

1 H.696

2 Introduced by Representatives Cheney of Norwich, Edwards of Brattleboro,

3 Klein of East Montpelier and Krawczyk of Bennington

4 Referred to Committee on

5 Date:

6 Subject: Conservation and development; solid waste; producer responsibility

7 Statement of purpose: This bill proposes to enact a solid waste program under  
8 which producers of solid waste designated by the secretary of natural resources  
9 would be required to pay for and implement a program for the collection,  
10 recycling, and disposition of designated solid wastes, including certain types of  
11 packaging. The bill would also repeal the beverage container redemption  
12 system.

13 An act relating to producer responsibility for solid waste

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 Sec. 1. LEGISLATIVE FINDINGS

16 The general assembly finds:

17 (1) It is an essential component of Vermont's solid waste management  
18 system to divert as much solid waste from the state's landfills as is possible.

19 Vermont has historically sought to recycle a large percentage of the solid waste

1 created in the state and to be a national leader in the design and  
2 implementation of advanced waste management policies.

3 (2) An essential component to any policy for reducing the amount of  
4 waste disposed is for producers to take responsibility for managing the waste  
5 created by their products and the packaging used for those products.

6 (3) Recycling rates in Vermont have plateaued at approximately 20  
7 percent and have remained at that level for many years.

8 (4) Expanded producer responsibility (EPR) regulatory programs have  
9 been enacted throughout the world, including the United States, and have  
10 resulted in significant improvements in designated material recycling rates.

11 (5) Vermont has endorsed expanded producer responsibility as the  
12 preferred policy for managing specific electronic waste, mercury-containing  
13 waste, and other specific categories of waste.

14 (6) Extending EPR requirements to all packaging and printed material  
15 can result in a solid waste management system that diverts in excess of 60  
16 percent of these wastes from Vermont's landfills.

17 (7) While Vermont's bottle bill diverts a high percentage of those  
18 beverage containers included under the regulation, this has resulted in the  
19 development of parallel recycling systems for beverage containers and for  
20 other recyclable packaging and printed materials. Maintaining two parallel  
21 recycling systems results in unnecessarily high costs for consumers;

1 significantly increased vehicle traffic to recycling centers; and a higher carbon  
2 footprint for the state.

3 (8) Vermont's bottle bill addresses less than three percent of Vermont's  
4 solid waste stream. Developing a single, integrated, statewide EPR program  
5 for all packaging and printed material generated in the state will increase  
6 consumer convenience, increase overall material recycling rates, reduce  
7 municipal waste management costs, and create sustainable jobs.

8 (9) Addressing the recycling of all packaging and printed material  
9 within a comprehensive EPR regulatory framework provides the basis for  
10 adding additional designated wastes to the program in subsequent years.

11 (10) Through this comprehensive approach to managing all designated  
12 wastes, Vermont will regain its reputation as a leading jurisdiction in advanced  
13 waste management policy.

14 (11) The establishment of a regulatory framework to divert a higher  
15 percentage of a wider range of recyclable material from Vermont's landfills is  
16 consistent with the state's duty to protect the health, safety, and welfare of its  
17 citizens; maintain and enhance the quality of the environment; conserve natural  
18 resources; prevent pollution of air, water, and land; and stimulate economic  
19 growth.

1       Sec. 2. 10 V.S.A. chapter 160 is added to read:

2                   CHAPTER 160. VERMONT EXTENDED PRODUCER

3                                   RESPONSIBILITY ACT

4       § 6671. SHORT TITLE

5           This chapter shall be known as the Vermont Extended Producer  
6       Responsibility Act of 2010.

7       § 6672. DEFINITIONS

8           As used in this chapter:

9           (1) “Agency” means the agency of natural resources.

10          (2) “Designated waste” means a material or product designated by the  
11       general assembly to be subject to management under an extended producer  
12       responsibility program.

13          (3) “Extended producer responsibility” means a requirement for a  
14       producer of a designated waste to provide for the collection, transportation,  
15       reuse, recycling, processing, and final management of a designated waste,  
16       including providing for financing.

17          (4) “Final disposition” means the point beyond which no further  
18       processing takes place and materials from a designated waste have been  
19       transformed for direct use as a feedstock in producing new products or  
20       disposed of or managed in permitted facilities.

