



# S.9493 (May)/A.10185 (Rules at request of Englebright)

STAFF CONTACT : Ken Pokalsky | Vice President | 518-565-7511

<b>BILL</b> S.9493 (May)/A.10185 (Rules at request of Englebright)
<b>SUBJECT</b> Packaging Tax and Packaging Standards
<b>DATE</b> September 26, 2022
<b>OPPOSE</b>

The Business Council strongly opposes this legislation that represents a significant departure from “expanded producer responsibility” proposals previously introduced by the Hochul administration and Senate.

Of particular concern, this bill:

- Imposes unrealistic mandates and timetables for recycling rates and recycled content of packaging, i.e., non-reusable packaging must be recycled at set rates: 50% by 5 years from the date of program implementation (which is two years after its effective date), 80% by 8 years and 90% after 12 years. In doing so, the bill significantly limits the opportunity for packaging manufacturers and users to shape programs for reducing the environmental impact of packaging, instead imposing fixed standards across the board.
- Requires packaging producers to make significant reductions in the number of “non-reusable” packages they use, regardless of whether such packaging is recycled or contains significant post-consumer recycled content. It also states that packaging fees should be designed to “drive reductions in overall packaging,” suggesting punitive fee levels. The bill provides some incentives for, but does not mandate, the use of reusable packaging, but it also fails to consider the practical limits on collection for reuse, or its cost or energy consumption.
- Imposes potentially unachievable and unnecessary toxic content restrictions on packaging, i.e., limits list chemicals in packaging to “maximum detection limits,” which are dramatically lower than current toxic chemical limits set forth in ECL § 37-0205.
- It outright bans the use of some specific packaging materials, including PVC and polystyrene and precludes any substitution of plastic as a “waste reduction” mechanism.

- It prohibits the use of advanced recycling technologies that are widely used in the U.S. and in Europe.
- It requires that material collections must be “at no additional cost” to residents (with no clear indication of what baseline costs would be used for comparison) and that such collections must be “as convenient as the collection of municipal solid wastes,” which seems to lock the state into current practices and precludes innovative approaches.

This legislation does include a more detailed “needs assessment” than we have seen in other EPR proposals. Importantly, it requires an assessment of “current municipal funding needs, both operational and capital, impacting recycling access . . .”, crucial information necessary to establish packaging fee levels necessary to support improvements in the state’s recycling systems. Even so, we still question the logic of adopting an expansive new regulatory program before an assessment of needs, opportunities and costs is complete.

While this and other proposals including EPR legislation contain similar prohibitions on imposing new or increased direct costs on consumers, ultimately the cost of compliance with A10185 will be borne by consumers, directly in the increased costs of consumer products, and indirectly through the potential reduction in product choice.

We believe there are many steps the state could take to improve the effectiveness of the state’s existing statutory structure for post-consumer recycling. Adopting an expanded producer responsibility program is one option. Another is for the state to actually implement and fund existing mandates to provide financial and technical assistance to municipalities and to promote in-state markets for recovered materials.

However, we believe the approach proposed in S.9493 A.10185 will be unnecessary expensive and restrictive, for businesses and consumers alike.

For these reasons, The Business Council opposes adoption of S.9493 A.10185.