 (j) Any additional information required by the department.

28 III. The packaging reduction organization shall conduct an annual review process to
29 determine whether products and packaging materials are recyclable. This review shall be conducted
30 in consultation with representatives of end markets, including recycled commodities brokers and
31 manufacturers who purchase post-consumer material for use in manufacturing new products. For
32 the purposes of calculating producer payments and municipal reimbursements, this annual process
33 shall include a transitional period between the date the determination is finalized and the date it
34 goes into effect.

35 IV. The packaging reduction organization shall conduct public outreach and provide
36 consumers with educational and informational materials related to reducing the amount of
37 packaging discarded, recycled, and disposed of in the state.

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(a) The outreach and education shall, at a minimum, include:

(1) A description of the environmental, social, economic, and environmental justice impacts associated with improper disposal of packaging materials;

(2) At least 3 public hearings in geographically diverse parts of the state each year, to solicit public input on the implementation and effectiveness of the law and suggested improvements;

(3) Information regarding the management of discarded packaging including reuse, recycling, composting, and disposal by landfilling and incineration;

(4) The location and availability of curbside and drop-off collection opportunities for packaging waste, including deposit and take-back programs;

(5) A description of the environmental, social, economic, and environmental justice impacts associated with failure to reuse or recycle packaging materials;

(6) Information regarding municipal reimbursement for the costs associated with packaging reuse, recycling, and disposal; and

(7) Any other information required by the department.

(b) The public outreach and education conducted by the packaging reduction organization shall:

(1) Utilize all available forms of media, including, but not limited to, television, radio, print, electronic, and web-based media to provide information directly to residents in the state, in multiple languages;

(2) Be coordinated with the various local governments in the state to incorporate electronic, print, web-based and social media elements that individual local governments may elect to use, at their discretion, to provide education directly to their residents;

(3) Be provided to producers for inclusion on their packaging's label to inform consumers about the methods to responsibly reuse, recycle, or dispose of the packaging; and

(4) Be coordinated with other similar public outreach and education programs in the state as necessary to avoid consumer confusion and facilitate the consolidation of available resources.

V. In addition to engaging in the public education and outreach required by paragraph III, the packaging reduction organization may provide producers and retailers with educational materials related to the responsible reduction, reuse, recycling, or disposal of discarded packaging. The educational and informational materials provided to the retailer under this subsection may include, but need not be limited to, printed materials, signage, templates of materials that can be reproduced by retailers and provided thereby to consumers at the time of a product's purchase, and advertising materials that promote and encourage consumers to properly reuse, recycle, or dispose of packaging materials

1 VI. The packaging reduction organization shall not spend funds on lobbying federal, state, or
2 local governments or campaign contributions to any candidates running for office.

3 149-M:69 Responsibilities of the Department of Environmental Services.

4 I. Beginning one year after the selection of the packaging reduction organization under RSA
5 149-M:67, and annually thereafter, the department shall work with the packaging reduction
6 organization to:

7 (a) Calculate the amount of packaging that was generated during the prior calendar
8 year;

9 (b) Calculate the recycling rate for all packaging during the prior calendar year;

10 (c) Calculate the recycling rate for each packaging material type during the prior
11 calendar year; and

12 (d) Develop a list of producers believed to be out of compliance with the requirements of
13 this subdivision.

14 II. In the event that the department determines that the packaging reduction organization
15 no longer meets the requirements of this subdivision, or fails to implement and administer the
16 requirements of this subdivision, the department shall revoke its approval of the packaging
17 reduction organization, and shall select a new packaging reduction organization to replace it, or, in
18 the alternative, may elect to operate the program itself.

19 III. The department or the attorney general shall take enforcement action against all non-
20 compliant producers in accordance with RSA 149-M:78.

21 149-M:70 Statewide Packaging Reduction, Reuse, and Recycling Needs Assessment.

