

**SENATE . . . . . No. 610**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Michael F. Rush***

*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:	
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>	
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>2/25/2021</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>	<i>2/25/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/2/2021</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>3/4/2021</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>	<i>3/9/2021</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>4/1/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>4/1/2021</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>5/20/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>5/20/2021</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>9/23/2021</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>9/23/2021</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>9/23/2021</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>9/23/2021</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>9/24/2021</i>
<i>John J. Cronin</i>	<i>Worcester and Middlesex</i>	<i>9/24/2021</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>11/2/2021</i>

**SENATE . . . . . No. 610**

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By Mr. Rush, a petition (accompanied by bill, Senate, No. 610) of Michael F. Rush, Mathew J. Muratore, Paul McMurtry, James B. Eldridge and other members of the General Court for legislation to save recycling costs in the commonwealth. Environment, Natural Resources and Agriculture.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-Second General Court  
(2021-2022)**  
\_\_\_\_\_

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 94 of the General Laws is hereby amended by inserting after  
2 section 329 the following sections:

3           Section 330. Definitions applicable to Secs. 330 to 345. In section three hundred and  
4 thirty to section three hundred and forty-five, inclusive, the following terms shall, unless the  
5 context clearly appears otherwise, have the following meanings:

6           "Alternative collection program", a program for the management of packaging material  
7 that is operated by an individual producer or group of producers and that has been approved by  
8 the department in accordance with section 338.

9           "Brand", a name, symbol, word or mark that identifies a product, rather than its  
10 components, and attributes the product to the owner of the brand.

11           “Collector”, a municipality, private hauler, association, or other entity that collects solid  
12 waste from residential generators or schools.

13           “Committee”, the advisory committee as established by the producer responsibility  
14 organization or coordinating body pursuant to section 332.

15           “Coordinating body”, the entity formed by producer responsibility organizations if more  
16 than one organization is formed, pursuant to section 332.

17           "Covered materials", any packaging material or paper products, regardless of  
18 recyclability or compostability, that are sold, offered for sale, or distributed to consumers in the  
19 state, including through an internet transaction.

20           “Covered material category”, the categories of covered materials as defined by the  
21 department pursuant to paragraph (d) of section 342.

22           “Department”, the department of environmental protection.

23           "Franchisee", a person that is granted a license by a franchisor to use the franchisor's  
24 trade name, service mark or related characteristic and to share in the franchisor's proprietary  
25 knowledge or processes pursuant to an oral or written arrangement for a definite or indefinite  
26 period.

27           "Franchisor", a person that grants to a franchisee a license to use the person's trade name,  
28 service mark or related characteristic and to share in the person's proprietary knowledge or  
29 processes pursuant to an oral or written arrangement for a definite or indefinite period.

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

32           “Municipal solid waste”, any residential or commercial solid waste, as defined in 310  
33 CMR 19.006.

34           “Municipality”, a city, town, or regional association acting on behalf of a city or town.

35           "Packaging material", any part of a package or container, including material that is used  
36 for the containment, protection, handling, delivery, and presentation of a product that is sold,  
37 offered for sale, imported, or distributed in the state, including through internet transactions

38 "Packaging material" does not include:

39           (a) A discrete type of material, or a category of material that includes multiple discrete  
40 types of material, intended to be used for the long-term storage or protection of a durable product  
41 and that can be expected to be usable for that purpose for a period of at least 5 years; or

42           (b) A discrete type of material, or a category of material that includes multiple discrete  
43 types of material, that is a beverage container, as defined in section 321 of this chapter.

44           “Paper products”, paper that can or has been printed on including flyers, brochures,  
45 booklets, catalogues, greeting cards, telephone directories, newspapers, magazines, paper used  
46 for copying, writing or any other general use. Paper products does not include:

47           (a) paper products that, by virtue of their anticipated use, could become unsafe or  
48 unsanitary to recycle; and

49           (b) any literary, text, reference, or other bound book.

50           "Producer", with respect to a covered material, producer means:

51 (a) an entity that manufactures and uses in a commercial enterprise, sells, offers for sale,  
52 or distributes the covered material in the commonwealth under the brand of the manufacturer;

53 (b) if clause (a) does not apply, an entity that is not the manufacturer of the covered  
54 material but is the owner or licensee of a trademark under which the covered product is used in a  
55 commercial enterprise, sold, offered for sale, or distributed in the commonwealth, whether or not  
56 the trademark is registered; or

57 (c) if clauses (a) and (b) do not apply, an entity that imports the covered material into the  
58 United States or the commonwealth for use in a commercial enterprise, sale, offer for sale, or  
59 distribution in the commonwealth.

60 (d) the definition of “producer” includes a franchisor of a franchise located in the  
61 commonwealth but does not include the franchisee operating that franchise.

62 (e). the definition of “producer” does not include a nonprofit organization exempt from  
63 taxation under the United States Internal Revenue Code, Section 501(c)(3), and any entity  
64 exempted from the program under section 331 of this chapter.

65 "Producer responsibility fund" or "fund", a privately held account established and  
66 managed by the stewardship organization pursuant to section 337.

67 "Producer responsibility organization" or "organization", a not-for-profit entity formed by  
68 a group of producers and contracted by the department under section 332 to act as an agent on  
69 behalf of each producer to develop and implement a producer responsibility plan.

70 "Producer responsibility plan" or "plan", a detailed plan that describes the manner in  
71 which producers shall comply with the requirements of secs. 330 to 345 and all regulations  
72 promulgated by the department pursuant to secs. 330 to 345.

