

DEEP DIVE

# Progress report: State waste and recycling policies gain notable traction this year

State lawmakers have made significant headway on laws about EPR, recycled content mandates and plastic products. Other bills are still in play, and experts anticipate even more changes in 2022.

Published July 19, 2021



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Reporter

State legislatures concerned about climate change and plastic packaging litter have moved the needle in 2021 to pass bills meant to make lasting changes on local waste and recycling systems.

Although many states have wrapped up their legislative sessions, this year has already been notable for the way historically difficult-to-pass bills have finally become law, including two extended producer responsibility (EPR) for packaging bills, one major bottle bill update, several plastic bans and two mandates that would require certain amounts of recycled content in packaging sold in their states. Many of these same policies are playing out at the federal level as Congress considers a historic influx of recycling-related bills, but these bills have not progressed at the same pace.

So too have many state recycling and waste bills failed to pass, but 2021 has still been a significant year for the number of climate change-related bills introduced, said Yinka Bode-George, an

environmental health manager at the National Caucus of Environmental Legislators.

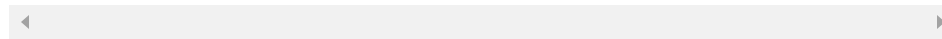
“This year we saw a lot of states introduce bills such as EPR bills for the first time,” she said. “For a lot of states, this year was a campaign year or an education year for their respective legislatures, so in subsequent years they can add some meat to their strategy.”

Panelists at June's WasteExpo in Las Vegas took note of how states are setting the tone on recycling, waste and organics policies that could eventually pave the way to success for federal bills with similar aims. **Michelle Leonard**, senior vice president at SCS Engineers, said industry professionals and lawmakers seem more plugged in now than at any other time in her 30-year career. “We're finally connecting the dots in terms of climate change, economic development, and protecting public health and safety,” she said.

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State	Bill	Category	Highlights
Colorado	HB 1162	Plastics ban	Bans single-use plastic bags at most stores and EPS takeout containers at most restaurants
Connecticut	SB 928	Minimum recycled content	Directs the Department of Energy and Environmental Protection to create a plan for implementing a minimum recycled content policy
Connecticut	SB 1037	Bottle bill	Doubles deposit value to 10 cents and expands types of containers accepted
Louisiana	SB 97	Chemical recycling	Classifies advanced recycling as a manufacturing process rather than solid waste management
Maine	LD	EPR	Covers most types of consumer

	1541		packaging. Producers will pay into a stewardship organization; local governments could use funds for packaging management costs
Maryland	HB 0164	Market development	Encourages businesses and state agencies to develop markets for recycled materials and products
Rhode Island	H 5923	Incineration	Restricts “high-heat” medical waste processing facilities
Rhode Island	S 0155	Plastics ban	Restricts single-use plastic straws in food service establishments
Virginia	SB 1164	Plastics ban/chemical recycling	Classifies advanced recycling as a manufacturing process rather than solid waste management; bans EPS foam foodservice containers
Washington	SB 5022	Plastics ban/PCR	Increases recycled content in packaging, bans some types of EPS containers and makes single-use foodservice ware available only on request



**It’s just the beginning for state EPR legislation for packaging**

2021 has been a breakout year for EPR laws, with Maine becoming the first state to pass one for packaging and **Oregon's** governor poised to soon sign a packaging EPR bill. Packaging EPR has been slower to take off in the U.S. compared to other countries, but state lawmakers decisions to ultimately enact these laws signals growing momentum and changing attitudes around EPR as a method to manage waste.

Most of the EPR bills introduced this year have failed to move forward in their respective legislatures, but industry leaders expect

the groundswell around EPR to continue throughout the year and well into the next legislative season – for better or worse.

“I see that EPR is going to probably proliferate across the U.S. next year even more than this year,” said Republic Services Vice President of Government & Regulatory Affairs Dan Jameson during a panel discussion at WasteExpo. Jameson said he sees improved packaging design as a better solution to waste than implementing EPR programs, but added that waste companies will need to pay close attention when EPR policies inevitably pop up in states where they operate.

An EPR for packaging bill in New York made some headway this year, but it ultimately did not pass before the state’s legislative session wrapped up.

“We're all of the belief that it's going to come up again as soon as the new session starts next year,” said Andy Moss, the Northeast division government affairs manager at Waste Connections, during the WasteExpo panel. “We are actively going to start talking to legislators in the summer” to have a more active role in how the bill may be written for the next session, he said.