22 I. Consistent with applicable competitive bidding requirements, within one year after
23 adopting rules under RSA 541-A and every 5 years thereafter, the department shall issue a request
24 for proposals to conduct a statewide packaging reduction, reuse, and recycling needs assessment,
25 hereinafter “needs assessment” to identify barriers and opportunities for reducing, reusing, and
26 recycling packaging materials. The proposals shall include, at a minimum, a description of how the
27 bidder will conduct the needs assessment to evaluate the following:

28 (a) The current recycling rate for each type of packaging material;

29 (b) The amount, by weight and material type, of packaging recycled at each recycling
30 facility that accepts discarded packaging generated in the state;

31 (c) The processing capacity, market conditions, and opportunities in the state and
32 regionally for recyclable materials;

33 (d) The net cost of end-of-life management of discarded packaging in the state, including
34 the cost associated with the collection, transportation, sortation, recycling, landfilling, or
35 incineration of discarded packaging;

36 (e) The neutrality of opportunities in the recycling and reuse system for both new and
37 under represented economic and sociological groups;

- (f) Current barriers affecting recycling access and availability in the state;
- (g) Current barriers to the marketability of recyclable materials generated in the state;
- (h) Opportunities for the creation of packaging reuse and refill programs in the state;
- (i) Opportunities for the improvement of packaging recycling in the state, including the development of end markets for recycled packaging materials.
- (j) Current barriers affecting the creation and implementation of packaging reuse and refill programs; and
- (k) Consumer education needs in the state with respect to packaging waste reduction, recycling, reducing contamination in recycling, and reuse and refill systems for packaging;

II. After reviewing proposals, the department shall select an applicant to perform the needs assessment. If, at the close of the competitive bidding process, the department determines that no applicant can successfully perform the needs assessment, the department shall perform the needs assessment itself, or designate another state agency to complete the assessment.

III. The cost incurred by the department or its designee associated with conducting the needs assessment shall be paid for by funds from the packaging reduction and recycling fund established in RSA149-M:75.

IV. The department shall report the results of the study to the public, the media, house of representatives, the senate, the governor, the state comptroller, and the attorney general.

149-M:71 Assessment of Fees.

I. The department shall adopt rules under RSA 541-A setting forth the manner in which producer payments on packaging materials shall be calculated and assessed.

II. The payments shall be calculated based on the total amount, by weight, of each type of packaging material used to contain, protect, deliver, present, or distribute a product sold, offered for sale, or distributed into the state by the producer in the prior calendar year.

III. The list of packaging material types for which there is a specific fee shall include, at a minimum, the following material types:

- (a) Polyethylene terephthalate (PET or PETE);
- (b) High density polyethylene (HDPE);
- (c) Polyvinyl Chloride (PVC)
- (d) Low density polyethylene (LDPE)
- (e) Polypropylene (PP)
- (f) Polystyrene (PS) including expanded polystyrene
- (g) Other plastic resin types not specifically identified here;
- (h) Bio-plastics;
- (i) Paper;
- (j) Cardboard;
- (k) Wood;

- 1 (l) Glass;
- 2 (m) Bi-metal, steel and other ferrous metals;
- 3 (n) Aluminum and other non-ferrous metals;
- 4 (o) Mixed materials including laminates and packaging containing more than one of the
- 5 above materials; and
- 6 (p) Any other material used for consumer packaging.

7 IV. The fees shall be designed to cover, at a minimum, the total cost associated with:

- 8 (a) The collection transportation, and management of each type of packaging material
- 9 used to contain, protect, deliver, present, or distribute products sold, offered for sale, or distributed
- 10 into the state by all producers;
- 11 (b) The department's and other state agencies administration of this subdivision;
- 12 (c) The packaging reduction organization's administration of the packaging reduction
- 13 and recycling program;
- 14 (d) The cost associated with the development of the statewide packaging reduction,
- 15 reuse, and recycling needs assessment pursuant to RSA 149-M:70; and
- 16 (e) Any other factors determined by the department.