73 "Packaging and paper products program" or "program", the program implemented under  
74 secs. 330 to 345 by the organization to assess and collect payments from producers based on the  
75 type and weight of packaging material sold, offered for sale or distributed for sale in the State by  
76 each producer and to reimburse participating municipalities for certain incurred municipal  
77 recycling and waste management costs.

78 "Readily-recycled", with respect to a covered material, that the type of packaging  
79 material or paper product, as annually determined by the department:

80 (a) can be sorted by entities that process recyclable material generated in the  
81 commonwealth; and

82 (b) has a consistent market for purchase, as based on data from the prior two (2) calendar  
83 years. For the purposes of this paragraph, "consistent market for purchase" means, with respect  
84 to a type of packaging material, that entities processing recyclable material are willing to  
85 purchase full bales of that type of fully sorted packaging material in quantities equal to or in  
86 excess of the supply of that fully sorted packaging material.

87 "Readily-recycled", does not include covered material categories or types that facilities  
88 accept in low quantities or sort out of material during additional processing steps; if facilities  
89 cannot aggregate or sell a full bale of a specific covered material category or type due to a lack  
90 of market or inability to feasibly separate, that covered material type is not readily-recyclable.

91 Covered material categories or types shall not be considered readily-recyclable, recyclable,  
92 compostable, or reusable if they contain toxic substances as defined in this section.

93 "Recycling", to separate, dismantle or process the materials, components or commodities  
94 in covered materials for the purpose of preparing the materials, components or commodities for  
95 use or reuse in new products or components. "Recycling" does not include energy recovery or  
96 energy generation by means of combustion; pyrolysis, gasification and any other high-heat  
97 chemical conversion processes; or landfill disposal of discarded covered products or discarded  
98 product component materials.

99 "Residential", of a place where residents live, stay, or are cared for over a period of more  
100 than two full days and nights, including but not limited to single and multifamily homes,  
101 apartments, condominiums, congregate housing, public housing, mobile home parks,  
102 dormitories, assisted living residences, nursing homes, hospitals, camps and hotels.

103 "School", a public, private, or charter school, including pre-schools, K-12 schools,  
104 colleges, and universities.

105 "Sustainable packaging trust" or "trust", an expendable trust under control of the  
106 department, created under Chapter 10 section 35EEE of the Massachusetts General Laws, for the  
107 purpose of collecting funds for department administration of the packaging and paper products  
108 program or an alternative collection program, and for collecting fines related to the packaging  
109 and paper products program or an alternative collection program.

110 "Toxic substance", with respect to packaging material, means a chemical or chemical  
111 class identified by a state agency, federal agency, international intergovernmental agency,

112 accredited research university, or other scientific evidence deemed authoritative by the  
113 department on the basis of credible scientific evidence as being one or more of the following:

114 (a) a chemical or chemical class that is a carcinogen, mutagen, reproductive toxicant,  
115 immunotoxicant, neurotoxicant, endocrine disruptor.

116 (b) a chemical or chemical class that is persistent or bioaccumulative.

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

119 (d) a chemical or chemical class that may harm organs or cause other systemic toxicity.

120 (e) a chemical or chemical class that may have adverse air quality impacts, adverse  
121 ecological impacts, adverse soil quality impacts, or adverse water quality impacts.

122 (f) the department has determined a chemical or chemical class has equivalent toxicity to  
123 the above criteria.

124 “Toxic substance”, for the purposes of secs. 330 to 345, includes the following chemicals  
125 or chemical classes: Per and Poly Fluor Alkyl Substances (PFAS); an ortho phthalate; a  
126 bisphenol compound; a halogenated, organophosphorus, organonitrogen, or nanoscale flame  
127 retardant chemical; Lead; Cadmium; Mercury; Hexavalent Chromium; and Formaldehyde.

128 “Waste disposal bans”, has the same meaning as in 310 CMR 19.000.

129 Section 331. Producer exemptions. Notwithstanding any provision of secs. 330 to 345 to  
130 the contrary, a producer is exempt from the requirements and prohibitions of sections 330 to 345  
131 in any calendar year in which the producer (a) realized less than \$1,000,000 in total gross

132 revenue during the prior calendar year, or (b) the producer sold, offered for sale or distributed for  
133 sale in or into the commonwealth during the prior calendar year products contained, protected,  
134 delivered, presented or distributed in or using less than one ton of covered material in total.

135         Section 332. Producer responsibility organizations. To satisfy the requirements under  
136 secs. 330 to 345, producers of covered materials sold or distributed into the commonwealth shall  
137 establish (a) producer responsibility organization(s) that shall act as an agent and on behalf of  
138 each producer to operate the packaging and paper products program. If more than one (1)  
139 producer responsibility organization is established with respect to a category or categories of  
140 covered materials, the commissioner of the department may establish a coordinating body to  
141 coordinate and manage those producer responsibility organizations, and conduct business  
142 between those producer responsibility organizations, collectors, and the department.

143         (a) If multiple producer responsibility organizations are formed, they must submit one  
144 single producer responsibility plan to the department and ensure seamless operation of the  
145 packaging and paper products program, thereby assigning responsibility equitably among  
146 producer responsibility organizations and relieving the department of responsibility associated  
147 with coordinating multiple producer responsibility organizations.

148         (b) Any producer responsibility organization formed in compliance with secs. 330 to 345  
149 shall be established and operated as an organization described in section 501(c)(3) of the Internal  
150 Revenue Code of 1986 and exempt from taxation under 501(a) of that Code.