Susan Robinson, Waste Management's senior director of sustainability and policy, said waste haulers have resisted EPR policies for years, but her company and others have started to see the advantage of working with legislators on improving proposed bills. One area where EPR policies may need work “is that EPR does a really good job of bringing supply into the system, but it doesn't really create demand, and that's a fundamental flaw,” she said. “We really need to address that to grow supply and demand together, otherwise you disrupt the economics of our system.”

Colorado is likely to introduce its own EPR bill next year, said Kate Bailey, policy and research director at Eco-Cycle. The handful of

EPR bills introduced across the country have different “flavors” that target a range of consumer packaging and involve different details on how much control producers will have over the systems. Bailey observed that Colorado has taken extensive notes on what other states are doing in order to craft legislation that best fits the needs of the state.

The state’s Department of Public Health and Environment released a literature review of other EPR programs in July, making recommendations about what a future bill in the state could look like. It called for “a program similar to Maine’s framework approach for producer responsibility,” according to the report, but also stressed the need for Colorado-specific ideas for better recycling access, particularly for the state's rural areas, as well as funding mechanisms and other facets.

Analysts also expect states to reintroduce more bottle bills next year. Connecticut successfully passed a law updating its low-performing bottle deposit program and doubled its deposit value, making it the most major bottle bill update in years, but longtime struggles between brands and lawmakers will likely continue to slow efforts to update or change bottle bills in other states in the future.

### **Bans on plastics are a mixed bag**

A trifecta of bans on plastic bags, straws and food service containers have been common approaches this year for states aiming to curb the flow of single-use plastics/ Rhode Island’s governor last week signed a law prohibiting food service establishments from providing single-use plastic straws unless the customer requests them. California has a similar straw law, and many municipalities have also adopted limits or bans — most recently New York City.

The growing popularity of single-use plastic bans will likely continue next year and beyond, Bode-George said. Some state legislatures view these types of bans as an entry point for reducing waste while they work on crafting “a spectrum of policy solutions” with more complex aims, such as EPR or recycled content laws, she said. “I don’t know if I want to call it a Trojan horse, but if you introduce a big bill [with multiple components] people may say, ‘No, we could never do this.’ But if you put out a plastic bag ban, they might say, ‘This is more reasonable.’”

Single-use plastic bans might be considered “low-hanging fruit,” but it still takes work to pass these types of bills, she added. Maryland was not able to pass a bill this year that would have banned most plastic bags at the point of sale. Likewise, a bill in California meant to ban some types of plastic packaging used in e-commerce died earlier this year; it would have prohibited large online retailers from using plastic shipping envelopes or cushioning, as well as some kinds of expanded polystyrene (EPS) packaging.

- July has been a big month for bag bans, as laws in both **Maine** and **Connecticut** took effect July 1.
- Philadelphia also enacted a bag ban on July 1, possibly opening the door for more **Pennsylvania** cities to do so. The state may be poised to not renew a statewide preemption on local single-use plastics ordinances. A law in **Ohio** temporarily preventing cities from taxing plastic bags and other single-use plastics took effect in January.
- **Colorado** became the first state to lift a similar preemption rule when it passed a law banning plastic bags and foam containers starting in 2024. Rep. Lisa Cutter, who sponsored the bill, said she hopes the action inspires other state legislatures to consider repealing their own plastic ban preemptions.

- Other future bag laws are scheduled for later this year and beyond. **Washington**'s bag ban will start Oct. 1. The ban was meant to go into effect in January but was delayed because of the COVID-19 pandemic. Meanwhile, lawmakers in Delaware recently updated details of its bag ban to indicate that bags will need to be thicker starting in July 2022 to be considered reusable. **New Jersey**'s law banning or limiting single-use plastic and paper carryout bags, polystyrene foam food service products and plastic straws is set to take effect in 2022.

### **Brands, lawmakers and interest groups convene on market development strategies**

Washington will soon require more recycled content in plastic beverage containers, trash bags and containers for household and personal care products after passing a law in May. Lawmakers and brands expect more such bills on the horizon as more and more brand owners announce commitments to reducing virgin plastic and laying out metrics for reaching recycled content goals by 2025 or 2030.

Brand owners in the U.S. “understand that we need to be more proactive on the policy side” in order to compromise on policies that work for both brands and states while also meeting aggressive 2025 postconsumer resin goals, said Charlie Schwarze, director of sustainability for Keurig Dr Pepper, during a panel discussion at WasteExpo. “We know that we have a gap between where we are right now and where we need to be in 2025 to be able to provide recycled content for PET bottles, polypropylene or any other plastic material we need.”

