

Testimony in OPPOSITION
to
House Bill 2399
in
**Hawaii Senate Committee on Agriculture & Environment and Committee on Energy,
Economic Development & Tourism**
on
March 21, 2022

The Flexible Packaging Association (FPA) is submitting testimony in **opposition to HB 2399**, “Relating to Waste Management,” which would establish and extended producer responsibility act for packaging and paper.

I am Sam Schlaich, Counsel, Government Affairs of FPA, which represents flexible packaging manufacturers and suppliers to the industry in the U.S. Flexible packaging represents over \$34 billion in annual sales; is the second-largest and fastest-growing segment of the packaging industry; and employs approximately 79,000 workers in the United States. Flexible packaging is produced from paper, plastic, film, aluminum foil, or any combination of these materials, and includes bags, pouches, labels, liners, wraps, rollstock, and other flexible products.

These are products that you and I use every day – including hermetically sealed food and beverage products such as cereal, bread, frozen meals, infant formula, and juice; as well as sterile health and beauty items and pharmaceuticals, such as aspirin, shampoo, feminine hygiene products, and disinfecting wipes. Even packaging for pet food uses flexible packaging to deliver fresh and healthy meals to a variety of animals. Flexible packaging is also used for medical device packaging to ensure that the products packaged, diagnostic tests, IV solutions and sets, syringes, catheters, intubation tubes, isolation gowns, and other personal protective equipment maintain their sterility and efficacy at the time of use. Trash and medical waste receptacles use can liners to manage business, institutional, medical, and household waste. Carry-out and take-out food containers and e-commerce delivery, which have become increasingly important during the pandemic, are also heavily supported by the flexible packaging industry.

Thus, FPA and its members are particularly interested in solving the plastic pollution issue, increasing the recycling of solid waste from packaging, and creating a working, circular economy. Unfortunately, we do not believe that HB 2399, as currently written, will accomplish these goals and feel compelled to highlight several concerns.

Extended Producer Responsibility

Flexible packaging is in a unique situation as it is one of the most environmentally sustainable packaging types from a water and energy consumption, product-to-package ratio, transportation efficiency, food waste, and greenhouse gas emissions reduction standpoint, but circularity options are limited. There is no single solution that can be applied to all communities when it comes to the best way to collect, sort, and process flexible packaging waste. Viability is influenced by existing equipment and infrastructure; material collection methods and rates; volume and mix; and demand for the recovered material. Single material flexible packaging, which is approximately half of the flexible packaging waste generated, can be mechanically recycled through store drop-off programs, however, end-markets are scarce. The other half can be used to generate new feedstock, whether through pyrolysis, gasification, or fuel blending, but again, if there are no end markets for the product, these efforts will be stranded.

Developing end-of-life solutions for flexible packaging is a work in progress and FPA is partnering with other manufacturers, recyclers, retailers, waste management companies, brand owners, and other organizations to continue making strides toward total packaging recovery. Some examples include The Recycling Partnership; the Materials Recovery for the Future (MRFF) project; the Hefty® EnergyBag® Program; and the University of Florida's Advanced Recycling Program. All of these programs seek to increase the collection and recycling of flexible packaging and increasing the recycled content of new products that will not only create markets for the products but will serve as a policy driver for the creation of new collection, sortation, and processing infrastructure for the valuable materials that make up flexible packaging.

FPA believes that a suite of options is needed to address the lack of infrastructure for non-readily recyclable packaging materials, and promotion and support of market development for recycled products is an important lever to build that infrastructure. We also believe that EPR can be used

to promote this needed shift in recycling in the U.S. In fact, FPA worked with the Product Stewardship Institute (PSI) and have jointly drafted a set of principles to guide EPR for flexible packaging (<https://www.flexpack.org/end-of-packaging-life>). This dialogue, which looked at the problems and opportunities for EPR to address the needs of the flexible packaging industry to reach full circularity for over a year. It is with this background that FPA provides this testimony to improve HB 2399, so that it provides the necessary elements for the improvement of collection and infrastructure investment and development of advanced recycling systems to allow for collection and recycling to a broader array of today's packaging materials, including flexible packaging; and quality sorting and markets for currently difficult-to-recycle materials.