151         (c) The organization or coordinating body shall establish an advisory committee that  
152 represents a range of interested and engaged persons relevant to the category of covered products  
153 of the applicable program, including the commissioner of the department of environmental

154 protection or a designee, and individuals representing producers, retailers, waste haulers,  
155 material recovery facility operators, waste pickers, municipalities, environmental and community  
156 organizations, freshwater and marine litter programs, and environmental and human health  
157 scientists. Each individual serving on an advisory committee may represent only one (1) member  
158 of each category listed under this paragraph, and the organization or coordinating body shall  
159 ensure that no category has a disproportionate representation on an advisory committee.

160 (d) The producer responsibility organization or coordinating body shall hold an advisory  
161 meeting at least quarterly; request and consider comments from the advisory committee of the  
162 organization prior to the submission to the department of the plan or any modifications to the  
163 plan; report comments of the advisory committee to the department as an appendix to any  
164 revisions to the plan submitted to the department; and include a summary of advisory committee  
165 engagement and input in the report under section 339.

166 Section 333. Producer plan. Within eight (8) months of the promulgation of related  
167 regulations by the department pursuant to section 342 the producer responsibility organization(s)  
168 shall submit a plan for the establishment of the packaging and paper product program to the  
169 department for approval. With the exception of paragraph (h), the plan shall have a duration of  
170 five (5) years. The plan(s) must include, at a minimum:

171 (a) A description of how the producer responsibility organization will administer the  
172 program, including the mechanism or process, to be developed with input from producers, by  
173 which producers may request and receive assistance from the organization in the reporting of  
174 required information and guidance for covered material modifications that would reduce fee  
175 payments; and the mechanism or process, to be developed with input from collectors, by which

176 participating collectors may request and receive assistance from the organization in the reporting  
177 of required information and guidance for recycling program modifications that would increase  
178 access to and participation in residential recycling programs.

179 (b) A description of how the organization intends to solicit and consider input from the  
180 advisory committee and other interested entities, including, but not limited to, producers,  
181 collectors, environmental organizations, and waste and recycling entities, regarding the operation  
182 of the packaging and paper products program.

183 (c) A description of the funding mechanism covering the entire cost of the program,  
184 including how the organization intends to establish and manage the producer responsibility fund  
185 consistent with the requirements of sections 335 and 337, including, but not limited to: staffing  
186 the organization and coordinating body to manage the fund; a plan to ensure equity of access for  
187 financially or otherwise challenged municipal participants; technical support to producers and  
188 collectors regarding program requirements; administering and collecting payments to and  
189 reimbursements from the fund and the financial mechanisms, including investment types if any,  
190 the organization intends to use to manage monies within the fund.

191 (d) A proposed budget outlining the anticipated costs of operating the program, including  
192 identification of any start-up costs that will not be ongoing and a description of the method by  
193 which the organization intends to determine and collect producer payments during the start-up  
194 period of program operation, and to reimburse or require additional payments by those producers  
195 subsequent to the start-up period based on producer reporting of the actual amount of packaging  
196 material sold, offered for sale or distributed for sale in or into the commonwealth by each  
197 producer during the start-up period. The proposed budget should describe how the organization

198 will maintain a financial reserve sufficient to operate the program in a fiscally prudent and  
199 responsible manner, such that it considers historical variations in market values of post-consumer  
200 packaging types. The proposed budget under this paragraph may overestimate the cost of  
201 operating the program during the start-up period of operation but must describe the method and  
202 basis for any overestimate.

203 (e) A proposal for how expenditures from the fund will be used for investments in public  
204 outreach, education, communication, and infrastructure enhancement in a way that increases  
205 access to recycling and reuse throughout the commonwealth, and how the organization's  
206 development of such investment proposals must incorporate input from producers, participating  
207 collectors, municipalities, environmental organizations, and waste and recycling entities. Public  
208 outreach, education, and communication shall:

209 (1) Promote the proper end-of-life management of covered materials.

210 (2) Provide information on how to prevent litter of covered materials.

211 (3) Provide recycling instructions that are, to the extent practicable; consistent statewide;  
212 easy to understand; easily accessible; and in compliance with the annually published list of  
213 readily recyclable materials under paragraph (c) of section 342.

214 (4) Provide for outreach and education that are; designed to achieve covered materials  
215 goals under paragraph (e) of this section, including the prevention of contamination of materials;  
216 coordinated across programs or regions to avoid confusion for consumers; and developed in  
217 consultation with local governments and other stakeholders.

218 (f) A description of how, through the proposed expenditures under paragraph (e), the  
219 organization intends to provide convenient and free consumer access to collection services or  
220 collection facilities for all residents in the Commonwealth, and how the organization intends to  
221 achieve and assist collectors and facilities in achieving a combined reduction and recycling rate,  
222 based on regular audits of inbound waste at facilities as described in paragraph (i) of this section  
223 and outbound tonnages of covered material from facilities as reported to the department pursuant  
224 to paragraph (f) of section 342, of no less than sixty-five (65) percent by weight by July 1, 2027,  
225 no less than eighty (80) percent by weight by July 1, 2031, and no less than one hundred (100)  
226 percent by weight by July 1, 2035 of covered materials managed by the organization. The  
227 organization shall also provide a description of how it intends to achieve and assist collectors in  
228 achieving performance standards for each type of covered material as published annually by the  
229 department pursuant to paragraph (d) of section 342.

230 (g) A proposed schedule of minimum post-consumer recycled material content rate  
231 requirements for covered materials, including a description of how the organization intends to  
232 meet the proposed minimum post-consumer recycled material content rates. The minimum post-  
233 consumer recycled material content rates shall include each covered material category, and shall  
234 not be less than ten (10) percent of all material in each covered material category, by weight.

