



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4258

Introduced 1/5/2022, by Rep. Dagmara Avelar

SYNOPSIS AS INTRODUCED:

415 ILCS 5/22.64 new

Amends the Environmental Protection Act. Requires the Environmental Protection Agency to select and enter into a contract with a packaging stewardship organization to operate a packaging stewardship program meeting specified requirements. Provides that, beginning one calendar year following the effective date of the contract entered into by the Agency and the stewardship organization, a producer may not sell, offer for sale, or distribute for sale in or into the State a product contained, protected, delivered, presented, or distributed in or using packaging material for which the producer has not complied with all applicable requirements of the provisions. Provides that the stewardship organization shall annually submit to the Agency and make available on its publicly accessible website a report with specified requirements. Provides that the stewardship organization shall annually disburse to participating municipalities from a packaging stewardship fund reimbursement payments for the median per-ton cost of managing packaging material that is readily recyclable and reimbursement payments for the median per-ton cost of managing packaging material that is not readily recyclable. Requires the Agency to administer and enforce the provisions and to adopt rules as necessary to implement, administer, and enforce the provisions. Contains other provisions.

LRB102 21396 CPF 30512 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Environmental Protection Act is amended by
5 adding Section 22.64 as follows:

6 (415 ILCS 5/22.64 new)

7 Sec. 22.64. Packaging stewardship program.

8 (a) In this Section:

9 "Alternative collection program" means a program for the
10 management of packaging material that is operated by an
11 individual producer or group of producers and that has been
12 approved by the Agency in accordance with subsection (j).

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

16 "Collection" means the gathering of waste, including the
17 preliminary sorting and storage of waste for the purposes of
18 transport to a recycling establishment.

19 "European article number" or "EAN" means a 13-digit
20 barcode used for product identification purposes, also
21 referred to as an international article number.

22 "Franchisee" means a person who is granted a franchise by
23 a franchisor authorizing the use of the franchisor's trade

1 name, service mark, or related characteristic and the sharing
2 of the franchisor's proprietary knowledge or processes
3 pursuant to an oral or written arrangement for a definite or
4 indefinite period.

5 "Franchisor" means a person who grants to a franchisee a
6 franchise authorizing the use of the person's trade name,
7 service mark, or related characteristic and the sharing of the
8 person's proprietary knowledge or processes pursuant to an
9 oral or written arrangement for a definite or indefinite
10 period.

11 "Low-volume producer" means a producer that sold, offered
12 for sale, or distributed for sale in or into the State during
13 the prior calendar year products contained, protected,
14 delivered, presented, or distributed in or using more than one
15 ton but less than 15 tons of packaging material in total.

16 "Packaging material" means a discrete type of material, or
17 a category of material that includes multiple discrete types
18 of material with similar management requirements and similar
19 commodity values, used for the containment, protection,
20 delivery, presentation, or distribution of a product,
21 including a product sold over the Internet, at the time that
22 the product leaves a point of sale with or is received by the
23 consumer of the product. "Packaging material" does not include
24 a discrete type of material, or a category of material that
25 includes multiple discrete types of material, that is:

26 (1) intended to be used for the long-term storage or

1 protection of a durable product and that can be expected
2 to be usable for that purpose for a period of at least 5
3 years;

4 (2) a beverage container;

5 (3) a container for architectural paint, as long as a
6 paint stewardship program is in operation, has been
7 approved by the Agency, and the stewardship organization
8 operating that program:

9 (A) has demonstrated to the Agency's satisfaction
10 that it recycles at least 90% of the containers of
11 architectural paint collected under the program; or

12 (B) subject to the approval of the Agency, if
13 unable to satisfy the requirements of subparagraph
14 (A), has demonstrated to the Agency's satisfaction
15 that it recycles at least 80% of the containers of
16 architectural paint collected under the program; or

17 (4) excluded from the definition of "packaging
18 material" by the Agency by rule.

19 "Packaging stewardship fund" or "fund" means a privately
20 held account established and managed by the stewardship
21 organization under subsection (o).

22 "Packaging stewardship organization" or "stewardship
23 organization" means the entity contracted by the Agency under
24 subsection (c) to operate the packaging stewardship program.

25 "Packaging stewardship program" or "program" means the
26 program implemented under this Section by the stewardship

1 organization to assess and collect payments from producers
2 based on the amount, whether by weight or volume, of packaging
3 material sold, offered for sale, or distributed for sale in or
4 into the State by each producer and to reimburse participating
5 municipalities for certain municipal recycling and waste
6 management costs.

7 "Participating unit of local government" means a unit of
8 local government that has complied with the requirements of
9 subsection (l) and is eligible for reimbursement of certain
10 costs in accordance with subsection (m).

11 "Post-consumer recycled material" means new material
12 produced using material resulting from the recovery,
13 separation, collection, and reprocessing of material that
14 would otherwise be disposed of or processed as waste and that
15 was originally sold for consumption. "Post-consumer recycled
16 material" does not include post-industrial material or
17 pre-consumer material.

18 "Producer" means a person who:

19 (1) has legal ownership of the brand of a product
20 sold, offered for sale, or distributed for sale in or into
21 the State contained, protected, delivered, presented, or
22 distributed in or using packaging material; or

23 (2) is the sole entity that imports into the State for
24 sale, offer for sale, or distribution for sale in or into
25 the State a product contained, protected, delivered,
26 presented, or distributed in or using packaging material

1 that is branded by a person that meets the requirements of
2 paragraph (1) and has no physical presence in the United
3 States.