17 V. The fees adopted under this section shall delineate criteria to be used to initially

18 establish and subsequently adjust producer payments in a manner that incentivizes:

- 19 (a) A reduction in the total packaging as measured by weight used by producers, and
- 20 discarded by consumers, businesses, institutions, and other users. Weight reductions shall not be
- 21 achieved by substituting plastic for other materials types.
- 22 (b) An increase in the proportion of a producer's total packaging that is managed within
- 23 a reuse and refill system;
- 24 (c) An increase in the proportion of a producer's total packaging that is deemed
- 25 recyclable as determined by an annual review process as described in RSA 149-M:68, III.
- 26 (d) An increase in the proportion of a producer's total packaging that is ultimately
- 27 recycled;
- 28 (e) A reduction or elimination in toxic components in packaging materials; and
- 29 (f) A reduction in litter from packaging materials.

30 VI. There shall be no fee assessed on packaging that is designed for reuse and refill and

31 contained within a reuse or refill system.

32 VII. The department shall update and revise the fees every 3 years.

33 149-M:72 Packaging Reduction Fund.

34 I. There is hereby established, a separate, non-lapsing, interest-bearing fund to be known as

35 the packaging reduction fund, which shall be managed by the packaging reduction organization with

36 oversight from the department of environmental services. The packaging reduction organization

1 shall deposit into the fund all payments received from producers in accordance with RSA 149-M:71
2 and all penalties collected pursuant to RSA 149-M:77.

3 II. Beginning one year after the first payment of fees by producers pursuant to RSA 149-
4 M:71 and annually thereafter, the packaging reduction organization shall:

5 (a) Retain the portion of the fees deposited into the packaging reduction fund that are
6 necessary to cover the costs associated with its administration of the packaging reduction and
7 recycling program.

8 (b) Disburse to the department of environmental services, the attorney general, the state
9 comptroller, and all other relevant state entities, funds necessary to reimburse them for the costs
10 associated with administering and enforcing this subdivision. This reimbursement shall include
11 costs associated with performing, revising, and updating the statewide packaging reduction, reuse,
12 and recycling needs assessment required by RSA 149-M:70. This reimbursement shall also cover
13 any costs incurred by the department in adopting rules, revising rules, and administering and
14 enforcing the requirements of this subdivision.

15 (c) Disburse funds to local governments as necessary to reimburse them for their costs
16 incurred for the management, reduction, and recycling of packaging waste, so long as the local
17 governments provide recycling services to all residents, businesses, schools, and institutions in their
18 jurisdictions. Local governments that contract with private haulers and recyclers to handle the
19 management, reduction, and recycling of packaging waste are eligible for reimbursement, so long as
20 the private haulers or recyclers provide recycling services to all residents, businesses, schools, and
21 institutions within the local governments' jurisdictions. Nothing in this subsection shall be
22 interpreted as allowing for the reimbursement of costs associated with the disposal of packaging.

23 (d) Allocate no less than 25 percent of the total funds collected per RSA 149-M:71 to
24 projects and programs that will help achieve the packaging reduction requirements of RSA 149-
25 M:73, and the packaging recycling requirements of RSA 149-M:74.

26 III.(a) Funds may be used for investment in collection systems, transportation systems,
27 reuse systems, washing systems, redistribution systems, technology for tracking and data collection,
28 capital expenditures on new and emerging technology focused on reusable and refillable packaging,
29 as well as equipment, and facilities, and other projects determined by the department to facilitate
30 the goals and objectives of this subdivision.

31 (b) Funds may also be used for investment in public outreach and education in ways that
32 increase access and participation in packaging reduction, reuse, refill, and recycling systems
33 throughout the state.

34 (c) The packaging reduction organization shall prioritize investments for projects and
35 programs that will directly benefit environmental justice communities, including, but not limited to,
36 communities that are home to a landfill, incinerator, transfer station, or waste-to-energy facility.

