

HB 1789-FN - AS INTRODUCED

2026 SESSION

26-2562

08/09

HOUSE BILL ***1789-FN***

AN ACT relative to extended producer responsibility.

SPONSORS: Rep. Parshall, Ches. 8; Rep. Bixby, Straf. 13; Rep. N. Germana, Ches. 15; Rep. Gruber, Ches. 16; Rep. Raymond, Hills. 5

COMMITTEE: Environment and Agriculture

ANALYSIS

This bill creates a program to enact extended producer responsibility for packaging. This bill also provides for oversight and management of the program through the collection of stewardship fees as managed by producers.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty-Six

AN ACT relative to extended producer responsibility.

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

1 1 New Subdivision; Extended Producer Responsibility. Amend RSA 149-M by inserting after
2 section 64 the following new subdivision:

3 Extended Producer Responsibility

4 149-M:65 Definitions.

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

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

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

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

16 V. "Extended producer responsibility" or "EPR" means a mandatory type of product
17 stewardship that includes, at a minimum, the requirement that the producer's responsibility for
18 their product extends to post-consumer management of that product and its packaging. There are 2
19 features of EPR policy:

20 (a) Shifting financial and management responsibility, with government oversight,
21 upstream to the producer and away from the public sector; and

22 (b) Providing incentives to producers to incorporate environmental considerations into
23 the design of their products and packaging.

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

29 (a) Medical devices and packaging which are included with products regulated as a drug,
30 medical device, or dietary supplement by the United States Food and Drug Administration under the

1 Federal Food, Drug, and Cosmetic Act, 21 U.S.C. section 321 et seq., 21 C.F.R. section 3.2(e), or the
2 Dietary Supplement Health and Education Act;

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

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

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

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

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

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

24 X. "Producer" means:

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

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

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

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

4 XII. "Recyclable" means a product or packaging material:

5 (a) That can be sorted by entities that process post-consumer materials generated in the
6 state;

7 (b) That has a consistent regional market for purchase by end users in the production of
8 new products; and

9 (c) Which can be recycled with minimal losses of material during processing and
10 manufacturing.

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

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

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

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

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

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

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

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

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

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

3 (f) A chemical or chemical class that the department has determined has equivalent
4 toxicity to the above criteria.

5 XVIII. "Unit" means each discrete component of a package or container, including material
6 that is used for the containment, protection, handling, delivery, transport, distribution, and
7 presentation of a product that is sold, offered for sale, imported, or distributed in the state, including
8 through Internet transactions.

9 149-M:66 Packaging Reduction and Recycling.

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

15 II. The department shall contract with an established non-profit packaging reduction
16 organization, which shall collect packaging reduction, generation, and recycling information and fee
17 payments, as described in RSA 149-M:72, from participating producers. The payments collected
18 from producers shall be deposited into the packaging reduction fund established in RSA 149-M:73 to
19 reimburse local governments for the costs associated with reducing and managing packaging waste,
20 reimburse the department for their administration of the program, and to support eligible projects
21 that reduce packaging waste by investing in packaging reduction and elimination, reuse and refill
22 systems and programs, recycling infrastructure, and comprehensive multi-media educational
23 programs.

24 III. No later than 18 months after the effective date of this section, the department shall
25 conduct a statewide packaging reduction, reuse, and recycling needs assessment as described in RSA
26 149-M:71 to determine the current state of packaging reuse, recycling, and disposal, and to identify
27 barriers and opportunities to reduce the amount of packaging discarded and disposed of, and to
28 increase the reusability and recyclability of packaging.

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

35 149-M:67 Producer Responsibilities and Exemptions.

1 I. One year after the selection of the packaging reduction organization in accordance with
2 RSA 149-M:68, a producer shall not sell, offer for sale, or distribute into the state a product
3 contained, protected, delivered, presented, or distributed in packaging unless the producer is:

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

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

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

9 (b) All information necessary for producer and the packaging reduction organization to
10 meet its obligations under RSA 149-M:69.

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

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

- 16 (a) The packaging reduction requirements of RSA 149-M:74;
- 17 (b) The packaging recycling requirements of RSA 149-M:75; and
- 18 (c) The toxic substance reduction requirements of RSA 149-M:76.