4 "Producer" includes a low-volume producer and a franchisor
5 of a franchise located in the State, but does not include the
6 franchisee operating that franchise. "Producer" does not
7 include a nonprofit organization exempt from taxation under
8 the United States Internal Revenue Code of 1986, Section
9 501(c)(3).

10 "Proprietary information" means information that is a
11 trade secret or production, commercial, or financial
12 information the disclosure of which would impair the
13 competitive position of the submitter and would make available
14 information not otherwise publicly available.

15 "Readily recyclable" means, with respect to a type of
16 packaging material, that the type of packaging material meets
17 the criteria and standards for recyclability as determined by
18 the Agency by rule under subsection (p).

19 "Similar municipalities" means 2 or more municipalities
20 that, as determined by the Agency by rule under subsection
21 (p), have similar population sizes and similar geographic
22 locations and share other Agency specified criteria.

23 "Toxicity" means, with respect to packaging material, the
24 presence in packaging material or the use in the
25 manufacturing, recycling, or disposal of packaging material of
26 intentionally introduced metals or chemicals regulated by the

1 Agency, food contact chemicals of high concern or priority
2 food contact chemicals regulated by the Agency, or chemicals
3 of concern, chemicals of high concern, or priority chemicals
4 identified by the Agency.

5 "Universal product code" or "UPC" means a standard for
6 encoding a set of lines and spaces that can be scanned and
7 interpreted into numbers for product identification purposes.

8 "Universal product code" includes any industry-accepted
9 barcode used for product identification purposes in a manner
10 similar to a UPC, including, but not limited to, an EAN.

11 (b) Notwithstanding any provision of this Section to the
12 contrary, a producer is exempt from the requirements and
13 prohibitions of this Section in any calendar year in which:

14 (1) the producer realized less than \$2,000,000 in
15 total gross revenue during the prior calendar year, except
16 that, for the period beginning one calendar year following
17 the effective date of the contract entered into by the
18 Agency and the stewardship organization under subsection
19 (c) and ending 3 years after that effective date, a
20 producer that realized less than \$5,000,000 in total gross
21 revenue during the prior calendar year is exempt from the
22 requirements and prohibitions of this Section;

23 (2) the producer sold, offered for sale, or
24 distributed for sale in or into the State during the prior
25 calendar year products contained, protected, delivered,
26 presented, or distributed in or using less than one ton of

1 packaging material in total;

2 (3) the producer realized more than 50% of its total
3 gross revenue in the prior calendar year from the sale of
4 goods it acquired through insurance salvages, closeouts,
5 bankruptcies, and liquidations; or

6 (4) the producer sold, offered for sale, or
7 distributed for sale in or into the State during the prior
8 calendar year to retailers or direct to consumers products
9 that were perishable food and that were contained,
10 protected, delivered, presented, or distributed in or
11 using less than 15 tons of packaging material in total.

12 In this subsection, "perishable food" means any food that
13 may spoil or otherwise become unfit for human consumption
14 because of its nature, type, or physical condition, including,
15 but not limited to, fresh and processed meats, poultry,
16 seafood, dairy products, bakery products, eggs in the shell,
17 and fresh fruits and vegetables. "Perishable food" does not
18 include any such food that is sold, offered for sale, or
19 distributed for sale frozen except for frozen wild
20 blueberries.

21 A producer claiming an exemption under this subsection
22 shall provide to the Agency sufficient information to
23 demonstrate that the producer meets the requirements for an
24 exemption under this subsection within 30 days after receiving
25 a request from the Agency to provide such information.

26 (c) Consistent with the requirements of this Section, the

1 Agency shall select and enter into a contract with a packaging
2 stewardship organization to operate the packaging stewardship
3 program under this Section.

4 (d) Consistent with applicable competitive bidding
5 requirements under State purchasing laws and following the
6 initial adoption of rules by the Agency under subsection (p)
7 to implement this Section, the Agency shall issue a request
8 for proposals for the operation of the packaging stewardship
9 program by a packaging stewardship organization. The proposals
10 must be required to cover a 10-year operation of the packaging
11 stewardship program by the successful bidder and must be
12 required to include, at a minimum, the following:

13 (1) A description of how the bidder will administer
14 the stewardship organization, including:

15 (A) the mechanism or process, to be developed with
16 input from producers, by which a producer may request
17 and receive assistance from the stewardship
18 organization in the reporting of required information
19 and regarding methods by which the packaging material
20 used by a producer may be modified so as to reduce the
21 producer's payment obligations under subsection (h);
22 and

23 (B) the mechanism or process, to be developed with
24 input from municipalities, by which a participating
25 unit of local government may request and receive
26 assistance from the stewardship organization in the

1 reporting of required information and regarding
2 methods by which a unit of local government's
3 recycling program may be modified so as to increase
4 access to and participation in the program.

5 (2) A description of how the bidder intends to solicit
6 and consider input from interested persons, including, but
7 not limited to, producers, municipalities, environmental
8 organizations, and waste management and recycling
9 establishments, regarding the bidder's operation of the
10 packaging stewardship program, if selected.

11 (3) A description of how the bidder intends to
12 establish and manage the packaging stewardship fund
13 consistent with subsection (o), including, but not limited
14 to:

15 (A) the staffing the bidder intends to use for
16 management of the fund;

17 (B) a plan to ensure equity of access to the fund
18 for participating municipalities;

19 (C) a plan for providing technical support to
20 producers and municipalities regarding program
21 requirements; and

22 (D) a plan for administering payments to and
23 reimbursements from the fund and the financial
24 mechanisms, including investment types, if any, the
25 bidder intends to use in managing the fund.