1           (5) “Orphan product” means a designated waste for which the producer  
2 is no longer in business and has no successor in interest, or that bears a brand  
3 for which a producer cannot be identified.

4           (6) “Packaging” means materials that are used for the containment,  
5 protection, handling, delivery, and presentation of goods sold or delivered in  
6 Vermont.

7           (7) “Pay-as-you-throw pricing” means a mechanism by which  
8 households are directly charged a fee for waste collection and disposal services  
9 in relation to the quantity of waste generated by each household.

10           (8) “Printed materials” means printed materials that are sold, issued,  
11 distributed, or delivered in Vermont.

12           (9) “Processor” means an entity recovering materials from unwanted  
13 products for use as feedstock in new products.

14           (10) “Producer” means a person that:

15               (A) has or had legal ownership of the brand, brand-name, or cobrand  
16 of a product or material sold, offered for sale, or distributed that results in a  
17 designated waste in the state, whether or not the producer is located in  
18 Vermont;

19               (B) imports or has imported a designated waste branded by a  
20 producer that meets the requirements of subdivision (10)(A) of this section  
21 when the producer is not located in the state;

1           (C) makes or made an unbranded product that is or was sold, offered  
2 for sale, or distributed in the state; or

3           (D) sells or sold at wholesale or retail a designated waste, does not  
4 have legal ownership of the brand, and elects to fulfill the responsibilities of  
5 the producer for that product.

6           (11) “Producer responsibility organization” means an organization  
7 designated by a group of producers to act as an agent on behalf of each  
8 producer to develop and operate an extended producer responsibility program  
9 for a designated waste.

10          (12) “Program plan” means a detailed plan required under section 6676  
11 of this title that describes the manner in which an extended producer  
12 responsibility program operated by producers will be implemented and  
13 financed.

14          (13) “Recycling” means the process of collecting and preparing  
15 designated waste for use in manufacturing processes or for recovery of usable  
16 materials followed by delivery of such materials for use. Recycling does not  
17 include destruction by incineration; waste-to-energy incineration or other such  
18 processes; or land disposal.

19          (14) “Recycling rate” means the quantity of designated waste collected  
20 for recycling divided by the quantity of designated waste offered for sale or  
21 distributed in the state.

1           (15) “Retailer” means a person that offers designated waste for sale at  
2 retail through any means, including remote offerings such as sales outlets,  
3 catalogues, or the Internet. For purposes of this subdivision, “sale at retail”  
4 does not include a sale that is a wholesale transaction with a distributor or a  
5 retailer.

6           (16) “Secretary” means the secretary of natural resources.

7           (17) “Unwanted product” means a designated waste that is no longer  
8 wanted by its owner or that has been abandoned or discarded or is intended to  
9 be discarded by its owner.

10 § 6673. DESIGNATED WASTE LIST

11           (a) Packaging and printed material is a designated waste as of July 1, 2010.

12           (b) Each year after July 1, 2010, the secretary shall consult with interested  
13 parties and may submit to the general assembly for approval a list of additional  
14 designated waste that should be managed under an extended producer  
15 responsibility program.

16           (c) For each designated waste on the list, the secretary may:

17           (1) establish guidelines for the environmentally sound management of  
18 the designated wastes; and

19           (2) recommend an annual fee producers and producer responsibility  
20 organizations may be charged to recover the reasonable costs incurred by the  
21 agency to administer the requirements of this chapter.

1     § 6674. EXTENDED PRODUCER RESPONSIBILITY PROGRAM

2             IMPLEMENTATION

3             A producer or group of producers shall implement a program plan for a  
4             designated waste within one year of the secretary listing the designated waste  
5             in writing under section 6673 of this title.

6     § 6675. PROHIBITIONS; REQUIREMENTS FOR THE SALE;

7             MANAGEMENT OF DESIGNATED WASTES

8             (a)(1) Requirement for sale. On and after the effective date of a program  
9             plan approved by the secretary, no person may sell, offer for sale, barter,  
10            exchange, gift, or distribute a product in Vermont which results in designated  
11            waste unless the producer of the product participates in an approved extended  
12            producer responsibility program for that product.