IV. Any investments made pursuant to RSA 149-M:72, III(c)(1- 3) shall be approved by the department. The department shall approve or deny proposed investments within 90 days of receipt of a proposal from the packaging reduction organization. The investments may be approved, at the discretion of the department, so long as the proposed investment will, at a minimum:

(a) Increase the transition of packaging from non-reusable to reduced, reusable or refillable packaging.

(b) Increase access to reuse and refill infrastructure in the state.

(c) Increase the capacity of reuse and refill infrastructure in the state.

(d) Provide reuse and refill instructions that are, to the extent practicable, consistent statewide, easy to understand, translated into various commonly-used languages, and easily accessible.

(e) Provide for outreach and education that are coordinated across programs or regions to avoid confusion for residents, and developed in consultation with local government and the public.

149-M:73 Packaging Reduction Requirements.

I. Each individual producer shall meet the following requirements:

(a) Beginning 2 years after a producer first registers with the packaging reduction organization, a producer shall reduce the amount of packaging used to contain, protect, deliver, present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by such goals as established by the department. Such goal shall not be less than 5 percent by weight.

(b) Beginning 5 years after a producer first registers with the packaging reduction organization, a producer shall reduce the amount of packaging used to contain, protect, deliver, present, or distribute the products they sell, offer for sale, or distribute for sale into the state, such goals as established by the department. Such goal shall not be less than 20 percent by weight.

(c) Beginning 10 years after a producer first registers with the packaging reduction organization, a producer shall reduce the amount of packaging used to contain, protect, deliver, present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by such goals as established by the department. Such goal shall not be less than 50 percent by weight.

II. The reductions required by this subsection shall be measured against the total amount of packaging the producer used to contain, protect, deliver, present, or distribute the products they sold, offered for sale, or distributed for sale, during the first year the producer registered with the packaging reduction organization.

III. The reductions required by this subsection may be achieved by using the following strategies:

(a) Elimination of packaging components;

(b) Reduction of packaging components;

(c) Using reuse and refill systems; and

(d) Packaging rightsizing, lightweighting, and optimization.

1 IV. The reductions required by this subsection shall not be achieved by substituting plastic
2 for other materials.

3 V. In the case of a producer that enters the market with 50 percent or more by weight of its
4 packaging being reusable and contained within a reuse and refill system, that producer may apply to
5 the department for a waiver from the packaging reduction requirements.

6 149-M:74 Packaging Recycling Requirements

7 I. A producer shall ensure that the packaging used to contain, protect, deliver, present, or
8 distribute the products they sell, offer for sale, or distribute into the state, is made of a material that
9 meets the following recycling rates:

10 (a) Not less than 30 percent within 5 years after the enactment of this subdivision;

11 (b) Not less than 50 percent within 8 years after the enactment of this subdivision; and

12 (3) Not less than 70 percent within 12 years after the enactment of this subdivision.

13 III. The requirements of paragraph II shall not apply to reusable or refillable packaging or
14 containers.

15 149-M:75 Prohibition on Certain Toxic Substances and Material.

16 I. Beginning 2 years after the adoption of rules pursuant to RSA 149-M:77, no person or
17 entity may sell, offer for sale, or distributed into the state any packaging containing the following
18 toxic substance:

19 (a) Ortho-phthalates;

20 (b) Bisphenols;

21 (c) Per- and polyfluoroalkyl substances (PFAS);

22 (d) Lead and lead compounds;

23 (e) Hexavalent chromium and compounds;

24 (f) Cadmium and cadmium compounds;

25 (g) Mercury and mercury compounds as not covered by existing statute;

26 (h) Benzophenone and its derivatives;

27 (i) Halogenated flame retardants;

28 (j) Perchlorate;

29 (k) Formaldehyde;

30 (l) Toluene;

31 (m) Antimony and compounds; and

32 (n) UV 328 (2-(2H-benzotriazol-2-yl)-4,6-di-tert-pentylphenol).