26 (4) A proposed financial assurance plan that ensures

1 all funds held in the packaging stewardship fund are
2 immediately and exclusively forfeited and transferred to
3 or otherwise made immediately available to the Agency to
4 support waste diversion, reuse, or recycling programs when
5 the stewardship organization's contract with the Agency is
6 terminated by the Agency or expires, unless the
7 stewardship organization enters into a new contract with
8 the Agency prior to the expiration of the stewardship
9 organization's existing contract.

10 (5) A proposed budget outlining the anticipated costs
11 of operating the packaging stewardship program, including
12 identification of any start-up costs that will not be
13 ongoing and a description of the method by which the
14 bidder intends to determine and collect producer payments
15 during the initial start-up period of program operation to
16 fund the program's operational costs during that initial
17 start-up period and to reimburse or require additional
18 payments by those producers subsequent to that initial
19 start-up period based on producer reporting of the actual
20 amount of packaging material sold, offered for sale, or
21 distributed for sale in or into the State by each producer
22 during that initial start-up period. The proposed budget
23 under this paragraph may overestimate the cost of
24 operating the program during its initial start-up period
25 of operation but must describe the method and basis for
26 any overestimate.

1 (6) A certification that the bidder will not share,
2 except with the Agency, information provided to the bidder
3 by a producer that is proprietary information and that is
4 identified by the producer as proprietary information. The
5 certification must include a description of the methods by
6 which the bidder intends to ensure the confidentiality of
7 such information.

8 (7) A description of how the bidder will conduct a
9 statewide recycling needs assessment that, at a minimum,
10 includes an evaluation of:

11 (A) current funding needs affecting recycling
12 access and availability in the State;

13 (B) the capacity, costs, and needs associated with
14 the collection and transportation of recyclable
15 material in the State;

16 (C) the processing capacity, market conditions,
17 and opportunities in the State and regionally for
18 recyclable material; and

19 (D) consumer education needs in the State with
20 respect to recycling and reducing contamination in
21 collected recyclable material.

22 (8) Any additional information required by the Agency.

23 (e) In accordance with applicable requirements of State
24 purchasing law, the Agency shall enter into a contract with a
25 bidder that has submitted a proposal in accordance with the
26 requirements of subsection (d), the term of which must cover

1 10 years of operation of the packaging stewardship program by
2 the stewardship organization. The contract must, at a minimum,
3 include provisions to ensure that the stewardship organization
4 will conduct the statewide recycling needs assessment
5 described in paragraph (7) of subsection (d) and report the
6 results of that assessment to the Agency within a reasonable
7 time frame and operate the program in accordance with all
8 applicable statutory requirements and the rules adopted by the
9 Agency under this Section.

10 If, at the close of the competitive bidding process under
11 subsection (d), the Agency determines that no bidder has
12 submitted, in accordance with this subsection, a proposal that
13 meets the requirements of subsection (d), the Agency may
14 reopen a new competitive bidding process under this
15 subsection.

16 (f) This subsection governs the sale or distribution in
17 the State of products with packaging not in compliance with
18 the requirements of this Section and sets forth requirements
19 for the collection and publication of compliance information.

20 (1) Except as provided in paragraph (4), beginning one
21 calendar year following the effective date of the contract
22 entered into by the Agency and the stewardship
23 organization under subsection (c), a producer may not
24 sell, offer for sale, or distribute for sale in or into the
25 State a product contained, protected, delivered,
26 presented, or distributed in or using packaging material

1 for which the producer has not complied with all
2 applicable requirements of this Section.

3 (2) The stewardship organization shall provide to the
4 Agency a list of producers that are participating in the
5 program and a list of the UPCs of products for which the
6 producer has complied with the program's requirements and,
7 if known to the stewardship organization, a list of
8 producers that are not participating in the program and
9 are not compliant with the program's requirements. The
10 stewardship organization shall provide to the Agency
11 regularly updated producer compliance information
12 described in this paragraph.

13 (3) Based on information provided to the Agency under
14 paragraph (1) and any other information considered by the
15 Agency, the Agency shall make available on its publicly
16 accessible website a regularly updated list of UPCs of
17 products for which the Agency has determined the producer
18 has complied with all applicable requirements of this
19 Section and a list of producers and, where applicable,
20 specific products and the UPCs of those products for which
21 the Agency has determined the producer has not complied
22 with all applicable requirements of this Section.

23 (4) Notwithstanding a producer's failure to comply
24 with all applicable requirements of this Section for a
25 type or types of packaging material used to contain,
26 protect, deliver, present, or distribute a product, the

1 Agency may authorize the sale or distribution for sale in
2 or into the State of another product or products of the
3 producer that are contained, protected, delivered,
4 presented, or distributed in or using a different type or
5 types of packaging material for which that producer has
6 complied with all applicable requirements of this Section.
7 If the Agency provides such an authorization, the Agency
8 shall ensure that such information is included in the
9 information made available under paragraph (3).

10 (g) In accordance with rules adopted by the Agency, the
11 stewardship organization shall annually submit to the Agency
12 and make available on its publicly accessible website a report
13 that includes, at a minimum, the following information:

14 (1) Contact information for the stewardship
15 organization.

16 (2) A list of participating producers and the brands
17 and UPCs of products associated with those producers.

18 (3) The total amount, whether by weight or volume, of
19 each type of packaging material sold, offered for sale, or
20 distributed for sale in or into the State by each
21 participating producer as reported in accordance with
22 subsection (i).

23 (4) As applicable, the total amount, whether by weight
24 or volume, of each type of packaging material collected
25 and managed by each participating producer through
26 alternative collection programs approved by the Agency

1 under subsection (j).