Regrettably, as currently drafted, HB 2399 is not in any meaningful way an EPR bill. In short, HB 2399 is a tax masquerading as EPR. In a true Producer Responsibility program the funds collected would go to a Producer lead non-profit to administer the program and ensure funds are allocated most effectively. Here, the state administers the program and receives the funds directly. In such a program, in addition to the administrative burden placed on the state, it is far more likely that the funds collected through the program will not be invested in infrastructure and modernizing our antiquated recycling system.

Compliance

Compliance under the bill is unworkable as many terms are contradictory or undefined. HB 2399 aims to address a highly complex issue but is riddled with ambiguities. One critical example is that bill's implementation date is set for the year 2100, yet the sunset provision is 2028.

Another issue is that the definition of "covered producer" points to the maker of the packaging and users of packaging, however, most of the bill and the prohibitions are clearly aimed at FMCG companies, as is registration and payment of the tax. Packaging manufacturers cannot track where their packaging end up, even if that is the product itself – it is always sold to the user (whether as is sold as a product or for use in packaging other products).

Even when packaging is sold directly to a brand in Hawaii, packaging producers have no way of knowing whether the final product (that uses the packaging) will be sold in or out of the state. Packaging can be more than one element as well, coming from multiple converters. Take, for example, Chobani yogurt, manufactured in the state of New York. The different components of a

yogurt container, which include the ridged cup, the flexible peel off top, and in many cases the cardboard portion used to sell multi-packs, are coming from different packaging producers. Chobani as the CPG is the only producer, however, that knows where the item that uses the packaging, the yogurt itself, is distributed and sold in or out of the State. Thus, just as all EPR for packaging programs in Europe, Canada and the two bills that have passed in the US, the responsible party must be the brand owner or entity who uses the packaging and not the packaging producer or converter.

Indefinite Terms

HB 2399 does not address any dates or financial figures for when and how much will be spent making an assessment of the costs and economic impacts impossible. There is also no requirement for a report back to the legislature on these provisions. Furthermore, the dates for implementation are all determined by rule as are funds expended for each County to utilize. Thus, no impact analysis can be done to determine the costs to the State or individual Counties and HB 2399 does not mandate any legislative oversight or approval of dates or amounts established.

The measure also fails entirely to address and take consideration of both environmental and health impacts. HB 2399 oddly prioritizes County “reuse programs” for funding, when this term is not defined. This is puzzling and worrisome, as when it comes to the practical application of similar programs, they are generally created and administered by FMCG companies. In addition, HB 2399 does not appear to contemplate or prioritize advancements in recycling and composting infrastructure to move past the status quo as the rates of packaging waste reduction to landfill and for combustion are arbitrary.

Penalties

The penalties and Departmental authority are far too broad and again there is no legislative oversight. The Department can assess additional penalties based on a range of factors as it deems appropriate, but there is no reporting requirement to the legislature on this provision. And in addition to the penalties outlined and any additional penalties which may be added, the bill gives additional authority to the Department to set, charge and collect administrative fines, and recover administrative fees and costs, without specification.

While HB 2399 is well-intentioned, it is underdeveloped as currently written and FPA must respectfully **oppose HB 2399** but stands ready to assist in creating a measure that comports with the PSI/FPA elements and supports a meaningful EPR program for packaging; providing the necessary investment in new infrastructure and markets for all packaging, including flexible packaging, and addresses the evolving needs and concerns of Hawaii.

In advance, thank you for your consideration. If we can provide further information or answer any questions, please do not hesitate to contact me at 410-694-0800 or SSchlaich@Flexpack.org.

Respectfully,

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