33 II. Beginning 2 years after the adoption of rules pursuant to RSA 149-M:77, no person or
34 entity shall sell, offer for sale, or distributed for use in this state any packaging containing:

35 (a) Polyvinyl chloride;

36 (b) Polystyrene; or

37 (c) Polycarbonate.

1 III. Beginning 3 years after the adoption of rules pursuant to RSA 149-M:77, and every 3
2 years thereafter, the department shall designate at least 10 additional toxic substances or families of
3 toxic substances that shall no longer be sold, offered for sale, distributed for sale, or distributed for
4 use in packaging in this state unless it determines there are not 10 chemicals that meet the
5 definition of toxic substances. If the department determines there are not 10 toxic substances that
6 meet such a definition, it shall publish a detailed statement of its findings and conclusions
7 supporting such determination.

8 IV. Within 180 days of designating a toxic substance, the department shall adopt rules
9 under RSA 541-A to prohibit the newly designated toxic substance in packaging, with an effective
10 date no later than 2 years after such designation.

11 V. Any producer that violates this section shall be subject to a fine for each violation not to
12 exceed \$50,000 per violation. For the purposes of this section, each product line that is sold, offered
13 for sale, or distributed to consumers, via retail commerce, in the state, including through an Internet
14 transaction violation shall be considered a violation.

15 149-M:76 Establishment of the Office of Inspector General.

16 I. The department of environmental services shall establish an independent office of
17 inspector general within the department of environmental services. The inspector general shall
18 evaluate the programs created by this subdivision on an annual basis to ensure it is properly
19 functioning, and that producers are in compliance with the requirements of this subdivision.

20 II. The inspector general shall have the authority to investigate the compliance of producers
21 with all provisions of this subdivision and to bring enforcement violations against non-compliant
22 producers.

23 149-M:77 Rulemaking.

24 I. Within one year after the effective date of this subdivision the department shall adopt
25 rules under RSA 541-A to implement, administer, and enforce this subdivision. Such rules shall
26 include:

27 (a) A process for contracting with the packaging reduction organization pursuant to the
28 requirements of RSA 149-M:67;

29 (b) A process for annually determining a schedule of producer fees and payment
30 collections pursuant to the requirements of RSA 149-M:70;

31 (c) A process for collecting all necessary information to ensure producer compliance with
32 the requirements of this subdivision;

33 (d) A process for evaluating whether a producer is in compliance with the packaging
34 reduction requirements of RSA 149-M:73;

35 (e) A process for evaluating whether a producer is in compliance with the packaging
36 recycling requirements of RSA 149-M:74;

1 (f) A process for evaluating whether a producer is in compliance with the toxic packaging
2 reduction requirements of RSA 149-M:75;

3 (g) A process for determining on an annual basis the types of packaging material that
4 are recyclable;

5 (h) A process for the assessment of the packaging reduction organization and the
6 packaging reduction and recycling program;

7 (i) Requirements for the packaging reduction organization to conduct a representative
8 audit of recyclable material processed and sold by facilities that process recyclable material
9 generated in the state and of municipal solid waste disposed of in the state;

10 (j) A process for establishing and enforcing penalties for all violations of the
11 requirements of this subdivision;

12 (k) A process for determining new toxic substances in packaging pursuant to RSA 149-
13 M:75;

14 (l) A process for how the department will oversee and monitor the packaging reduction
15 organization's management of the packaging reduction fund, including a process for submitting and
16 reviewing proposals from the packaging reduction organization regarding investments in projects
17 and programs that will help achieve the packaging reduction requirements of RSA 149-M:73, and the
18 packaging recycling requirements of RSA 149-M:74; and

19 (m) A process for determining whether information is proprietary information and
20 therefore must be handled as confidential information.