13            (2) No person shall in the course of business use in Vermont designated  
14            materials obtained in a transaction outside Vermont unless the person or  
15            producer subscribes to or operates an extended producer responsibility  
16            program. Each producer participating in an extended producer responsibility  
17            program shall:

18            (A) operate, individually or jointly with other producers, an extended  
19            producer responsibility program approved by the secretary or enter into an  
20            agreement with a producer responsibility organization to operate, on the  
21            producer's behalf, a program plan approved by the secretary; and

1           (B) verify in writing to a person selling or distributing a product  
2           which results in a designated waste in this state at least 60 days before the  
3           effective date of the extended producer responsibility program that the  
4           producer is participating in an extended producer responsibility program  
5           approved by the secretary.

6           (b)(1) Product stewardship program costs. A producer, group of producers,  
7           or producer responsibility organization shall pay all administrative and  
8           operational costs associated with its extended producer responsibility program,  
9           including the cost of collection, transportation, recycling, and final disposition  
10           of unwanted products.

11           (2) A producer, group of producers or producer responsibility  
12           organization or a collector operating on behalf of producers or a producer  
13           responsibility organization operating under an approved program plan shall not  
14           charge a fee to the generator of the designated waste for the collection,  
15           transportation, or recycling of the designated waste.

16           (c) Inspections and audits. The secretary may inspect, audit, or review  
17           audits of processing and disposal facilities used to fulfill the requirements of an  
18           extended producer responsibility program.

19           (d) Requirements on solid waste districts and municipalities. Within one  
20           year of approval of a program plan for printed material and packaging,  
21           municipalities and solid waste districts shall implement mandatory recycling

1 requirements for these designated wastes and shall implement  
2 pay-as-you-throw pricing for household waste collection and disposal.

3 § 6676. PROGRAM PLAN

4 (a) Plan submission. A producer, group of producers, or producer  
5 responsibility organization shall submit an extended producer responsibility  
6 program plan to the secretary for review within six months of the secretary  
7 listing a designated waste under section 6673 of this title.

8 (b) Consultation required. A producer, group of producers, or producer  
9 responsibility organization shall consult with stakeholders during the  
10 development of the plan, solicit stakeholder comments, and attempt to address  
11 any stakeholder concerns regarding the plan before submitting the plan to the  
12 secretary for review.

13 (c) Plan content. A program plan shall contain:

14 (1) certification that the extended producer responsibility program will  
15 accept all unwanted products that result in designated wastes regardless of who  
16 produced them, including orphan products;

17 (2) contact information for the individual and the entity submitting the  
18 plan;

19 (3) a description of the producers eligible to participate in the program;

1           (4) a description of the methods by which unwanted products will be  
2 collected in a statewide program, and an explanation of how collection  
3 programs will:

4           (A) be convenient and adequate to serve the needs of residents in  
5 both urban and rural areas;

6           (B) collect unwanted products from households; industrial,  
7 commercial, and institutional generators; and public spaces;

8           (C) involve municipalities, solid waste districts, and waste  
9 management service providers in the program; and

10          (D) reduce the amount of designated wastes improperly disposed of  
11 as litter or at unlicensed sites;

12          (5) baseline information on collectors, transporters, processors, and  
13 disposal facilities that are currently managing the designated waste or their  
14 components and their anticipated role in the program;

15          (6) a description of how designated waste will be safely and securely  
16 transported, tracked, and handled from collection through final disposition;

17          (7) a description of how designated waste and its components will be  
18 processed, recycled, and disposed of, including what steps will be taken to  
19 ensure environmentally sound management;

1           (8) a description of the public education and outreach efforts that will be  
2 implemented to support the program and how the activities' effectiveness will  
3 be evaluated;

4           (9) anticipated resources and the extended producer responsibility  
5 program financing system to implement the plan;

6           (10) an administratively simple di minimis provision to minimize the  
7 requirements on smaller producers;

8           (11) evidence of adequate insurance and financial assurance for  
9 collection, handling, recycling, and disposal operations operating under the  
10 program plan;

11           (12) proposed performance goals, including an estimate of the  
12 percentage of designated waste that will be collected for recycling during each  
13 of the five years subsequent to the approval of the program plan;

14           (13) how recycling infrastructure will be enhanced to achieve a  
15 recycling rate of no less than 60 percent within five years of program  
16 implementation;

17           (14) an implementation date when collection of designated waste will  
18 begin;

19           (15) an assessment of anticipated issues, challenges, and barriers to  
20 achieving program goals and objectives;

1           (16) research and development activities that will be undertaken to  
2 improve program performance.