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

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

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

26 VI. A producer claiming an exemption pursuant to paragraph V shall provide the
27 department with sufficient information to demonstrate that the claimant is eligible for an
28 exemption.

29 149-M:68 Selection of the Packaging Reduction Organization.

30 I. Within one year after the adoption of rules pursuant to RSA 149-M:78, the department
31 shall select and enter into a contract with a non-profit organization to act as the packaging reduction
32 organization (PRO) in order to operate the packaging reduction and recycling program for a period of
33 10 years.

34 II. Consistent with applicable competitive bidding requirements under state purchasing
35 laws and following the initial adoption of rules by department under RSA 149-M:78, the department
36 shall issue a request for a proposal for the operation of the packaging reduction and recycling

1 program. The proposals shall cover the 10-year operation of the program by the successful bidder
2 and shall include, at a minimum, the following information:

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

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

8 (c) How the bidder intends to establish and manage the packaging reduction fund,
9 including, but not limited to, public participation, the staffing the bidder intends to use for
10 management of the fund, and the plan for providing technical support to interested persons
11 regarding use of the funds;

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

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

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

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

25 149-M:69 Responsibilities of the Packaging Reduction Organization.

26 I. The packaging reduction organization shall:

27 (a) Register all producers;

28 (b) Collect and compile data from producers;

29 (c) Collect fees due from producers;

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

32 (e) Distribute funds to reimburse local governments and private companies for the costs
33 associated with the implementation of reduction and refill and reuse programs, collection,
34 transportation, and recycling of packaging materials as required by RSA 149-M:73;

35 (f) Make recommendations to the department regarding investments toward packaging
36 reduction, reuse, and recycling as required by RSA 149-M:73; and

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

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

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

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

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

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

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

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

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

27 (h) An assessment of whether the fee structure adopted by the department pursuant to
28 RSA 149-M:72 has been effective in incentivizing improvements to the design of packaging material,
29 including actual reduction of packaging, increases in reusable and refillable packaging, recycling
30 rates for packaging materials, and decreases in the amount of packaging;

31 (i) A description of the reimbursements and expenditures made pursuant to RSA 149-
32 M:73; and

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

34 III. The packaging reduction organization shall conduct an annual review process to
35 determine whether products and packaging materials are recyclable. This review shall be conducted
36 in consultation with representatives of end markets, including recycled commodities brokers and
37 manufacturers who purchase post-consumer material for use in manufacturing new products. For

1 the purposes of calculating producer payments and municipal reimbursements, this annual process
2 shall include a transitional period between the date the determination is finalized and the date it
3 goes into effect.

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

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

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

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

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

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

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

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

21 (7) Any other information required by the department.

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

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

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

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

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

35 V. In addition to engaging in the public education and outreach required by paragraph III,
36 the packaging reduction organization may provide producers and retailers with educational
37 materials related to the responsible reduction, reuse, recycling, or disposal of discarded packaging.

1 The educational and informational materials provided to the retailer under this paragraph may
2 include, but need not be limited to, printed materials, signage, templates of materials that can be
3 reproduced by retailers and provided thereby to consumers at the time of a product's purchase, and
4 advertising materials that promote and encourage consumers to properly reuse, recycle, or dispose of
5 packaging materials.

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

8 VII. At the time that the stewardship organization submits its annual report to the
9 department of environmental services pursuant to paragraph II, the stewardship organization shall
10 pay to the department a reasonable annual fee established by the department, not to exceed
11 \$300,000, to cover the department's costs for review of the stewardship organization's annual report
12 and the department's costs in the prior fiscal year for its oversight, administration and enforcement
13 of the packaging stewardship program. The annual fee required under this paragraph may include
14 reimbursement of any costs incurred by the department in adopting rules and in administering and
15 enforcing this section prior to the effective date of the contract entered into by the department and
16 the stewardship organization.

17 149-M:70 Responsibilities of the Department of Environmental Services.

18 I. Beginning one year after the selection of the packaging reduction organization under RSA
19 149-M:68, and annually thereafter, the department shall work with the packaging reduction
20 organization in receiving reports that:

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

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

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

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

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

33 III. The department or the attorney general shall take enforcement action against all non-
34 compliant producers in accordance with RSA 149-M:79.