2 (5) A complete accounting of payments made to and by
3 the stewardship organization during the prior calendar
4 year, including information on how the stewardship
5 organization determined the amount of such payments in
6 accordance with subsections (h) and (m) and the rules
7 adopted under subsection (p).

8 (6) A list of producers that are not participating in
9 the program that are required to participate in the
10 program and any product-specific noncompliance, if known
11 by the stewardship organization.

12 (7) A description of education and infrastructure
13 investments made by the stewardship organization in prior
14 calendar years and an evaluation of how those investments
15 were designed to increase access to recycling in the State
16 and to encourage the reuse of packaging material.

17 (8) A description of the results of the representative
18 audits required under subsection (p).

19 (9) An assessment of the progress made toward the
20 achievement of any program goals required by the Agency by
21 rule under subsection (p).

22 (10) An assessment of whether the payment schedule for
23 producer payments adopted by the Agency by rule under
24 subsection (p) has been successful in incentivizing
25 improvements to the design of packaging material as
26 encouraged through the allowance of payment adjustments in

1 accordance with subsection (p).

2 (11) Any proposals for changes to the packaging
3 stewardship program or investments in education and
4 infrastructure designed to reduce the amount of packaging
5 material used, increase access to recycling, increase the
6 recycling of or recyclability of packaging material,
7 reduce program costs, or otherwise increase program
8 efficiency, which may include an analysis of best
9 practices for municipal recycling programs.

10 (12) The results of a third-party financial audit of
11 the stewardship organization.

12 (13) An estimate of the annual greenhouse gas
13 emissions effects in the State associated with the
14 operation of the stewardship program. In this paragraph,
15 "greenhouse gas" means any chemical or physical substance
16 that is emitted into the air and that the Agency
17 determines by rule may reasonably be anticipated to cause
18 or contribute to climate change. "Greenhouse gas"
19 includes, but is not limited to, carbon dioxide, methane,
20 nitrous oxide, hydrofluorocarbons, perfluorocarbons, and
21 sulfur hexafluoride.

22 (14) Any additional information required by the
23 Agency.

24 (h) In accordance with the provisions of this subsection
25 and rules adopted by the Agency, no later than 180 days after
26 the effective date of the contract entered into by the Agency

1 and the stewardship organization under subsection (c), and
2 annually thereafter, a producer shall make payments to the
3 stewardship organization to be deposited into the packaging
4 stewardship fund under subsection (o) based on the net amount,
5 whether by weight or volume, of each type of packaging
6 material sold, offered for sale, or distributed for sale in or
7 into the State by the producer and not managed by the producer
8 under an approved alternative collection program. The Agency
9 shall adopt rules setting forth the manner in which such
10 payments must be calculated for packaging material that is
11 readily recyclable and packaging material that is not readily
12 recyclable, which must be designed to incentivize the use by
13 producers of packaging material that is readily recyclable and
14 disincentivize the use by producers of packaging material that
15 is not readily recyclable.

16 (i) In accordance with rules adopted by the Agency, a
17 producer shall annually report to the stewardship organization
18 the total amount, whether by weight or volume, of each type of
19 packaging material sold, offered for sale, or distributed for
20 sale in or into the State by the producer in the prior calendar
21 year.

22 (j) In accordance with the requirements of this subsection
23 and rules adopted by the Agency, a producer or group of
24 producers may develop and operate an alternative collection
25 program to collect and manage a type or types of packaging
26 material sold, offered for sale, or distributed for sale in or

1 into the State by the producer or producers. A producer that
2 manages a type of packaging material under an approved
3 alternative collection program through reuse, recycling, and,
4 where approved by the Agency, management of that packaging
5 material through incineration may wholly or partially offset
6 the producer's payment obligations under the packaging
7 stewardship program with respect to that same type of
8 packaging material only.

9 Beginning on the effective date of the contract entered
10 into by the Agency and the stewardship organization under
11 subsection (c), a producer or group of producers seeking to
12 implement an alternative collection program shall submit a
13 proposal for the establishment of that program to the Agency
14 for approval. The Agency shall approve or deny the proposal
15 within 120 days after receipt and shall provide an opportunity
16 for public review and comment on the proposal prior to its
17 approval or denial. The Agency may approve an alternative
18 collection program for a term of 5 years and, at the expiration
19 of such term, the producer or group of producers operating the
20 program may submit an updated proposal to the Agency for
21 approval.

22 In determining whether to approve a proposed alternative
23 collection program, the Agency shall consider the following:

- 24 (1) Whether the alternative collection program will
25 provide year-round, convenient, free, statewide collection
26 opportunities for the types of packaging material to be

1 collected under that program.

2 (2) To what extent the alternative collection program
3 intends to manage those types of packaging material to be
4 collected under the program through reuse for an original
5 purpose, through recycling or through disposal at an
6 incineration facility. The Agency may not approve an
7 alternative collection program that proposes management of
8 a packaging material type through disposal at an
9 incineration facility unless that packaging material is
10 not readily recyclable and the program proposes a process
11 to begin reuse or recycling of that type of packaging
12 material within a period of 3 years or less.

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

17 (4) How the alternative collection program intends to
18 accurately measure the amount, whether by weight or
19 volume, of each packaging material type collected, reused,
20 recycled, disposed of at an incineration facility, or
21 otherwise managed under the program.

22 (5) To what extent approval of the alternative
23 collection program may disproportionately impact any
24 community in the State.

25 A proposed modification to an approved alternative
26 collection program must be submitted to the Agency for written

1 approval. The Agency shall approve or deny a proposed
2 modification based on application of the criteria described in
3 paragraph (2). The Agency may waive payment of any fees
4 associated with review and approval of a proposed modification
5 to an approved alternative collection program if the review of
6 the proposed modification does not require significant Agency
7 staff time.