21 149-M:78 Penalties and Enforcement.

22 I. Failure to comply with the requirements of this subdivision shall subject the packaging
23 reduction organization or an individual producer to penalties for violations. The department,
24 inspector general, and attorney general may conduct investigations, including inspecting operations,
25 facilities, and records of producers and the packaging reduction organization, and by performing
26 audits of producers and the packaging reduction organization, to determine whether entities are
27 complying with the requirements of this subdivision.

28 II. The department, the inspector general, and the attorney general, shall notify the
29 packaging reduction organization and producers of any conduct or practice that does not comply with
30 the requirements of this subdivision and of any inconsistencies identified in an audit.

31 III. The department, the inspector general, and the attorney general, may issue a notice of
32 violation to, and impose an administrative civil penalty not to exceed \$100,000 per day per violation
33 on any entity not in compliance with this chapter or any of rules adopted under RSA 541-A by the
34 department for the administration of this subdivision. For the purposes of this section, each product
35 line that is sold, offered for sale, or distributed to consumers, via retail commerce, in the state,
36 including through an Internet transaction violation shall be considered a violation.

1 IV. Any funds collected under this section shall be deposited into the packaging reduction
2 fund established in RSA 149-M:77.

3 2 New Subparagraph; Application of Receipts; Dedicated Fund. Amend RSA 6:12, I(b) by
4 inserting after subparagraph (394) the following new subparagraph:

5 (395) Moneys deposited in the packaging reduction fund established in RSA 149-
6 M:77.

7 3 Effective Date. This act shall take effect 60 days after its passage.

HB 1630-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to extended producer responsibility.

FISCAL IMPACT: ☒ State ☐ County ☒ Local ☐ None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
Revenue	\$0	\$0	\$0	Indeterminable Increase
<i>Revenue Fund(s)</i>	Packaging Reduction Fund			
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<i>Funding Source(s)</i>	General Fund Packaging Reduction Fund			
Appropriations	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

- Does this bill provide sufficient funding to cover estimated expenditures? ☒ No
- Does this bill authorize new positions to implement this bill? ☒ No

METHODOLOGY:

This bill creates a program to enforce extended producer responsibility, prohibits the use of certain toxic substances, and creates an inspector general in the Department of Environmental Services. The Department of Environmental Services provided the following information and assumptions concerning the fiscal impact of this bill:

- Once fully established, this program would reimburse municipalities for costs associated with recycling certain discarded consumer packaging. The program would not reimburse for disposal of such packaging in a landfill or incinerator and such costs would remain the responsibility of the municipality.
- Reimbursements to the municipalities would be managed by a “Packaging Reduction Organization” (PRO).
- The Department would be responsible for general oversight and enforcement, and these costs would be reimbursed by the PRO.
- The PRO would register producers and collect fees from the producers for deposit into the Packaging Reduction Fund. The PRO would manage the fund which would reimburse municipalities and the State, enable investments by the PRO in packaging reduction systems such as reuse/refill infrastructure, provide education and outreach programs and cover the PRO’s administrative costs. The PRO would also compile information and prepare reports about statewide generation and recycling of packaging materials,

prepare educational materials, conduct outreach and identify non-compliant producers to be referred for enforcement.

- The bill establishes an Office of Inspector General within the Department to fulfill duties related to compliance assurance, enforcement, and program evaluation. The bill does not authorize the creation of new positions to staff the new program.
- The Department would select a PRO to run the program for 10 years, select a contractor to conduct a needs assessment every 5 years, and adopt administrative rules with a producer fee structure every 3 years.
- In addition, the Department would:
 - o establish goals for reduction of total packaging over time,
 - o assess whether producers are using packaging materials that comply with required recycling rates,
 - o assess packaging for presence of toxic substances and enact prohibitions on use of such substances in packaging, and conduct enforcement actions as necessary,
 - o approve certain expenditures from the Packaging Reduction Fund,
 - o review reports submitted by the PRO, and assess overall effectiveness of EPR program.
- The State Comptroller would conduct an annual audit of the program
- The Office of Attorney General would share enforcement authority with Department.