3           (d)(1) Secretary review and approval. No producer, group of producers, or  
4 producer responsibility organization may begin collecting fees or collecting  
5 designated waste until it has received written approval of its program plan  
6 from the secretary.

7           (2) Program plans shall be submitted to the secretary for approval.

8           (3) Within 90 days after receipt of a plan, the secretary shall determine  
9 whether the program plan complies with the requirements of this chapter. If  
10 the secretary approves a plan, the secretary shall notify the applicant of the  
11 plan approval in writing. If the secretary rejects a plan, the secretary shall  
12 notify the applicant in writing of the reasons for rejecting the plan. An  
13 applicant whose plan has been rejected by the secretary shall submit a revised  
14 plan to the secretary within 60 days after receiving notice of the rejection.

15           (4) At least every five years, a producer, group of producers or a  
16 producer responsibility organization operating an extended producer  
17 responsibility program on behalf of producers shall update its program plan  
18 and submit the updated plan to the secretary for review and approval.

19           (e) Plan availability. All program plans approved by the secretary shall be  
20 placed on the agency website and made available at the agency headquarters  
21 for public review within 30 days of the secretary's approval.

1       § 6677. PROGRAM PROMOTION AND OUTREACH

2           (a) An extended producer responsibility program shall promote the  
3       program to retailers, wholesalers, collectors, and other interested parties,  
4       including schools.

5           (b) An extended producer responsibility program shall prepare education  
6       and outreach materials that publicize the location and operation of collection  
7       locations throughout the state and disseminate them to interested parties. The  
8       program shall also utilize a website publicizing collection locations and  
9       program operations.

10       § 6678. PRODUCER ANNUAL REPORT

11           (a) Within six months following the first full year after the effective date of  
12       a program plan, and each July 1 thereafter, each producer, group of producers,  
13       or producer responsibility organization operating an extended producer  
14       responsibility program shall submit to the secretary a report on the preceding  
15       year's activities, describing:

16           (1) the quantity of designated waste resulting from products supplied for  
17       use in the state by participating producers;

18           (2) the amount, by weight, of unwanted products collected in the state;

19           (3) the degree to which recycling rates established in the program plan  
20       were achieved, and if the program did not attain those recovery rates, what  
21       actions will be taken in the future to do so;

1           (4) the weight of unwanted products processed at each processing  
2           facility and disposed of at each disposal facility and a description of the  
3           methods used at each processing facility, including the subcontractors used  
4           through final disposition that processed or disposed of unwanted products  
5           containing hazardous substances and the subcontractors' facility locations;

6           (5) the degree to which policies and procedures in the program plan for  
7           collection, transportation, processing, and final disposition of unwanted  
8           products were followed during the preceding year and a description of, and  
9           reasons for, any deviations;

10           (6) the extended producer responsibility program financing system;

11           (7) a list of any participating companies that are in arrears for fee  
12           payments;

13           (8) the public education and outreach activities implemented, including  
14           an analysis of the activities' effectiveness;

15           (9) how the extended producer responsibility program complied with  
16           any other elements in the program plan;

17           (10) other information the secretary may request.

18           (b) All reports submitted to the secretary under this section shall be made  
19           available to the public on the agency website and at the agency headquarters  
20           within 30 days of receipt.

1     § 6679. FEES

2           (a)(1) Agency fees. The secretary may establish and charge fees to  
3     producers and producer responsibility organizations for:

4                   (A) reviewing program plans submitted for approval;

5                   (B) monitoring the effectiveness of approved plans; and

6                   (C) enforcement of this chapter.

7           (2) Creation of designated waste fund. There is hereby established a  
8     designated waste fund in which fees charged and penalties assessed under this  
9     chapter shall be deposited. The fund shall be used solely for the costs incurred  
10    by the agency in implementing, administering, and enforcing this chapter. All  
11    balances in the fund at the end of any fiscal year shall be carried forward and  
12    may be used solely for activities related to management of the designated  
13    waste. Interest earned on the fund shall be deposited in the fund.