235 (h) A description of how the organization intends to use the materials cost differentiation  
236 system developed by the department and the annual schedule of adjustments under paragraphs  
237 (a) and (b) of section 342 to assess fees for producers of each type of covered materials, as  
238 defined by the department, in compliance with all applicable provisions of secs 330 to 345. The  
239 description must include a flat-rate fee schedule for producers generating between one (1) and  
240 fifteen (15) tons of covered materials annually. The organization shall develop an evaluation

241 system for the fee structure, and shall annually evaluate, revise and submit an updated  
242 assessment schedule along with the annual report submitted to the department pursuant to section  
243 339.

244 (i) A description of how the organization intends to fund representative third-party,  
245 independent audits of both inbound and outbound recyclable material generated in the  
246 commonwealth that is processed and sold by facilities; waste characterizations of municipal solid  
247 waste being disposed of in the commonwealth; and litter audits. The audits must be conducted at  
248 least annually, and must include:

249 (1) A description of the sampling techniques to be used in those audits, which must  
250 include random sampling.

251 (2) A description of how those audits, at a minimum, will be designed to solicit  
252 information regarding the extent to which recyclable material processed and sold by those  
253 facilities reflects the tons of each type of covered material recycled in the commonwealth and the  
254 ultimate state or country destination of and intended use for that material.

255 (3) Requirements regarding how the audits will be designed so that information obtained  
256 through the audit of one facility will not be used to infer information about a different facility  
257 that uses different processing equipment, different sorting processes or different staffing levels to  
258 conduct such processing.

259 (4) Requirements regarding how a facility will be allowed to request and receive an audit  
260 if it can credibly demonstrate that an audit result being applied to its material output is not  
261 representative of its current operations.

262 (5) For waste disposal audits, at a minimum, a description of the types and weight of  
263 packaging material in the disposal waste stream, and the percentage by weight and volume of the  
264 disposal waste stream that is comprised of covered materials.

265 (6) For litter audits, to the maximum extent practicable, a description of the packaging  
266 material type by weight, identification of producer, and the general description of where the litter  
267 is accumulating throughout the State.

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

269 Section 334. Approval of plan; plan amendments; corrective actions, termination of plan.  
270 In accordance with the applicable provisions of secs. 330 to 345, the department shall review the  
271 producer responsibility plan and amendments to such plan submitted by the organization or  
272 coordinating body, and shall require the implementation of corrective actions by the organization  
273 to the packaging and paper products program. Following approval of the plan by the department  
274 under this section, the producer responsibility organization shall immediately begin  
275 implementation of the plan.

276 (a) The department shall review the producer responsibility plan submitted by the  
277 organization or coordinating body pursuant to section 333 and approve or deny the plan within  
278 ninety (90) days of receipt. The department shall approve the plan if the department determines  
279 that the plan meets the requirements of section 333 and is otherwise consistent with all  
280 applicable requirements of secs. 330 to 345 of this chapter. If the department approves the plan,  
281 the department shall transmit written notice of that approval to the organization. An approval  
282 under this section must terminate five (5) years from the date of that approval but may be  
283 extended for an additional five (5)-year period following the submission by the stewardship

284 organization of an updated plan consistent with section 333 that is approved by the department  
285 consistent with this section. The organization or coordinating body must submit an updated plan  
286 no later than one hundred twenty (120) days prior to the date its current plan expires.

287 (b) If the department determines that a submitted plan fails to meet any applicable  
288 requirements of secs. 330 to 345, the department shall provide written notice to the organization  
289 describing the reasons for rejecting the plan. No later than forty-five (45) days after receiving  
290 written notice rejecting a submitted plan, the organization shall revise and resubmit the plan to  
291 the department. The department shall review the revised plan, decide whether to approve it and  
292 provide written notice of the department's decision within forty-five (45) days of receipt of the  
293 revised plan.

294 (c) The organization may propose modifications to the approved plan, provided the  
295 organization submits the proposed modifications to the department for review and consults the  
296 advisory committee as required under paragraph (d) of section 332. Not later than forty-five (45)  
297 days following receipt of proposed modifications, the department shall approve the modifications  
298 if the department determines the revision is in accordance with secs. 330 to 345. If the  
299 department determines the revision is not in accordance with secs. 330 to 345, the department  
300 shall communicate the determination to the organization, at which time the organization shall  
301 resubmit proposed modifications to the department for approval. If the department does not make  
302 a determination under this paragraph within forty-five (45) days of the receipt of a proposed  
303 modification, the modification shall be considered to be approved.

304 (d) If, based on its review of an organization's annual report required under section 339 or  
305 on a different basis, the department determines that the organization is not operating the

306 packaging and paper product program in a manner consistent with its approved plan, or the  
307 provisions of this section, the department may require the organization to implement  
308 amendments to the plan or corrective actions to the program. If the organization fails to  
309 implement a department-required amendment to the plan or corrective action to the program  
310 within the time frame for implementation required by the department, the department may take  
311 enforcement actions pursuant to section 343.