8 (k) In accordance with rules adopted by the Agency, a
9 producer or producers managing an approved alternative
10 collection program shall report annually to the stewardship
11 organization and to the Agency the following information:

12 (1) The total tons of each type of packaging material
13 collected, reused, recycled, disposed of at an
14 incineration facility, or otherwise managed under the
15 alternative collection program in the prior calendar year,
16 including a breakdown of the total tons of each type of
17 material to be credited to each producer participating in
18 the alternative collection program.

19 (2) A list of the collection opportunities in the
20 State for the types of packaging material managed under
21 the alternative collection program that were made
22 available in the prior calendar year.

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

1 (4) Any additional information required by the Agency.

2 If the Agency determines that an approved alternative
3 collection program is not operating in a manner consistent
4 with the proposal approved under subsection (j) or this
5 subsection, the Agency shall provide written notice to the
6 producer or producers operating the alternative collection
7 program regarding the nature of the deficiency, the actions
8 necessary to correct the deficiency, and the time by which
9 such actions must be implemented. If the Agency determines
10 that the producer or group of producers have failed to
11 implement the actions described in the written notice within
12 the required time frame, the Agency shall notify the producer
13 or group of producers as well as the stewardship organization
14 in writing that the producer or group of producers are
15 ineligible to offset payment obligations under the packaging
16 stewardship program based on packaging material managed under
17 the alternative collection program.

18 (1) In accordance with the provisions of this Section and
19 rules adopted by the Agency, a unit of local government may
20 elect to, but is not required to, participate in the packaging
21 stewardship program under this Section. To be eligible for
22 reimbursement of costs under subsection (m) as a participating
23 unit of local government, a unit of local government must, at a
24 minimum:

25 (1) provide for the collection and recycling of
26 packaging material that is generated in the unit of local

1 government and is readily recyclable; and
2 (2) annually report to the stewardship organization,
3 on a form provided and approved by the Agency, all
4 information necessary for the stewardship organization to
5 determine the unit of local government's incurred costs
6 associated with its collection, processing,
7 transportation, and recycling or other management of
8 recyclable material and of municipal solid waste.

9 2 or more municipalities, municipally-owned solid waste
10 processing facilities, or quasi-municipal entities that manage
11 waste materials on behalf of a unit of local government may
12 elect to jointly report to the stewardship organization as
13 required under paragraph (2) and to jointly receive
14 reimbursement payments under subsection (m) from the
15 stewardship organization.

16 (m) In accordance with the rules adopted by the Agency
17 under subsection (p), the stewardship organization shall
18 annually disburse to participating municipalities from the
19 packaging stewardship fund established under subsection (o)
20 reimbursement payments for the median per-ton cost of managing
21 packaging material that is readily recyclable and
22 reimbursement payments for the median per-ton cost of managing
23 packaging material that is not readily recyclable. For the
24 purposes of this subsection, the cost to a unit of local
25 government of managing packaging material may include, but is
26 not limited to, the costs associated with the collection,

1 transportation, and processing of packaging material, whether
2 readily recyclable or not readily recyclable.

3 In accordance with rules adopted by the Agency, the
4 stewardship organization shall determine the amount of
5 payments to participating municipalities under this subsection
6 based on the following information:

7 (1) Information provided by participating
8 municipalities to the stewardship organization in
9 accordance with subsection (1) regarding the costs
10 incurred by those municipalities in managing packaging
11 material that is readily recyclable and packaging material
12 that is not readily recyclable, which may include costs
13 associated with the management of packaging material
14 collected in public spaces and schools.

15 (2) Information provided to the Agency by recycling
16 establishments and made available by the Agency to the
17 stewardship organization, including the tons of recyclable
18 material received by each recycling establishment from
19 each unit of local government and the tons of processed
20 recyclable material sold by each recycling establishment.

21 (3) Information provided to the Agency by recycling
22 establishments not located in the State or by
23 participating municipalities and made available by the
24 Agency to the stewardship organization regarding the tons
25 of recyclable material brokered by those municipalities to
26 those recycling establishments and processed and sold by

1 those recycling establishments.

2 (4) Information obtained by the stewardship
3 organization through the audits of facilities that process
4 recyclable material generated in the State as required
5 under subsection (p).

6 (5) Any other information specified by the Agency by
7 rule.

8 In accordance with procedures and requirements adopted by
9 the Agency by rule, the stewardship organization shall use the
10 information described in paragraph (1) to determine the total
11 tons of each packaging material type recycled by all
12 municipalities at each recycling establishment and the
13 percentage of those total tons attributable to each
14 participating unit of local government. In the case of 2 or
15 more municipalities that jointly send recyclable material to a
16 recycling establishment, the stewardship organization shall
17 assume that an equal amount of the jointly sent material is
18 attributable to each resident of each unit of local government
19 unless those municipalities by agreement identify an unequal
20 per capita division of that jointly sent material for the
21 purposes of this subsection.

22 (n) In accordance with the provisions of this subsection
23 and rules adopted by the Agency, the stewardship organization
24 shall make investments in education and infrastructure that
25 support the recycling of packaging material in the State.

26 The stewardship organization shall submit any proposed

1 investment in education or infrastructure to the Agency for
2 approval prior to making any expenditure for such investment.
3 The proposal must incorporate any input received by the
4 stewardship organization regarding the proposed investment
5 from producers, recycling establishments, and participating
6 municipalities.