14           (b)(1) Extended producer responsibility fees. Approved producer  
15    responsibility organizations may charge fees to participating producers which  
16    are sufficient in the aggregate to:

17                   (A) pay fees assessed by the agency to administer this chapter on  
18    behalf of participating producers;

19                   (B) fund the costs of developing, implementing, and operating the  
20    approved program plan;

21                   (C) cover deficits, if any, from a prior program year; and

1           (D) maintain an adequate reserve fund appropriate to the size and  
2 functions of the organization.

3           (2) Creation of an extended producer responsibility fund. There is  
4 hereby established a fund in which fees charged to participating producers  
5 shall be deposited. The fund shall be used solely for the costs incurred by the  
6 producer responsibility organization in developing, implementing, and  
7 managing the approved program plan. All balances in the fund at the end of  
8 any fiscal year shall be carried forward and shall be used solely for activities  
9 related to management of the designated waste. Interest earned on the fund  
10 shall be deposited in the fund.

11 § 6680. PENALTIES

12           (a)(1) Producer penalties. Upon first determining that a producer is  
13 offering a product for sale or distribution in this state that may result in a  
14 designated waste but is not participating in an extended producer responsibility  
15 program approved by the secretary, the agency shall send the producer a  
16 written warning that the producer is in violation of this chapter.

17           (2) A producer not participating in a program plan approved by the  
18 secretary whose product continues to be sold in the state 60 days after  
19 receiving a written warning from the secretary under subdivision (1) of this  
20 subsection shall be assessed a penalty of up to \$10,000.00 for each calendar  
21 day that the violation continues.

1           (3) If a program plan approved by the secretary is not fully implemented  
2           within 30 days of the start date contained in the plan, the secretary may assess  
3           a penalty of up to \$5,000.00 against the producer responsibility organization  
4           and notify each producer associated with the program plan. If, after an  
5           additional 30 days, an approved plan is not fully implemented, the secretary  
6           shall issue a second violation notice and may assess a penalty of up to  
7           \$10,000.00 to each producer associated with the program plan. Subsequent  
8           violations occur each 30 days that the approved plan is not fully implemented.

9           (4) The secretary shall send a written warning to a producer that fails to  
10           submit a program plan, update or change the plan when required, or submit an  
11           annual report as required under section 6678 of this title. The written warning  
12           shall include compliance requirements and notification that the requirements  
13           shall be met within 60 days. If requirements are not met within 60 days, the  
14           secretary shall issue a second violation notice and may assess the producer a  
15           penalty of up to \$10,000.00 per day of noncompliance starting with the first  
16           day of notice of noncompliance.

17           (b)(1) Retailer penalties. The agency shall provide on its website a list of  
18           all producers participating in extended producer responsibility programs the  
19           secretary has approved and a list of all producers the secretary has identified as  
20           noncompliant.

1           (2) It is the responsibility of a retailer offering products for sale in this  
2           state that result in a designated waste to view the agency website to determine  
3           if producers of products the retailer is offering for sale in this state are in  
4           compliance with section 6674 of this title. If a retailer is unsure of the status of  
5           the producer or believes the producer is not in compliance, the retailer shall  
6           contact the secretary to determine the producer's status.

7           (3) The secretary shall send a written notice to a retailer known to be  
8           selling a product in Vermont which results in designated waste from producers  
9           that are not participating in an approved extended producer responsibility  
10          program or that are not in compliance with other provisions of this chapter.

11          (4) A retailer that continues to sell a product which results in designated  
12          waste from a producer that is not participating in an extended producer  
13          responsibility program 60 days after receiving a written notice from the  
14          secretary may be assessed a penalty of up to \$10,000.00 for each day of  
15          noncompliance.

16          (5) A retailer that continues to sell a product which results in a  
17          designated waste from a producer that is not in compliance with other  
18          provisions of this chapter may be assessed a penalty of up to \$1,000.00 for  
19          each day of noncompliance.

20          (6) A person primarily engaged in the business of reuse and resale of  
21          used products is not subject to this section when selling a used product which

1 results in a designated waste, for use in the same manner and purpose for  
2 which the product was originally purchased.