35 149-M:71 Statewide Packaging Reduction, Reuse, and Recycling Needs Assessment.

36 I. Consistent with applicable competitive bidding requirements, within one year after
37 adopting rules under RSA 541-A and every 5 years thereafter, the department shall issue a request

1 for proposals to conduct a statewide packaging reduction, reuse, and recycling needs assessment,
2 hereinafter “needs assessment,” to identify barriers and opportunities for reducing, reusing, and
3 recycling packaging materials. The proposals shall include, at a minimum, a description of how the
4 bidder will conduct the needs assessment to evaluate the following:

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

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

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

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

13 (e) The neutrality of opportunities in the recycling and reuse system for both new and
14 underrepresented economic and sociological groups;

15 (f) Current barriers affecting recycling access and availability in the state;

16 (g) Current barriers to the marketability of recyclable materials generated in the state;

17 (h) Opportunities for the creation of packaging reuse and refill programs in the state;

18 (i) Opportunities for the improvement of packaging recycling in the state, including the
19 development of end markets for recycled packaging materials;

20 (j) Current barriers affecting the creation and implementation of packaging reuse and
21 refill programs; and

22 (k) Consumer education needs in the state with respect to packaging waste reduction,
23 recycling, reducing contamination in recycling, and reuse and refill systems for packaging.

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

28 III. The cost incurred by the department or its designee associated with conducting the
29 needs assessment shall be paid for by funds from the packaging reduction and recycling fund
30 established in RSA149-M:76.

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

33 149-M:72 Assessment of Fees.

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

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

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

- 6 (a) Polyethylene terephthalate (PET or PETE);
- 7 (b) High density polyethylene (HDPE);
- 8 (c) Polyvinyl Chloride (PVC);
- 9 (d) Low density polyethylene (LDPE);
- 10 (e) Polypropylene (PP);
- 11 (f) Polystyrene (PS) including expanded polystyrene;
- 12 (g) Other plastic resin types not specifically identified here;
- 13 (h) Bio-plastics;
- 14 (i) Paper;
- 15 (j) Cardboard;
- 16 (k) Wood;
- 17 (l) Glass;
- 18 (m) Bi-metal, steel and other ferrous metals;
- 19 (n) Aluminum and other non-ferrous metals;
- 20 (o) Mixed materials including laminates and packaging containing more than one of the
21 above materials; and
- 22 (p) Any other material used for consumer packaging.

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

- 24 (a) The collection transportation, and management of each type of packaging material
25 used to contain, protect, deliver, present, or distribute products sold, offered for sale, or distributed
26 into the state by all producers;
- 27 (b) The department's and other state agencies administration of this subdivision;
- 28 (c) The packaging reduction organization's administration of the packaging reduction
29 and recycling program;
- 30 (d) The cost associated with the development of the statewide packaging reduction,
31 reuse, and recycling needs assessment pursuant to RSA 149-M:71; and
- 32 (e) Any other factors determined by the department.

33 V. The fees adopted under this section shall delineate criteria to be used to initially
34 establish and subsequently adjust producer payments in a manner that incentivizes:

- 35 (a) A reduction in the total packaging as measured by weight used by producers, and
36 discarded by consumers, businesses, institutions, and other users. Weight reductions shall not be
37 achieved by substituting plastic for other materials types.

1 (b) An increase in the proportion of a producer's total packaging that is managed within
2 a reuse and refill system;

3 (c) An increase in the proportion of a producer's total packaging that is deemed
4 recyclable as determined by an annual review process as described in RSA 149-M:69, III.

5 (d) An increase in the proportion of a producer's total packaging that is ultimately
6 recycled;

7 (e) A reduction or elimination in toxic components in packaging materials; and

8 (f) A reduction in litter from packaging materials.

9 VI. There shall be no fee assessed on packaging that is designed for reuse and refill and
10 contained within a reuse or refill system.

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

12 149-M:73 Packaging Reduction Fund.

13 I. There is hereby established, a separate, non-lapsing, interest-bearing fund to be known as
14 the packaging reduction fund, which shall be managed by the packaging reduction organization with
15 oversight from the department of environmental services. The packaging reduction organization
16 shall deposit into the fund all payments received from producers in accordance with RSA 149-M:72
17 and all penalties collected pursuant to RSA 149-M:78.