7 The Agency shall adopt rules setting forth the criteria
8 for evaluation and approval or denial of investments in
9 education and infrastructure proposed by the stewardship
10 organization. The Agency shall approve or deny a proposed
11 investment within 90 days after receipt of the proposal from
12 the stewardship organization.

13 The Agency shall ensure that preference for funding is
14 given to proposals that support the State's waste management
15 hierarchy under subsection (b) of Section 2 of the Illinois
16 Solid Waste Management Act, promote a circular economy for
17 packaging material types for which producers were required to
18 make payments under subsection (h), increase the recyclability
19 of packaging material that is not readily recyclable, increase
20 access to recycling infrastructure in the State, improve
21 consumer education in the State regarding recycling and
22 recyclability, and equitably support recycling and education
23 efforts in participating municipalities, particularly in those
24 participating municipalities that have received minimal or no
25 prior funding under this paragraph.

26 (o) In accordance with the provisions of this subsection

1 and rules adopted by the Agency, the stewardship organization
2 shall establish and manage a packaging stewardship fund. The
3 stewardship organization shall deposit into the fund all
4 payments received from producers in accordance with subsection
5 (h) and shall expend those funds for the following purposes:

6 (1) To reimburse participating municipalities in
7 accordance with applicable provisions in subsections (l),
8 (m), and (p) and the applicable rules adopted by the
9 Agency under those subsections.

10 (2) To cover the operating costs of the stewardship
11 organization, which must be annually verified by a
12 third-party financial audit paid for by the stewardship
13 organization as required under paragraph (12) of
14 subsection (g).

15 (3) To pay to the Agency all applicable fees required
16 under subsection (p), including reimbursement of any costs
17 incurred by the Agency in adopting rules and in
18 administering and enforcing this Section prior to the
19 effective date of the contract entered into by the Agency
20 and the stewardship organization under subsection (c).

21 (4) To support investments in education and
22 infrastructure made in accordance with subsection (n).

23 (p) The Agency shall administer and enforce this Section
24 and shall adopt rules as necessary to implement, administer,
25 and enforce this Section. The Agency shall solicit input from
26 interested parties in the development of any draft rules to

1 implement this Section, solicit public comment on the draft
2 rules for a period of at least 30 days, and hold a public
3 hearing on the draft rules in the same manner as a public
4 hearing must be conducted under the Illinois Administrative
5 Procedure Act.

6 Rules adopted by the Agency under this Section must
7 include, at a minimum, the following:

8 (1) A process for annually determining a schedule of
9 producer payments required under subsection (h), which
10 must include, but is not limited to, provisions regarding
11 the timing of producer payments and the timing of and
12 information required to be provided in the annual producer
13 report required under subsection (i). The process must
14 comply with the following:

15 (A) The payment schedule adopted under this
16 paragraph must provide for a flat fee option to be
17 assessed on a tiered basis such that a low-volume
18 producer is required to pay no more than \$500 per ton
19 of packaging material and no more than \$7,500 in total
20 annual fees to the stewardship organization under this
21 Section.

22 (B) For producers other than low-volume producers,
23 the payment schedule adopted under this paragraph must
24 be based on and cover the cost of managing the amount
25 of each type of packaging material sold, offered for
26 sale, or distributed for sale in or into the State by a

1 producer and not managed under an approved alternative
2 collection program, adjusted as applicable in
3 accordance with the adjustment criteria adopted under
4 subparagraph (C).

5 (C) For producers other than low-volume producers,
6 the payment schedule adopted under this paragraph must
7 delineate criteria to be used to adjust producer
8 payments in a manner that incentivizes the use of
9 recycled content in and increased recyclability of
10 packaging material, lower toxicity in packaging
11 material, a reduction of the amount of packaging
12 material used, a reduction of litter from packaging
13 material, increased reuse of packaging material, and
14 labeling of packaging material to reduce consumer
15 confusion and creates other incentives consistent with
16 generally accepted industry standards.

17 (D) The rule must require as part of the annual
18 producer reporting under subsection (i) the provision
19 by a producer of all information necessary for the
20 determination of the producer's payment obligation and
21 the determination of the producer's compliance with
22 respect to its products.

23 (E) For producers other than low-volume producers,
24 the rule must require the producer to provide a
25 description of the methods it used to determine the
26 amount reported for each type of packaging material

1 associated with its products, a description of the
2 characteristics of each type of packaging material
3 that are relevant to the adjustment criteria adopted
4 under subparagraph (C), and a list of the producer's
5 brands and the UPCs of the products associated with
6 each type of packaging material.

7 (F) For low-volume producers, the rule must
8 require the reporting of only the information
9 necessary for a calculation of the flat fee described
10 in subparagraph (A) and a determination of the
11 producer's compliance with the requirements of this
12 Section.

13 (G) The rule must authorize a producer that is
14 unable to fully satisfy the reporting requirements due
15 to a failure to obtain sufficient information
16 regarding the characteristics of the packaging
17 material of products of the producer that are sold,
18 offered for sale, or distributed for sale in or into
19 the State to alternatively report to the stewardship
20 organization an estimate of the total amount of that
21 packaging material based on unit quantities as long as
22 such alternative reporting includes a description of
23 the methods used by the producer to calculate the
24 estimate. When a producer alternatively reports an
25 estimate in accordance with this subparagraph, unless
26 otherwise determined by the Agency, the estimate must

1 be adjusted using the least favorable adjustment
2 criteria adopted under subparagraph (C).

3 (2) A process for determining on an annual basis those
4 types of packaging material that are readily recyclable,
5 which must involve consultation with the stewardship
6 organization and recycling establishments and must include
7 a transitional period between the time that a type of
8 packaging material is determined to be readily recyclable
9 or to not be readily recyclable and the time that such
10 determinations will be effective for the purposes of
11 calculating producer payments and municipal reimbursements
12 in accordance with this Section.

