

SENATE No. 572**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>Paul McMurtry</i>	<i>11th Norfolk</i>	<i>2/2/2023</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/6/2023</i>
<i>John J. Cronin</i>	<i>Worcester and Middlesex</i>	<i>2/7/2023</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/8/2023</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/9/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/14/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/16/2023</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/16/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/21/2023</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>2/21/2023</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>5/22/2023</i>
<i>Pavel Payano</i>	<i>First Essex</i>	<i>11/7/2023</i>
<i>Manny Cruz</i>	<i>7th Essex</i>	<i>12/8/2023</i>

SENATE No. 572

By Mr. Rush, a petition (accompanied by bill, Senate, No. 572) of Michael F. Rush, Paul
McMurtry, Jack Patrick Lewis, John J. Cronin and other members of the General Court for
legislation to save recycling costs in the commonwealth. Environment and Natural Resources.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 610 OF 2021-2022.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

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.

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

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

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

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

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

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

“Department”, the department of environmental protection.

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

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

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

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

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

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

"Packaging material" does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Toxic substance", with respect to packaging material, means a chemical or chemical 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) Any additional information required by the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Any additional information required by the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The department shall regularly publish a schedule of adjustments to be used by the producer responsibility organization in determining the amount of producer payments required 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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