The Department estimated the time line for implementation of the program would be as follows:

- September 1, 2024 the bill will be effective (60 days after passage).
- September 1, 2025 Administrative rules for the program will be adopted.
- September 1, 2026 Contract approval with the selected PRO .
- January 1, 2027 the PRO would begin to receive fee payments from producers.
- September 1, 2027 Producers must comply and will be subject to enforcement.
- January 1, 2028 Municipalities, the State and other entities eligible for reimbursement receive their first disbursements from the fund.

The Department states the additional responsibilities cannot be absorbed in the Department's existing budget and assumes that the following 8 new full-time positions would be needed to implement the program and staff the new Office of Inspector General:

- Administrator IV (LG 34). General administration of Office of Inspector General.
- Attorney IV (LG 34) – Coordinate enforcement actions and oversee rulemaking.
- Auditor II (LG 31) – Facilitate audits of Packaging Reduction Fund and data submitted by producers and the PRO.
- Principal Investigator (LG 28) Supervise compliance audits of producers and oversee technical implementation of the program.
- 3 Environmentalist IV's (LG 27) – For compliance, technical support, assistance with rulemaking, oversight of the contract process and periodic needs assessments, review of reports, the compilation and analysis of the data.
- Toxicologist IV (LG 29) – Ongoing analysis of toxic substances to fulfill toxic reduction requirements.

The Department assumes the positions would need to be created and filled by September 1, 2024 to begin the rulemaking process and perform other duties related to standing up the program. The cost to the general fund for the new positions is estimated to be \$920,000 in FY 2025,

\$1,085,000 in FY 2026, and \$1,124,000 in FY 2027. Because the Department will start the work several years before funds from the Packaging Reduction Fund would be available, initial expenditures in FY 2025 through FY 2027 would be general fund costs, however there is no appropriation included in the bill. In future years after FY 2027 the expenditures would be funded by paid the Packaging Reduction Fund.

The Department states it would need a qualified contractor to conduct the needs assessment every 5 years. Given the complexity of this assessment, the Department assumes such a study would cost between \$500,000 and \$1,000,000 per instance. The first needs assessment would be conducted during FY 2027. The Department expects it will likely incur other costs beyond these that are indeterminable such as costs related to enforcement or laboratory testing and analysis.

The Department indicates it is possible that enforcement penalties levied by the Department or the Attorney General's Office may generate some state revenues starting in FY 2028. However, it is not possible to predict the amount of potential revenue from penalties with any confidence. Regarding local revenue, beginning in FY 2028, municipalities will be eligible for reimbursements from the Packaging Reduction Fund to recover costs associated with reducing and/or recycling discarded packaging within their jurisdictions. Such revenues are indeterminable and will likely vary by municipality. The Department does not expect any impact on county revenue or expenditures.

The Department of Administrative Services indicated this bill does not appear to have any direct fiscal impact on the Department or the Department's internal recycling program.

The Department of Justice states this bill provides oversight and enforcement responsibilities for the Office of the Attorney General. The Department indicates the enforcement costs are unknown but litigation costs could be high. The bill states the reduction fund will cover the costs associated with the Department's activities but the fund may not reimburse during the first year(s) as it is unclear when revenues will exceed costs. The Department believes the potential costs are indeterminable but may be between \$1,000 and \$10,000. The Department assumes there will be no revenues in FY 2025 and revenues may cover costs in FY 2026 and FY 2027. The Department estimates additional annual expenditures would be between \$1,000-\$10,000 starting in FY 2025.

It is assumed that any fiscal impact would occur after FY 2024.

AGENCIES CONTACTED:

Departments of Administrative Service, Justice and Environmental Services