18 II. Beginning one year after the first payment of fees by producers pursuant to RSA 149-
19 M:72 and annually thereafter, the packaging reduction organization shall:

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

23 (b) Disburse to the department of environmental services, the attorney general, the state
24 comptroller, and all other relevant state entities, funds necessary to reimburse them for the costs
25 associated with administering and enforcing this subdivision. This reimbursement shall include
26 costs associated with performing, revising, and updating the statewide packaging reduction, reuse,
27 and recycling needs assessment required by RSA 149-M:71. Such reimbursement shall also cover
28 any costs incurred by the department in adopting rules, revising rules, and administering and
29 enforcing the requirements of this subdivision.

30 (c) Disburse funds to local governments as necessary to reimburse them for their costs
31 incurred for the management, reduction, and recycling of packaging waste, so long as the local
32 governments provide recycling services to all residents, businesses, schools, and institutions in their
33 jurisdictions. Local governments that contract with private haulers and recyclers to handle the
34 management, reduction, and recycling of packaging waste are eligible for reimbursement, so long as
35 the private haulers or recyclers provide recycling services to all residents, businesses, schools, and
36 institutions within the local governments' jurisdictions. Nothing in this paragraph shall be
37 interpreted as allowing for the reimbursement of costs associated with the disposal of packaging.

1 (d) Allocate no less than 25 percent of the total funds collected per RSA 149-M:72 to
2 projects and programs that will help achieve the packaging reduction requirements of RSA 149-
3 M:74, and the packaging recycling requirements of RSA 149-M:75.

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

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

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

15 IV. Any investments made pursuant to RSA 149-M:73, III(c)(1-3) shall be approved by the
16 department. The department shall approve or deny proposed investments within 90 days of receipt
17 of a proposal from the packaging reduction organization. The investments may be approved, at the
18 discretion of the department, so long as the proposed investment will, at a minimum:

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

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

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

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

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

28 149-M:74 Packaging Reduction Requirements.

29 I. Each individual producer shall meet the following requirements:

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

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

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

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

9 III. The reductions required by this section may be achieved by using the following
10 strategies:

- 11 (a) Elimination of packaging components;
12 (b) Reduction of packaging components;
13 (c) Using reuse and refill systems; and
14 (d) Packaging rightsizing, lightweighting, and optimization.

15 IV. The reductions required by this section shall not be achieved by substituting plastic for
16 other materials.

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

20 149-M:75 Packaging Recycling Requirements.

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

- 24 (a) Not less than 30 percent within 5 years after the enactment of this subdivision;
25 (b) Not less than 50 percent within 8 years after the enactment of this subdivision; and
26 (c) Not less than 70 percent within 12 years after the enactment of this subdivision.

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

29 149-M:76 Prohibition on Certain Toxic Substances and Material.

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

- 33 (a) Ortho-phthalates;
34 (b) Bisphenols;
35 (c) Per- and polyfluoroalkyl substances (PFAS);
36 (d) Lead and lead compounds;
37 (e) Hexavalent chromium and compounds;

- 1 (f) Cadmium and cadmium compounds;
- 2 (g) Mercury and mercury compounds as not covered by existing statute;
- 3 (h) Benzophenone and its derivatives;
- 4 (i) Halogenated flame retardants;
- 5 (j) Perchlorate;
- 6 (k) Formaldehyde;
- 7 (l) Toluene;
- 8 (m) Antimony and compounds; and
- 9 (n) UV 328 (2-(2H-benzotriazol-2-yl)-4,6-di-tert-pentylphenol).

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

- 12 (a) Polyvinyl chloride;
- 13 (b) Polystyrene; or
- 14 (c) Polycarbonate.

15 III. Beginning 3 years after the adoption of rules pursuant to RSA 149-M:78, and every 3
16 years thereafter, the department shall designate at least 10 additional toxic substances or families of
17 toxic substances that shall no longer be sold, offered for sale, distributed for sale, or distributed for
18 use in packaging in this state unless it determines there are not 10 chemicals that meet the
19 definition of toxic substances. If the department determines there are not 10 toxic substances that
20 meet such a definition, it shall publish a detailed statement of its findings and conclusions
21 supporting such determination.

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

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

29 149-M:77 Rulemaking.