312           Section 335. Producer payments. In accordance with the provisions of this section and the  
313 regulations promulgated by the department, no later than thirty (30) days after the approval of the  
314 producer responsibility plan under section 334, and quarterly thereafter, a producer shall make  
315 payments to the organization to be deposited into the producer responsibility fund under section  
316 337, based on the amount of each type of covered material sold, offered for sale or distributed for  
317 sale in or into the commonwealth by the producer and not managed under an approved  
318 alternative collection program. The department shall promulgate regulations under section 342  
319 setting forth the manner in which such payments must be calculated. Payments must include a  
320 producer's share of administrative, enforcement, education and infrastructure costs, and must  
321 reflect the per ton costs associated with collection, processing, transportation and recycling or  
322 disposal of covered materials; the costs associated with increasing access to reuse and recycling  
323 of covered materials; and other criteria as determined by paragraph (b) of section 342. In total,  
324 payments made by producers to the organization shall be sufficient to cover all expenditures  
325 under section 337.

326           Section 336. Annual reporting by producers. Beginning no later than 180 days after the  
327 approval of the producer responsibility plan under section 334, and in conjunction with payments  
328 made pursuant to section 335, a producer shall annually report to an organization the total tons of

329 each type of packaging material sold, offered for sale or distributed for sale in or into the  
330 commonwealth by the producer in the prior calendar year and the methods for determining the  
331 reported amounts; the characteristics of that packaging material that are relevant to the fee  
332 adjustment criteria as determined by the department by rule in accordance with paragraph (b),  
333 section 342; and a list of all of the producer's brands associated with that packaging material.

334 Section 337. Producer responsibility fund; authorized expenditures. In accordance with  
335 the provisions of this section and the regulations promulgated by the department, the  
336 organization or coordinating body shall establish and manage a producer responsibility fund. The  
337 organization shall deposit into the fund all payments received from producers in accordance with  
338 section 335 and shall expend those funds for the following uses:

339 (a) To reimburse participating collectors in accordance with section 341.

340 (b) To fund the actual operating costs of the organization, which may not exceed the  
341 estimated operating costs indicated in the plan approved by the department pursuant to section  
342 341, and which must be verified through a third-party audit paid for by the stewardship  
343 organization.

344 (c) To pay into the sustainable packaging trust all applicable fees required by the  
345 department under section 342(e).

346 (d) To make investments in education and infrastructure that support the recycling of  
347 covered material in the commonwealth, which are directly supported by producer payments for  
348 covered materials and must be approved by the department prior to any such expenditures, and  
349 which must incorporate input from producers, facilities, and participating collectors. Of the  
350 expenditures from the producer responsibility fund for a fiscal year, the organization shall ensure

351 that not less than two (2) percent is used for education and not less than eight (8) percent is used  
352 for infrastructure described under this section and in compliance with the approved producer  
353 responsibility plan under section 334.

354 (1) The organization shall submit any proposed expenditure under this paragraph to the  
355 advisory committee for approval prior to making such expenditure.

356 (2) The department shall promulgate regulations setting approval criteria for the  
357 evaluation of proposed expenditures under this paragraph.

358 (3) The department shall approve or deny a proposed expenditure under this paragraph  
359 within 90 days of receipt of the proposal.

360 (e) To fulfill any other obligation required by the producer responsibility plan, including  
361 representative audits of covered materials from materials recovery facilities, solid waste  
362 facilities, and litter.

363 (f) Expenditures from the producer responsibility fund shall be used only for the uses  
364 described in this section; and shall not be used to pay penalties imposed under section 342, or  
365 any costs associated with litigation against the commonwealth.

366 (g) If for any reason secs 330 to 345 are repealed, or the producer responsibility  
367 organization ceases operation, the entire fund balance shall be transferred by the organization to  
368 the commonwealth of Massachusetts to be deposited into the sustainable packaging trust.

369 Section 338. Alternative collection program. In accordance with the requirements of this  
370 section and the regulations promulgated by the department, a producer or group of producers  
371 may develop and operate an alternative collection program to collect and manage a type or types

372 of covered material sold, offered for sale or distributed for sale in or into the commonwealth by  
373 the producer or producers. A producer that manages a type of covered material under an  
374 approved alternative collection program through reduction, reuse, recycling or, where approved  
375 by the department, management of that covered material through incineration may wholly or  
376 partially offset the producer's payment obligations under the packaging and paper product  
377 program with respect to that same type of covered material only.

378 (a) Once a producer responsibility organization or coordinating body has a plan approved  
379 by the department for the creation of a packaging and paper products program, a producer or  
380 group of producers seeking to implement an alternative collection program shall submit a  
381 proposal for the establishment of that program to the department for approval. The department  
382 shall provide an opportunity for public review and comment on the proposal or deny the proposal  
383 within ninety (90) days of receipt. The department may approve an alternative collection  
384 program for a term of five (5) years and, at the expiration of such term, the producer or group of  
385 producers operating the program may submit an updated proposal to the department for approval.

386 (b) In determining whether to approve a proposed alternative collection program, the  
387 department shall consider:

388 (1) Whether the alternative collection program will provide convenient, free, statewide  
389 collection opportunities for the types of packaging material to be collected under that program.

390 (2) To what extent the alternative collection program intends to manage those types of  
391 covered material to be collected under the program through reduction, reuse for an original  
392 purpose, through recycling or through disposal at an incineration facility. The department may  
393 not approve an alternative collection program that proposes management of a covered material

394 type through disposal at an incineration facility unless that covered material is not readily  
395 recyclable as defined by the department pursuant to section 342 and the program proposes a  
396 process to begin reuse or recycling of that type of covered material within a period of 3 years or  
397 less. The program shall ensure that a combined reduction and recycling rate is achieved of no  
398 less than sixty-five (65) percent by weight by July 1, 2027, no less than eighty (80) percent by  
399 weight by July 1, 2031, and no less than one hundred (100) percent by weight by July 1, 2035 of  
400 covered materials managed by the organization.

