

HOUSE No. 750

The Commonwealth of Massachusetts

PRESENTED BY:

Michael S. Day

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to save recycling costs in the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Michael S. Day</i>	<i>31st Middlesex</i>	<i>1/14/2019</i>
<i>RoseLee Vincent</i>	<i>16th Suffolk</i>	<i>1/23/2019</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>1/23/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/25/2019</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>1/25/2019</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>1/28/2019</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>1/29/2019</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>1/31/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2019</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	<i>1/31/2019</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>1/31/2019</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/31/2019</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>	<i>1/31/2019</i>
<i>Richard M. Haggerty</i>	<i>30th Middlesex</i>	<i>1/31/2019</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/31/2019</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>	<i>1/31/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/1/2019</i>

<i>Jonathan Hecht</i>	<i>29th Middlesex</i>	<i>2/1/2019</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	<i>2/1/2019</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>2/1/2019</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>	<i>2/1/2019</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	<i>2/1/2019</i>

HOUSE No. 750

By Mr. Day of Stoneham, a petition (accompanied by bill, House, No. 750) of Michael S. Day and others relative to recycling costs. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act to save recycling costs in the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 21A of the General Laws is hereby amended by inserting after
2 section 11C the following section:

3 Section 11D. Creation of Sustainable Packaging Advisory Board. For the purposes of this
4 section the following terms shall, unless the context clearly appears otherwise, have the
5 following meanings:

6 “Board”, the Sustainable Packaging Advisory Board

7 "Brand", a name, symbol, word or mark that identifies a product and attributes the
8 product to the owner of the brand as the producer.

9 “Department”, the department of environmental protection.

10 “Designated materials” means any packaging materials or printed paper material that
11 producers generate in the marketplace and are obliged to recover per this section.

12 “Material recovery facility”, a facility that receives, processes, and sells or otherwise
13 distributes post-consumer materials for recycling.

14 “Packaging”, any material used to ship, hold, protect, and present goods for sale to
15 consumers in the commonwealth by a producer.

16 “Packaging types”, including but not limited to corrugated cardboard, boxboard, rigid
17 plastic containers, etc., as designated by the department, based on material type, recyclability,
18 recycled content and other attributes.

19 "Plan", a detailed plan that describes the manner in which producers shall arrange for the
20 collection and recycling of post-consumer packaging.

21 "Post-consumer" means material that would normally be discarded as municipal solid
22 waste having completed its life cycle as a consumer item.

23 “Printed paper”, paper that can or has been printed on including flyers, brochures,
24 booklets, catalogues, greeting cards, telephone directories, newspapers, magazines, paper used
25 for copying, writing or any other general use. Printed paper does not include paper products that,
26 by virtue of their anticipated use, could become unsafe or unsanitary to recycle and any type of
27 bound book not otherwise specified in this definition.

28 "Producer", an entity with more than \$100,000 per year in sales in the commonwealth to
29 which one or more of the following apply:

30 (i) Which manufactures consumer goods and sells, offers to sell, delivers or
31 distributes in the commonwealth under the manufacturer's own name or brand;

32 (ii) Which is the owner or licensee of a trademark or brand under which the
33 material is sold, offered for sale, delivered or distributed in the commonwealth, whether or not
34 the trademark is registered;

35 (iii) Which imports the consumer goods into the commonwealth for sale or
36 distribution;

37 (iv) Which sells containers into which products are dispensed at a retail
38 establishment for offsite consumption; or

39 (v) Which sells at wholesale or retail a designated material, does not have legal
40 ownership of the brand, and elects to fulfill the responsibilities of the producer for that product.

41 "Producer responsibility organization", a non-profit organization designated by a group
42 of producers to act as an agent on behalf of participating producers to administrate their
43 responsibility to manage packaging and printed paper.

44 "Product", any physical product sold to consumers in the commonwealth through retail
45 establishments, wholesale distributor, internet sales or mail order.

46 "Recovery rate", the percentage of packaging and printed material by weight that is
47 ultimately recycled.

48 "Recycled", material that is collected, prepared, delivered and incorporated in new
49 products as a replacement for, or supplement to, raw material inputs in manufacturing,
50 agriculture or construction. Recycling does not include destruction by incineration, conversion
51 into a fuel without material recovery, or landfill disposal.

52 “Small producer”, an entity which meets the above specifications defining a producer
53 with the following exceptions:

54 (i) A producer with less than \$100,000 per year in sales, or

55 (ii) A producer which supplies less than 15 tons of packaging and printed paper per
56 year.