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

- 33 (a) A process for contracting with the packaging reduction organization pursuant to the
34 requirements of RSA 149-M:68;
- 35 (b) A process for annually determining a schedule of producer fees and payment
36 collections pursuant to the requirements of RSA 149-M:71;

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

3 (d) A process for evaluating whether a producer is in compliance with the packaging
4 reduction requirements of RSA 149-M:74;

5 (e) A process for evaluating whether a producer is in compliance with the packaging
6 recycling requirements of RSA 149-M:75;

7 (f) A process for evaluating whether a producer is in compliance with the toxic packaging
8 reduction requirements of RSA 149-M:76;

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

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

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

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

18 (k) A process for determining new toxic substances in packaging pursuant to RSA 149-
19 M:76;

20 (l) A process for how the department will oversee and monitor the packaging reduction
21 organization's management of the packaging reduction fund, including a process for submitting and
22 reviewing proposals from the packaging reduction organization regarding investments in projects
23 and programs that will help achieve the packaging reduction requirements of RSA 149-M:74, and the
24 packaging recycling requirements of RSA 149-M:75; and

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

27 149-M:78 Penalties and Enforcement.

28 I. Failure to comply with the requirements of this subdivision shall subject the packaging
29 reduction organization or an individual producer to penalties for violations. The department and
30 attorney general may conduct investigations, including inspecting operations, facilities, and records
31 of producers and the packaging reduction organization, and by performing audits of producers and
32 the packaging reduction organization, to determine whether entities are complying with the
33 requirements of this subdivision.

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

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

7 IV. Any funds collected under this section shall be deposited into the packaging reduction
8 fund established in RSA 149-M:73.

9 2 New Subparagraph; Application of Receipts; Dedicated Fund. Amend RSA 6:12, I(b) by
10 inserting after subparagraph (410) the following new subparagraph:

11 (411) Moneys deposited in the packaging reduction fund established in RSA 149-
12 M:73.

13 3 Effective Date. This act shall take effect 60 days after its passage.

HB 1789-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to extended producer responsibility.

FISCAL IMPACT: This bill does not provide funding, nor does it authorize new positions.

Estimated State Impact				
	FY 2026	FY 2027	FY 2028	FY 2029
Revenue	\$0	\$0	Indeterminable (General Fund)	Indeterminable Increase \$300,000+ (PR Fund)
<i>Revenue Fund(s)</i>	General Fund and Packaging Reduction Fund			
Expenditures*	\$0	\$790,000 to \$1,290,000 (SWMF)	\$350,000 (SWMF)	Indeterminable Increase (SWMF)
				Indeterminable Increase \$600,000 to \$1,500,000 (PR Fund)
		Indeterminable Increase \$100,000 to \$500,000 (General Fund)	Indeterminable Increase \$100,000 to \$500,000 (General Fund)	Indeterminable Increase \$100,000 to \$500,000 (General Fund)
<i>Funding Source(s)</i>	Solid Waste Management Fund (SWMF), Packaging Reduction (PR) Fund, and General Fund			
Appropriations*	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

*Expenditure = Cost of bill

*Appropriation = Authorized funding to cover cost of bill

Estimated Political Subdivision Impact				
	FY 2026	FY 2027	FY 2028	FY 2029
County Revenue	\$0	\$0	\$0	\$0
County Expenditures	\$0	\$0	\$0	\$0
Local Revenue	\$0	\$0	\$0	Indeterminable Increase \$500,000 to \$1,000,000

Local Expenditures	\$0	\$0	\$0	\$0
---------------------------	-----	-----	-----	-----

METHODOLOGY:

This bill creates an extended producer responsibility program for consumer packaging. It requires producers to register with a Packaging Reduction Organization, pay producer fees, meet packaging reduction and recycling goals, and comply with standards adopted by the Department of Environmental Services (DES). The Packaging Reduction Organization, a non-profit which shall be contracted by DES, would collect fees and deposit into the Packaging Reduction Fund (RSA 149-M:73) and reimburse municipalities and state agencies for eligible recycling and program costs. DES would oversee rulemaking, enforcement, toxic substance restrictions, reporting, municipal reimbursements, and long-term program evaluation. DES expenditures for this new program would be supported with the new Packaging Reduction Fund. The Department of Justice would share enforcement responsibilities with DES and new civil penalties would be deposited into the General Fund. Additionally, this bill would require the State Comptroller to conduct an annual audit of the Packaging Reduction and Recycling program and to make the audit publicly available.