401 (3) Whether the education and outreach strategies proposed for the alternative collection  
402 program can be expected to significantly increase consumer awareness of the program  
403 throughout the commonwealth.

404 (4) How the alternative collection program intends to accurately measure the amount of  
405 each covered material type collected, reused, recycled, disposed at an incineration facility or  
406 otherwise managed under the program.

407 (5) To what extent the alternative collection program may disproportionately impact one  
408 community over another.

409 (c) A proposed modification to an approved alternative collection program must be  
410 submitted to the department for written approval. The department shall approve or deny a  
411 proposed modification based on application of the criteria described in paragraph (b).

412 (d) A producer or producers managing an approved alternative collection program shall  
413 report annually and concurrent with the reporting required by section 339 to the organization and  
414 to the department the following information:

415 (1) The total tons of each type of covered material collected, reused, recycled, disposed at  
416 an incineration facility or otherwise managed under the alternative collection program in the  
417 prior twelve months, including a breakdown of the total tons of each type of material to be  
418 credited to each producer participating in the alternative collection program.

419 (2) A list of the collection opportunities in the commonwealth for the types of covered  
420 material managed under the alternative collection program that were made available in the prior  
421 twelve months.

422 (3) A description of the education and outreach strategies implemented by the alternative  
423 collection program in the prior calendar year to increase consumer awareness of the program  
424 throughout the commonwealth.

425 (4) Progress toward reducing the disposed tons of the material.

426 (5) Any additional information required by the department.

427 (e) No later than thirty (30) days after the approval of an alternative collection program  
428 under this section, and quarterly thereafter, a producer or producers participating in an approved  
429 alternative collection program shall make a payment into the sustainable packaging trust for the  
430 department's administrative costs of operating the program as determined by the department  
431 pursuant to section 342(f).

432 (f) If the department determines that an approved alternative collection program is not  
433 operating in a manner consistent with the proposal approved under this section or the provisions  
434 of this section, the department shall provide written notice to the producer or producers operating  
435 the alternative collection program regarding the nature of the deficiency, the actions necessary to

436 correct the deficiency and the time by which such actions must be implemented. If the  
437 department determines that the producer or group of producers have failed to implement the  
438 actions described in the written notice within the required time frame, the department shall notify  
439 the producers or group of producers as well as the producer responsibility organization or  
440 coordinating body in writing that the producer or group of producers are ineligible to offset  
441 payment obligations under the packaging and paper product program based on covered material  
442 managed under the alternative collection program. The department may also bring enforcement  
443 actions against the producer or group of producers under section 343.

444           Section 339. Annual reporting by producer responsibility organization. The producer  
445 responsibility organization shall submit an annual report to the department on a regular schedule  
446 determined by the department for the preceding calendar year the program was in operation,  
447 which shall include:

448           (a) Contact information for the producer responsibility organization.

449           (b) A list of participating producers and the brands of products associated with those  
450 producers.

451           (c) The total amounts of each type of covered material sold, offered for sale or distributed  
452 for sale in or into the commonwealth by each participating producer as reported in accordance  
453 with section 336.

454           (d) As applicable, the total amount of each type of packaging material collected and  
455 managed by each participating producer through alternative collection programs approved by the  
456 department under section 338

457 (e) A complete accounting of payments made to and by the organization during the prior  
458 calendar year, as determined by an independent financial audit, as performed by an independent  
459 auditor, including information on how the organization determined the amount of such payments  
460 in conformance with regulations promulgated in accordance with section 342.

461 (f) A copy of the independent audit described in paragraph (e).

462 (g) A list of producers not participating in the program that are required to participate in  
463 the program and any product specific non-compliance, if known by the organization.

464 (h) A description of education and infrastructure investments made by the organization in  
465 prior calendar years and how those expenditures quantifiably increased access to recycling and  
466 reuse of covered materials throughout the commonwealth.

467 (i) An updated assessment schedule, as required under paragraph (h) of section 333.

468 (j) Results of representative inbound and outbound audits of recyclable material  
469 processed and sold by materials recycling facilities in the commonwealth, waste characterization  
470 of municipal solid waste being disposed of in the commonwealth, and litter audits.

471 (k) Progress toward any program goals determined in the producer responsibility plan.

472 (l) Any other information the department determines to be appropriate.

473 Section 340. Requirements for collector reimbursements. In accordance with the  
474 provisions of this section and the regulations promulgated by the department, a collector may  
475 elect to, but is not required to, participate in the program under secs. 330 to 345. All collectors  
476 shall provide collection and recycling of covered recyclables to all residential units and schools  
477 to which they provide service. The producer responsibility organization(s) or coordinating body

478 shall reimburse participating collectors for incurred net costs associated with collection,  
479 processing, transportation and recycling or disposal of covered materials from all residential  
480 units and schools and shall ensure that, in the event no collector has elected to participate in the  
481 program in a given jurisdiction, convenient, equitable and free access to recycling services is  
482 available to residential units and schools within that jurisdiction. Participating collectors shall not  
483 charge fees to residential units or schools for reimbursable costs.

484 (a) To be eligible for reimbursement of costs under sections 341 as a participating  
485 collector, a collector must provide for the collection and recycling of covered materials that are  
486 generated by all residential and school generators using its service and that are readily recyclable  
487 as listed regularly by the department and that are not collected by an alternative collection  
488 program in accordance with section 338, must annually report to the organization or coordinating  
489 body all information necessary for the organization or coordinating body to determine the  
490 collector's incurred net costs associated with collection, processing, transportation and recycling  
491 or disposal of recyclable material and of municipal solid waste.