57 a) The governor shall appoint a Sustainable Packaging Advisory board which shall
58 advise the commissioner of the department, the producers and producer responsibility
59 organization(s) on the plans and regulations required herein. The board shall consist of 9
60 members: 1 of whom shall be the commissioner of the department of environmental protection or
61 a designee, 2 of whom shall be a representative of commonwealth producers which are subject to
62 the fee; 2 of whom shall represent of the waste hauling and material recovery facility industry[3]
63 [CG4] ; 2 of whom shall be a representative of nonprofit environmental organizations that
64 participate on the department’s solid waste advisory committee; and 2 of whom shall be a
65 representative of municipal solid waste programs.

66 i. Appointed representatives from nonprofit environmental organizations shall have
67 no affiliation with a company disposing of or hauling waste, whether within the Commonwealth
68 or without, including but not limited to affiliation through;

69 1) Funding provided as a donation;

70 2) Corporate representation on a board of trustees.

71 b) Within twenty-four (24) months of the passage of this chapter, no producer,
72 distributor or retailer shall sell or offer for sale any packaging materials to any person in the
73 commonwealth if:

74 i. the producer of such materials has not had a plan approved by the Sustainable
75 Packaging Advisory Board that arranges for and finances the collection and recycling of post-
76 consumer packaging as described within this section, or

77 ii. the producer of such material has not paid for membership in a producer
78 responsibility organization approved under section (c).

79 c) Within 6 (six) months of passage of this act, the Sustainable Packaging Advisory
80 Board shall, in coordination with a producer responsibility organization(s), cause for the
81 development of a program to fund the requirements of Chapter 10 section 35EEE. If no producer
82 responsibility organization exists, the Sustainable Packaging Advisory Board shall cause a non-
83 profit organization to be incorporated which shall be the producer responsibility organization for
84 packaging and printed paper. The producer responsibility organization(s) shall, either in
85 coordination with the Sustainable Packaging Advisory Board or on its own, develop and submit
86 to the Sustainable Packaging Advisory Board a program plan including, but not limited to, the
87 following information:

88 i. The name of the producer responsibility organization that the program has been
89 developed in cooperation with.

90 ii. The designation of persons or classes of persons as stewards in respect to
91 packaging production.

92 1) Beverage containers included in Chapter 94 section 321 shall be excluded from
93 any definition of packaging and printed paper.

94 2) Small producers of packaging and printed paper shall be exempt from either
95 submitting a plan or obtaining membership in a producer responsibility organization.

96 iii. A fee schedule for the collection of stewardship fees from producers of printed
97 paper and packaging, such that the funding requirements outlined in Chapter 10 section 35EEE
98 shall be fulfilled. Financing costs shall be apportioned to stewards using the following cost
99 criteria:

100 1) Position on the Zero Waste International Alliance hierarchy (higher cost for
101 prohibited or less desirable processes, lower costs for processes further up in the hierarchy).

102 2) End of life management cost of each material type per ton, including collection,
103 disposal, recycling, contamination cost at material recovery facilities;

104 3) environmental impact of production, recovery and disposal as determined by an
105 independent third party conducting a life cycle assessment for each material type; and

106 4) recovery rate for each material based on audits of incoming loads at representative
107 transfer stations, disposal facilities and material recovery facilities in the commonwealth.

108 iv. Explain the process for determining how much of each type of packaging, based
109 on weight, is sold into the commonwealth each year, and determining the amount of material
110 recycled.

111 v. Explain the process for determining the quantity of payments to municipalities
112 which meet the specifications outlined in Chapter 10 Section 35EEE (c).

113 d) Not later than ninety (90) days after the submission of a plan pursuant to this
114 section, the department shall make a determination whether to:

115 (1) Approve the plan as submitted;

116 (2) Approve the plan with conditions; or

117 (3) Deny the plan.

118 e) Not later than six (6) months after the date the plan is approved, the producers, or
119 producer responsibility organization, shall implement the approved plan.

120 f) Not later than the implementation date of the program, the Sustainable Packaging
121 Advisory Board shall publicly list the names of participating producers and the brands covered
122 by the approved program.

123 g) A person or producer designated under the rules set forth in subsection (d) (ii) as a
124 steward, who elects to waive their responsibility to submit and execute a plan for collecting and
125 recycling their post-consumer packaging and printed paper through membership in a producer
126 responsibility organization, shall pay to the organization the fees determined in accordance with
127 subsection (d) (iii) of this act.

128 h) The producer responsibility organization shall maintain the Sustainable Packaging
129 Trust, as described under Chapter 10 section 35EEE. The fund shall be held in trust by the
130 producer responsibility organization for the following purposes:

131 i. To pay the costs of developing, implementing and operating the municipal
132 reimbursements outlined in Chapter 10 section 35EEE, including reasonable costs associated
133 with the operation of the producer responsibility organization.

134 ii. To pay a reasonable share of costs incurred by the Sustainable Packaging
135 Advisory Board in carrying out its responsibilities under this act.