13 (3) A process for determining on an annual basis which
14 municipalities are similar municipalities, which must
15 involve consultation with participating municipalities.

16 (4) A process for determining municipal
17 reimbursements, including a description of the information
18 required from participating municipalities under
19 subsection (l), a method for calculating the
20 reimbursements required under subsection (m), and the
21 timing for participating unit of local government
22 reporting and payments to participating municipalities.
23 The method for calculating reimbursements must include the
24 median per-ton cost of managing packaging material that is
25 readily recyclable and the median per-ton cost of managing
26 packaging material that is not readily recyclable. The

1 method for calculating reimbursements must involve
2 consultation with participating municipalities and be
3 designed to incentivize municipal waste management
4 activities that represent higher priorities on the solid
5 waste management hierarchy.

6 (5) Requirements for the assessment of program
7 performance, including the setting of program goals used
8 to inform the producer payment schedule determined under
9 paragraph (1) and the investments in infrastructure and
10 education made under subsection (n), which must include,
11 but are not limited to: program goals supporting an
12 overall reduction by producers in the amount of packaging
13 material used, an increased reuse by producers of
14 packaging material, and an increased amount of
15 post-consumer recycled content in packaging material used
16 by producers; packaging material litter reduction goals;
17 recycling access and collection rate goals for
18 municipalities; and overall program and material-specific
19 recycling rate goals. To the maximum extent practicable,
20 material-specific recycling rate goals adopted under this
21 paragraph must reflect the following recycling standards:

22 (A) Sorted glass is considered recycled if it does
23 not require further processing before entering a glass
24 furnace or before use in the production of filtration
25 media, abrasive materials, glass fiber insulation, or
26 construction materials.

1 (B) Sorted metal is considered recycled if it does
2 not require further processing before entering a
3 smelter or furnace.

4 (C) Sorted paper is considered recycled if it does
5 not require further processing before entering a
6 pulping operation.

7 (D) Plastic separated by polymer is considered
8 recycled if it does not require further processing
9 before entering a pelletization, extrusion or molding
10 operation or, in the case of plastic flakes, does not
11 require further processing before use in a final
12 product.

13 (6) Requirements for the stewardship organization to
14 conduct representative audits of recyclable material
15 processed and sold by facilities that process recyclable
16 material generated in the State, of municipal solid waste
17 disposed of in the State, and of waste littered in the
18 State, which must include, but are not limited to, the
19 following:

20 (A) Provisions regarding the sampling techniques
21 to be used in those audits, which must include random
22 sampling.

23 (B) For audits of recyclable material, provisions
24 regarding:

25 (i) how those audits must be designed to
26 collect information regarding the extent to which

1 recyclable material processed and sold by those
2 facilities reflects the tons of each type of
3 packaging material collected in the State for
4 recycling and the tons of each type of packaging
5 material recycled in the State, as well as the
6 ultimate destination of and intended use for that
7 recycled material;

8 (ii) how those audits must be designed so that
9 information collected through the audit of one
10 facility will not be used to infer information
11 about a different facility that uses different
12 processing equipment, different sorting processes,
13 or different staffing levels to conduct
14 processing; and

15 (iii) the process by which a facility will be
16 allowed to request and receive an audit if it can
17 credibly demonstrate that an audit result being
18 applied to its material output is not
19 representative of its current operations.

20 (C) For audits of municipal solid waste,
21 provisions regarding how the audits will be designed
22 to collect information regarding the types and amount,
23 whether by weight or volume, of packaging material in
24 the waste stream and the percentage by weight and
25 volume of the waste stream that is composed of
26 packaging material.

1 (D) For audits of waste littered in the State,
2 provisions regarding how the audits will be designed
3 to collect information regarding the packaging
4 material type by amount, whether by weight or volume,
5 in sampled litter, identification of the producer or
6 producers of the packaging material in sampled litter,
7 if identifiable, and an evaluation based on those
8 audits regarding the areas of the State in which
9 litter accumulation is greatest.

10 (7) A schedule by which the stewardship organization
11 must annually report to the Agency under subsection (g)
12 and a schedule by which a producer or group of producers
13 operating an approved alternative collection program must
14 annually report to the stewardship organization and to the
15 Agency under subsection (j).

16 (8) A process by which the stewardship organization
17 will develop and submit for Agency review and a process by
18 which the Agency shall review and approve or deny a
19 proposed investment in education and infrastructure under
20 subsection (n). The process must set forth the manner in
21 which the stewardship organization is required to solicit
22 and incorporate input in the development of proposed
23 investments from producers, recycling establishments, and
24 participating municipalities.

25 (g) At the time that the stewardship organization submits
26 its annual report to the Agency under subsection (g), the

1 stewardship organization shall pay to the Agency a reasonable
2 annual fee established by the Agency, not to exceed \$300,000,
3 to cover the Agency's costs for review of the stewardship
4 organization's annual report and the Agency's costs in the
5 prior fiscal year for its oversight, administration, and
6 enforcement of the packaging stewardship program. In
7 accordance with subsection (o) the annual fee required under
8 this subsection may include reimbursement of any costs
9 incurred by the Agency in adopting rules and in administering
10 and enforcing this Section prior to the effective date of the
11 contract entered into by the Agency and the stewardship
12 organization under subsection (c).