The Department of Environmental Services states this bill creates substantial new administrative, regulatory, oversight, and enforcement responsibilities that cannot be absorbed within its existing budget. Producer registration fees, producer payments, and other revenues necessary to operate the program will be deposited into the Packaging Reduction Fund. Expenditures from this fund will support DES program administration, municipal reimbursements, compliance activities, and long-term evaluation of the packaging system. While most revenues to the fund are indeterminable because the number of producers subject to the program and the value of producer payments cannot be estimated, DES anticipates that the Packaging Reduction Fund will receive approximately \$300,000 in FY 2029 once the program becomes operational.

To implement the requirements of the bill, DES anticipates the need for three new full-time positions beginning September 1, 2026 so that rulemaking, system development, and compliance planning may begin prior to the program start. The cost of these positions is estimated to be \$290,000 in FY 2027, \$350,000 in FY 2028, and \$366,000 in FY 2029, with the FY 2029 amount partially offset by \$300,000 in expected program revenue. Beginning in FY 2030, DES anticipates that all costs associated with the three positions will be fully supported by the Packaging Reduction Fund.

DES Positions Requested	FY 2027	FY 2028	FY 2029
--------------------------------	----------------	----------------	----------------

Natural Scientist Manager (11-9120 NATRL SCIENCES MGRS-3 SOC11-07)	\$107,000	\$130,000	\$136,000
Environmental Scientist (19-2040 ENV SCIENTISTS-5 SOC19-08)	\$89,000	\$107,000	\$111,000
Medical Scientist (19-1040 MEDICAL SCIENTISTS-4 SOC19-09)	\$94,000	\$113,000	\$119,000
Total Salary, Benefits and Operational Costs	\$290,000	\$350,000	\$366,000

In addition to personnel needs, this bill requires DES to complete a statewide needs assessment every five years. The first assessment is expected to occur in FY 2027 at an estimated cost between \$500,000 and \$1,000,000. Because producer revenues will not be available until later in the program cycle, the needs assessment and initial personnel costs will require support from the Solid Waste Management Fund in FY 2027 and FY 2028.

DES notes that municipalities would begin receiving reimbursements from the Packaging Reduction Fund in FY 2029 for eligible recycling and packaging reduction costs. The value of these reimbursements is indeterminable, but DES estimates they may total between \$500,000 and \$1,000,000 in FY 2029

The Department of Justice (DOJ) states the bill establishes a complex regulatory and enforcement framework that will require substantial legal support. DOJ anticipates increased demands for rulemaking assistance, client counseling, enforcement actions, investigations, audits, and litigation. DOJ indicates it would likely require additional personnel, including an attorney, paralegal, and investigator, but did not provide a breakout of the individual position costs needed to implement the bill.

This bill does not fund or authorize positions requested by DES or DOJ.

The Department of Administrative Services states this bill would require the State Comptroller, within the Division of Accounting Services, to conduct an annual audit of the Packaging Reduction and Recycling program, including financial and programmatic records, and to make the audit publicly available. The Department states the Division of Accounting Services does not currently perform this type of audit and that existing authority under RSA 21-I:8 is limited to business process audits related to accounts payable disbursements. The Department indicates implementation would likely require contracting with an outside audit firm and the addition of one full-time position within the Comptroller's office to coordinate and oversee the audit process. The Department estimates the fiscal impact is indeterminable but could range from \$330,000 to \$360,000 annually, inclusive of external audit services and staffing, with the cost of the external audit based on a prior state contract for similar audit and consulting services. The additional

position is estimated to cost between \$80,000 and \$110,000 annually depending on classification. The Department assumes these costs would be fully reimbursed from the Packaging Reduction Fund established in RSA 149-M:73; however, the bill does not explicitly authorize the requested position or specify appropriation or transfer authority for these costs. It is assumed the audit would not begin until FY 2029 when the Packaging Reduction Fund begins to receive revenue.

AGENCIES CONTACTED:

Department of Environmental Services, Department of Justice, and Department of Administrative Services