492 (b) A collector shall report the information described in paragraph (a) to the organization  
493 or coordinating body on a form provided by or approved by the department.

494 (c) Two or more municipalities, a regional refuse district or association, a municipally  
495 owned processing facility or quasi-municipal entity that manages materials on behalf of a  
496 municipality may elect to jointly report to the organization and jointly receive reimbursement  
497 payments from the stewardship organization.

498 Section 341. Calculation and disbursement of collector reimbursements. In accordance  
499 with the provisions of this section and regulations promulgated by the department, the

500 organization or coordinating body shall calculate and make reimbursement payments from the  
501 fund to participating collectors to reimburse those collectors for incurred costs associated with  
502 collection, processing, transportation and recycling of covered materials from all residential units  
503 and schools.

504 (a) In accordance with the regulations promulgated by the department pursuant to section  
505 342, the organization or coordinating body shall determine the amount of reimbursements to  
506 participating collectors under this section based on the following information:

507 (1) Information provided by participating collectors to the organization or coordinating  
508 body in accordance with section 340 regarding the incurred net costs associated with collection,  
509 processing, transportation and recycling or disposal of recyclable material.

510 (2) Information provided to the department by facilities pursuant to paragraph (f) of  
511 section 342 and made available by the department to the organization or coordinating body,  
512 including the tons of readily recyclable material received by each facility from each collector, the  
513 tons of processed readily recyclable material sold by each facility, and any revenue received.

514 (3) Information obtained by the organization or coordinating body through the audits of  
515 facilities that process readily recyclable material generated in the commonwealth as required in  
516 the approved plan under section 333.

517 (4) Any other information specified by the department by rule.

518 (b) In accordance with regulations promulgated by the department, the organization or  
519 coordinating body shall use the information described in paragraph (a) to determine the total tons  
520 of each covered material type recycled by all collectors at each recycling establishment and the

521 percentage of those total tons attributable to each participating collector. In the case of two or  
522 more municipalities that jointly send recyclable material to a recycling establishment, the  
523 organization shall assume that an equal amount of the jointly sent material is attributable to each  
524 resident of each municipality unless those municipalities by agreement identify an unequal per  
525 capita division of that jointly sent material for the purposes of this section.

526         Section 342. Administration and enforcement; rulemaking; fees; additional department  
527 responsibilities. The department shall administer and enforce this section and shall promulgate  
528 regulations as necessary to implement, administer and enforce this section. All regulations  
529 developed under this section shall be promulgated no later than six months after the passage of  
530 this act.

531         (a) The department shall develop a material cost differentiation system with which the  
532 producer responsibility organization or coordinating body will calculate material costs for  
533 collector reimbursements and producer payments. The material cost differentiation mechanism  
534 shall be based on the net cost of residential curbside collection or transfer station operation, on-  
535 site processing cost for each readily recyclable covered material types, management cost of non-  
536 readily recyclable covered materials, transportation cost for each covered material, and any other  
537 cost factors as determined by the department. Cost calculations shall take into consideration  
538 revenue generated from recyclable materials and must incentivize operational efficiency and  
539 contamination reduction.

540         (b) The department shall regularly publish a schedule of adjustments to be used by the  
541 producer responsibility organization in determining the amount of producer payments required  
542 under section 335. The schedule of adjustments shall apply to both readily and non-readily

543 recyclable covered materials as defined in paragraph (c), and shall be used to individually adjust  
544 the fees assessed for each category of covered material as defined in paragraph (d). To minimize  
545 the extraction, manufacture, use, and end-of-life-management impacts of covered materials, the  
546 schedule of adjustments must be structured to incent:

547 (1) Covered material waste reduction.

548 (2) Reuse and lifespan extension of packaging.

549 (3) Use of readily recyclable materials to manufacture covered materials.

550 (4) Increased use of post-consumer recycled content material in covered materials so long  
551 as it does not increase the toxicity of the packaging material.

552 (5) Reduced use of toxic substances in covered materials, which raise the lifecycle  
553 environmental and societal costs of packaging.

554 (6) The use of the minimum quantity of packaging necessary to effectively deliver a  
555 product without damage or spoilage.

556 (7) Single-material packaging with clear recycling or disposal instructions for consumers,  
557 and other design characteristics that reduce contamination in recycling.

558 (8) Domestic processing of covered materials.

559 (9) Minimal life cycle impact of covered materials.

560 (c) The department shall regularly publish a list of readily recyclable materials,  
561 developed through coordination with the producer responsibility organization and material  
562 recovery facilities or other entities managing covered materials. The department shall provide for

563 a transitional period between the time that a type of covered material is determined to be readily  
564 recyclable or to not be readily recyclable and the time that such determinations will be effective  
565 for the purposes of determining producer payments and collector reimbursements in accordance  
566 with secs. 330 to 345. The department may amend the list of readily recyclable materials as  
567 needed.

568 (d) The department shall coordinate with the producer responsibility organization to  
569 establish categories of covered materials. The covered material categories shall group covered  
570 materials that have similar properties such as chemical composition, shape, or other  
571 characteristics, including, but not limited to: rigid or flexible plastics made of polyethylene  
572 terephthalate (PET), polyethylene (PE), polyvinyl chloride (PVC), polypropylene (PP),  
573 polystyrene (PS), poly coated fiber, multi-layered plastics, other (BPA, Compostable Plastics,  
574 Polycarbonate and LEXAN); metal, such as aluminum, tin, and steel; paper; cartons; and glass.