136 iii. To pay a reasonable share of costs incurred by the department in carrying out its
137 responsibilities under this act.

138 i) All money received by the producer responsibility organization, including the
139 following amounts, shall be paid into the fund:

140 i. All fees paid to the producer responsibility organization under subsections (h) and
141 all interest and penalties paid in respect of those fees.

142 ii. All voluntary contributions of money to the organization.

143 iii. All investment income earned by the fund.

144 j) The total amount of fees paid by stewards under subsection (h) should not exceed
145 the sum of the amounts outlined in subsection (i).

146 k) One year from the submission of the initial program plan, and each year
147 thereafter, the producer responsibility organization shall submit to the Sustainable Packaging
148 Advisory Board a report containing, but not limited to, the following:

149 i. the amount of material sold into the commonwealth, including a detailed
150 methodology for how this figure was determined,

151 ii. a summary of fees assessed and program expenses incurred,

152 iii. and any other information required by the department pertaining to this Section.
153 This information may be audited by the department by an independent auditor chosen by the
154 department. Audits are funded from the Sustainable Packaging Trust.

155 Section 11E. Municipal Reporting.

156 a) Each municipality in the Commonwealth shall submit to the department and the
157 producer responsibility organization within twelve (12) months of the passage of this act a report
158 containing the following:

159 i. Monthly tonnage of recycling collected by the municipality, or on behalf of the
160 municipality by a private hauling company, if applicable.

161 ii. Monthly cost of hauling and tipping fees for recyclables collected as part of a
162 municipal recycling program, if applicable.

163 iii. Monthly cost of operating a municipal transfer station, if applicable.

164 iv. Any other information the producer responsibility organization may deem
165 necessary to fulfill the program planning requirements set out in Section 11D subsection (d).

166 Section 11F. Authority.

167 The department is hereby authorized to promulgate rules and regulations as may be
168 necessary to implement and carry out the provisions of this chapter, and to assess fines for
169 noncompliance as detailed in Section 11F.

170 Section 11G. Enforcement.

171 Failure to comply with any of the requirements established by or pursuant to Section 11D
172 shall obligate the producers covered under that material-type to pay not less than two hundred
173 thousand dollars (\$200,000) per year of non-compliance. The department shall deposit the funds
174 received from producers into the Sustainable Packaging Trust for grants for market development
175 related to the collection and recycling of the material type, and to municipalities to offset
176 disposal costs related to the managing the un-recycled packaging and/or printed paper.
177 Producers' individual contributions shall not exceed their respective market shares of packaging
178 sold in the state.

179

180 SECTION 2. Chapter 10 of the General Laws is hereby amended by inserting after
181 section 35DDD the following section:

182 Section 35EEE.

183 a) There shall be established an expendable trust to be known as the Sustainable
184 Packaging Trust. Amounts deposited in the trust shall be used for reimbursements described in
185 sections (c) and (d). Proceeds of the trust shall be invested by the treasurer and shall be under the
186 care and custody of the commissioner of the department of environmental protection, in
187 consultation with the board established in subsection (a) of Section 11D of Chapter 21A. Interest
188 earnings on funds deposited in said trust shall be credited to and become part of the trust. The
189 proceeds of the trust shall be expended by said commissioner without further appropriation to
190 cover the costs outlined in this act.

191 b) The commissioner of the department of environmental protection shall cause to be
192 filed with the chairs of the house and senate committees on ways and means an annual report
193 regarding the revenues and expenditures provided from the trust.

194 c) Each municipality in the Commonwealth shall consider their costs related to
195 recycling to include but not be limited to:

196 i. Hauling costs incurred by the municipality or paid to a private hauler,

197 ii. Tipping fees paid to a materials recycling facility,

198 iii. Costs incurred through operation of a municipal transfer station.

199 d) Each municipality in the Commonwealth shall be entitled to a reimbursement for
200 any costs related to recycling, provided they meet the requirements of subsection (e):

201 i. 60 percent if recycling contamination is above 10 percent overall, as decided by
202 the material recycling facility, or

203 ii. 80 percent if recycling contamination is below 10 percent overall, as decided by
204 the material recycling facility.

205 e) Each municipality in the Commonwealth must develop and submit a Zero Waste
206 Plan to the Department, outlining how the municipality intends to reduce their waste. The
207 municipality may only receive a reimbursement from the producer responsibility organization
208 through the Sustainable Packaging Trust, once that Zero Waste Plan is approved by the
209 department.

210 SECTION 3. The department shall, on or before July 1, 2021, promulgate regulations to
211 set a timeline for the types of packaging to be covered by the plans set forth in section 1, with
212 priority materials being those that are most costly to manage based on aggregate disposed weight
213 and aggregate contamination volume at material recovery facilities. All packaging types as
214 defined in section 1 shall be included by 5 years from initial promulgation.