3 (7) A retailer that sells a product which results in a designated waste  
4 from a physical outlet located in Vermont and that is in possession of an  
5 existing stock of products which result in a designated waste on-site on the  
6 effective date of the program plan may exhaust the existing stock of the  
7 product which results in a designated waste.

8 (c) Disposition of penalties. All penalties assessed under this section shall  
9 be deposited in the designated waste fund established under section 6679 of  
10 this title.

11 § 6681. SOLICITATION OF COMMENTS

12 Beginning July 1, 2013, and every other year thereafter, the secretary shall  
13 solicit comments from municipalities, solid waste districts, the public,  
14 nonprofit organizations, and other interested parties regarding their satisfaction  
15 with the services provided by extended producer responsibility programs. The  
16 secretary shall use this information and the reports submitted by producers,  
17 groups of producers, and producer responsibility organizations operating on  
18 behalf of producers to determine the degree to which the product stewardship  
19 programs are meeting the convenience requirements under section 6676 of this  
20 title in reviewing proposed updates or changes to program plans.

1     § 6682. ANNUAL REPORT TO GENERAL ASSEMBLY

2           Beginning January 15, 2013, and annually thereafter, the secretary shall  
3     submit a report to the senate and house committees on natural resources and  
4     energy on the implementation and operation of this chapter. The report shall  
5     include, for each designated waste for which an extended producer  
6     responsibility program is operating in the state:

7           (1) the total amount, by weight, of products and components supplied  
8     for use in the state that contribute to the creation of the designated waste;

9           (2) the total amount, by weight, of designated waste that has been  
10    collected and recycled and that has undergone final disposition;

11          (3) the amount of fees collected from producers;

12          (4) a description of the collection programs, including the location of  
13    collection sites;

14          (5) the costs to the agency of administering the requirements of this  
15    chapter;

16          (6) a summary of comments received under section 6681 of this title;  
17    and

18          (7) recommendations to improve the operation of extended producer  
19    responsibility programs.

1        § 6683. OTHER RECYCLING PROGRAMS

2            A municipality or other public agency may not require producers or  
3        producer responsibility organizations to use public facilities to recycle  
4        designated waste to the exclusion of other lawful programs available.  
5        Municipalities and other public agencies are encouraged to work with  
6        producers and producer responsibility organizations to assist them in meeting  
7        their recycling obligations under this chapter. Nothing in this chapter prohibits  
8        or restricts the operation of any program recycling designated waste in addition  
9        to those provided by producers or producer responsibility organizations or  
10       prohibits or restricts any persons from receiving, collecting, transporting, or  
11       recycling designated waste, provided that those persons are registered and in  
12       compliance with the laws of Vermont.

13       § 6684. ANTICOMPETITIVE CONDUCT

14            Producers or industry trade groups may work together and pool resources  
15        and collection activities to meet the requirements of this chapter.

16       § 6685. MULTISTATE IMPLEMENTATION

17            Producers, industry trade groups, or producer responsibility organizations  
18        are authorized to participate in the establishment of a regional multistate  
19        organization or compact to assist in carrying out the requirements of this  
20        chapter.

1     § 6686. LIMITATIONS

2             If a federal law or combination of federal laws takes effect that is applicable  
3     to products sold in the United States that result in a designated waste, and  
4     establishes a program for the collection and recycling or reuse of a designated  
5     waste that is applicable to all discarded designated waste, the general assembly  
6     shall evaluate whether the laws provide a solution that is equal to or better than  
7     the program established under this chapter.

8     § 6687. PROHIBITIONS ON DISPOSAL

9             In accordance with the following schedule, no person shall knowingly  
10    dispose of the following solid waste in landfills:

11             (1) Packaging and printed material as of one year following approval of  
12    a program plan for these designated wastes.

13             (2) Any other designated waste as of one year following approval of a  
14    program plan for these designated wastes.

15    Sec. 3. REPEAL

16             10 V.S.A. chapter 53 (beverage deposit redemption) is repealed upon the  
17    date of implementation of an approved program plan for packaging and printed  
18    materials.

19    Sec. 4. EFFECTIVE DATE

20             This act shall take effect on July 1, 2010.