575 (e) Beginning at the time that the producer responsibility organization is required to  
576 submit its first annual report to the department, the department shall submit to the producer  
577 responsibility organization, and quarterly thereafter, all costs incurred in the administration of the  
578 packaging and paper products program, including oversight, issuance of any regulations,  
579 planning, plan review, including proposed modifications to the plan under section 334,  
580 compliance, enforcement, and sufficient staff positions to administer the program. All funds shall  
581 be deposited in the sustainable packaging trust.

582 (f) Beginning at the time that a producer or producers managing an alternative collection  
583 program are required to submit the first annual report to the department pursuant to section  
584 338(d), the department shall submit to the producer or producers, and quarterly thereafter, all

585 costs incurred in the administration of the alternative collection program, including oversight,  
586 issuance of any regulations, planning, plan review, including proposed modifications to the plan  
587 under section 338, compliance, enforcement, and sufficient staff positions to administer the  
588 program. All funds shall be deposited in the sustainable packaging trust.

589 (f) Beginning one (1) year after passage of secs. 330 to 345, the department shall  
590 establish a toxic substances list, and may reference existing toxic or hazardous substances lists  
591 created by other state agencies and the Interstate Chemicals Clearinghouse. Any person may  
592 petition the department to add a chemical or chemical class substance to the list based on  
593 scientific evidence. The department shall review and update the list of toxic substances at least  
594 every three years.

595 (g) Upon request by the department, the organization shall provide a list of producers that  
596 are participating in the program and are compliant with the program's requirements and, if  
597 known to the organization, a list of producers that are not participating in the program and are  
598 not compliant with the program's requirements.

599 (h) Based on the information provided to the department under paragraph (g) and any  
600 other information considered by the department, the department shall make available on its  
601 publicly accessible website a regularly updated list of producers that the department has  
602 determined are compliant with all applicable requirements of this section and a list of producers  
603 and, where applicable, specific products that the department has determined are not compliant  
604 with all applicable requirements of this section. The department shall conduct outreach to  
605 retailers to ensure that retailers are aware of the information made available under this paragraph  
606 and any changes to that information.

607 Section 343. Enforcement. Within eighteen (18) months of the passage of this chapter, no  
608 producer, distributor, retailer, or other responsible party for a covered material shall sell, offer for  
609 sale, use, or distribute any covered material to any person in the commonwealth if the producer  
610 of such materials is not in compliance with all applicable parts of secs. 330 to 345.

611 (a) Any producer, distributor, retailer, or other responsible party that violates this section  
612 shall be subject to a fine for each violation and for each day that the violation occurs in an  
613 amount of not more than \$200,000.

614 (b) The department may bring a civil action to enjoin the sale, distribution, or importation  
615 into the commonwealth of a covered material in violation of this part.

616 (c) The penalties provided for in this section may be recovered in a civil action brought in  
617 the name of the People of the Commonwealth of Massachusetts by the Commonwealth's  
618 Attorney General. Any funds collected under this section in an action in which the Attorney  
619 General has prevailed shall be deposited in the sustainable packaging trust.

620 Section 344. Antitrust laws. A producer or producer responsibility organization,  
621 including a producer's or organization's officers, members, employees and agents that organize a  
622 packaging and paper product program or an alternative collection program under secs. 330 to  
623 345, is immune from liability for the producer's or organization's conduct under state laws  
624 relating to antitrust, restraint of trade, unfair trade practices and other regulation of trade or  
625 commerce only to the extent necessary to plan and implement the producer's or organization's  
626 packaging and paper product program or alternative collection program consistent with the  
627 provisions of secs. 330 to 345.

628           Section 345. Proprietary information. Proprietary information submitted to the  
629 department pursuant to the requirements of secs. 330 to 345 or the rules adopted pursuant to secs.  
630 330 to 345 that is identified by the submitter as proprietary information is confidential.

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

633           Section 35EEE. Sustainable packaging trust. There shall be established an expendable  
634 trust to be known as the sustainable packaging trust. Amounts deposited in the trust shall be used  
635 for department administration of the packaging and paper product program or an alternative  
636 collection program developed under secs. 330 to 345 of chapter 94 of the Massachusetts General  
637 Laws, and for other uses described in this section. Proceeds of the trust shall be invested by the  
638 treasurer and shall be under the care and custody of the commissioner of the department of  
639 environmental protection, in consultation with the committee established in paragraph (c) of  
640 section 332 of Chapter 94 of the Massachusetts General Laws. Interest earnings on funds  
641 deposited in said trust shall be credited to and become part of the trust. Proceeds from the trust  
642 shall be expended by said commissioner without further appropriation to cover administrative  
643 costs for the implementation and enforcement of this section, including oversight, issuance of  
644 any regulations, planning, plan review, review of proposed modifications to a plan developed  
645 under sections 334 or 338 of Chapter 94 of the Massachusetts General Laws, compliance,  
646 enforcement, and adequate staff positions to administer the packaging and paper products  
647 program or an alternative collection program. Adequate department staff positions shall include  
648 but not be limited to five (5) FTE positions: one managerial position, three compliance and  
649 enforcement positions, and one administrative position.

650           (a) Any funds collected under section 343 of chapter 94 of the Massachusetts General  
651 Laws in an action in which the Attorney General has prevailed shall be deposited in the trust, and  
652 shall be used to administer grants and loans to businesses, non-profits and collectors, as defined  
653 in section 330 of chapter 94 of the Massachusetts General Laws, to reduce environmental  
654 impacts related to the collection and recycling of the covered material category for which the  
655 penalty was exacted.

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