13 (r) A producer or group of producers, when submitting a
14 proposal to the Agency for the establishment of an alternative
15 collection program or submitting a proposal to the Agency for
16 modifications to an approved alternative collection program
17 under subsection (j), shall pay to the Agency a reasonable fee
18 established by the Agency to cover the Agency's actual costs
19 for review of the proposal or proposed modifications. A
20 producer or group of producers operating an approved
21 alternative collection program under subsection (j) shall pay
22 to the Agency a reasonable annual fee established by the
23 Agency, not to exceed \$10,000 per participating producer, to
24 cover the Agency's costs for review of the producer's or
25 group's annual report and the Agency's costs for the
26 oversight, administration, and enforcement of the alternative

1 collection program, which may be waived by the Agency if those
2 activities by the Agency do not require significant Agency
3 staff time.

4 (s) The Agency shall review packaging material associated
5 with certain federally regulated products to determine whether
6 that packaging material should be excluded from the definition
7 of "packaging material" under subsection (a). In making such a
8 determination, the Agency shall, at a minimum, consider
9 whether the packaging material for such products is required
10 by federal law to meet specific content or construction
11 standards that may preclude or significantly diminish the
12 producer's ability to increase the recyclability or reduce the
13 volume of the packaging material. If the Agency determines
14 that any such product or its associated packaging material
15 should be excluded from the definition of "packaging
16 material", the Agency shall adopt an exclusion by rule. At a
17 minimum, the Agency shall conduct a review in accordance with
18 this subsection of the packaging material associated with the
19 following federally regulated products:

20 (1) Material that is used for the containment,
21 protection, delivery, presentation, or distribution of a
22 drug, as that term is defined under Section 321 of the
23 federal Food, Drug, and Cosmetic Act, as regulated by the
24 United States Food and Drug Administration under the
25 federal Food, Drug, and Cosmetic Act, or as collected
26 under a stewardship program in the State that has been

1 approved for operation by the Agency and has been
2 established to collect and dispose of such drugs,
3 including, but not limited to, prescription and
4 nonprescription drugs, drugs in medical devices and
5 combination products, branded and generic drugs, and drugs
6 for veterinary use.

7 (2) Material that is a medical device or a biological
8 product, or is used for the containment, protection,
9 delivery, presentation, or distribution of a medical
10 device or a biological product, as regulated by the United
11 States Food and Drug Administration under Parts 200, 300,
12 and 800 of Title 21 of the Code of Federal Regulations.

13 (3) Material that is used for the containment,
14 protection, delivery, presentation, or distribution of an
15 over-the-counter human drug product for which
16 tamper-evident packaging is required, as regulated by the
17 United States Food and Drug Administration under 21 CFR
18 211.132.

19 (4) Material that is used for the containment,
20 protection, delivery, presentation, or distribution of a
21 substance regulated by the United States Consumer Product
22 Safety Commission under the federal Poison Prevention
23 Packaging Act of 1970 for which special packaging is
24 required under Part 1700 of Title 16 of the Code of Federal
25 Regulations.

26 (t) Beginning February 15, 2025, and annually thereafter,

1 the Agency shall submit a report to the Senate Committee on
2 Environment and Conservation and the House Committee on Energy
3 and Environment. The report must include, at a minimum:

4 (1) data on the amount and type of packaging material
5 associated with products sold, offered for sale, or
6 distributed for sale in or into the State;

7 (2) data regarding how that packaging material was
8 managed; and

9 (3) any recommendations for amendments to the programs
10 implemented under this Section, including, but not limited
11 to, the establishment of new program goals or the
12 imposition of a prohibition on the sale, offer for sale,
13 or distribution for sale in or into the State of products
14 associated with packaging material that the Agency has
15 determined is nonessential, is contaminating collected
16 recyclable material, is a common source of litter, or
17 exhibits toxicity, particularly if that toxicity is
18 demonstrated to have a disproportionate impact on any
19 community in the State.

20 Beginning February 15, 2028, and every 5 years thereafter,
21 the report under this subsection must describe the results of
22 a comprehensive review of the rules adopted by the Agency
23 under this Section and must include recommendations by the
24 Agency for any legislative changes to this Section determined
25 necessary as a result of that review, including, but not
26 limited to, changes to the flat fee that may be paid by a

1 low-volume producer under subparagraph (A) of paragraph (1) of
2 subsection (p), as well as a description of any changes to
3 those rules that the Agency intends to propose in future
4 rulemaking.

5 (u) A producer or stewardship organization, including a
6 producer's or stewardship organization's officers, members,
7 employees, and agents that organize a packaging stewardship
8 program or an alternative collection program under this
9 Section, is immune from liability for the producer's or
10 stewardship organization's conduct under State laws relating
11 to antitrust, restraint of trade, unfair trade practices, and
12 other regulation of trade or commerce only to the extent
13 necessary to plan and implement the producer's or stewardship
14 organization's packaging stewardship program or alternative
15 collection program consistent with the provisions of this
16 Section.

17 (v) Proprietary information submitted to the Agency under
18 the requirements of this Section or the rules adopted under
19 this Section that is identified by the submitter as
20 proprietary information is confidential and must be handled by
21 the Agency in the same manner as other confidential
22 information is handled.

23 (w) On or before December 31, 2023, the Agency shall adopt
24 rules necessary for the implementation, administration, and
25 enforcement of a stewardship program for packaging pursuant to
26 this Section. Notwithstanding any provision of law to the

1 contrary, the Agency may use funds within the Solid Waste
2 Management Fund to support its activities required under this
3 Section, except that, if the Agency uses funds within the
4 Solid Waste Management Fund as authorized under this
5 subsection, the Agency shall deposit back into that Fund the
6 same amount of funds withdrawn once reimbursed.