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Schwarze said Keurig Dr Pepper hasn't officially endorsed particular strategies like recycled content minimums, EPR or bottle bills, but his and other major companies have a vested interest in "getting involved in conversations" with lawmakers about ways to boost recycled content in products.

- **Connecticut** Gov. Ned Lamont in June signed a bill giving the state's Department of Energy and Environmental Protection 18 months to create a plan for implementing a minimum recycled content policy for products sold in the state. The department must coordinate with other states and private sector entities like the Northeast Recycling Council.
- **Maryland** Gov. Larry Hogan in May signed a bill meant to help develop markets for recycled materials and products by encouraging businesses and state government to use more recycled products and helping hard-to-recycle materials with end markets.
- A bill in **New Jersey** that would establish minimum recycled content standards for bags and plastic containers recently passed the state Senate. S2515 would require rigid plastic non-beverage containers and plastic beverage containers to gradually include more and more PCR until it hits a 50% threshold. Plastic bags would eventually need to have 40% PCR – the same benchmark California currently requires.



- A bill moving through the **California** legislature would mandate recycled content in thermoforms such as clamshell packaging. Some advocates see it as the next step in the state's long-term plan to reduce virgin plastic. Next year, California will start enforcing the country's first minimum recycled content law for plastic beverage containers, which will start with a minimum of 15% in 2022.

### **Chemical recycling, conversion technology bills divide environmentalists, plastics industry**

The American Chemistry Council (ACC) recently clarified its position on recycled content mandates last week when it called on Congress to create a federal policy to require all plastic packaging to include at least 30% recycled plastic by 2030. It asked for “a national recycled plastics standard” to help achieve that goal and cited a report from the Independent Commodity Intelligence Services projecting that the U.S. would need to recycle 13 billion pounds of plastic to meet it.

ACC is a proponent of chemical recycling, sometimes called advanced recycling, and argues that the process is critical to helping the country meet that 2030 goal by allowing higher volumes and more types of plastic to be recycled. The process uses techniques such as pyrolysis to break plastics down to their molecular level to be used for new plastic products or fuels.

Environmental groups that oppose chemical recycling say the processes used to break down the plastics to their molecular level may also have harmful effects on nearby communities. A provision of the proposed Break Free From Plastic Pollution Act brought national attention to these environmental justice concerns by calling for a three-year pause on issuing permits for new plastics production facilities and chemical recycling plants to research what effects the facilities could have on surrounding communities.

Some opponents also say the process is often used to turn plastics into fuel instead of new plastic, which they do not consider recycling.

- A handful of states this year have passed ACC-backed legislation to reclassify advanced recycling as a manufacturing process rather than solid waste management. ACC said 14 states have now adopted such laws, with **Louisiana** the most recent state to do so. **Virginia** passed its version of this law in March, using the same bill to ban most EPS foam foodservice containers.
- **New Jersey** is considering a similar bill, which has drawn criticism from environmental groups such as Clean Water Action. The group testified that “‘advanced recycling’ is a new and more expensive form of incineration” that would prioritize the creation of fossil fuels instead of new plastics.
- Lawmakers in **Rhode Island**, concerned about possible environmental effects, passed a law last week that effectively bans “high-heat” medical waste processing facilities in the state. Environmental regulators in the state also turned down a proposal from MedRecycler, which had plans to build a pyrolysis plant to burn medical waste such as gloves and syringes using pyrolysis, which would be used to generate power.



## **Looking ahead**

Many state legislatures have wrapped for the year, but bills in places such as California, New Jersey and Massachusetts are still in the running.

California is having a busy legislative season, most recently by sending a bill to Gov. Gavin Newsom that would call for President Joe Biden to ratify the Basel Convention in an effort to curb the export of low-value scrap plastic to developing countries. The state is also mulling several bills proposing various fixes to the state's bottle bill.

California is also debating SB 343, known as the "Truth in Labeling" bill, which would prohibit the use of the word "recyclable" or the chasing arrows symbol on products the state determines are not recyclable in most California communities. Proponents say the bill could help set a national precedent. But opponents, including some plastics manufacturers, worry it would restrict the flow of postconsumer plastics to developing PCR markets such as polypropylene. The consideration has already found its way to bills in other states, notably in Oregon's EPR bill, which establishes a Truth in Labeling task force meant to "study and evaluate misleading or confusing claims" about whether certain products are recyclable.

California's Statewide Commission on Recycling Markets and Curbside Recycling released its annual report in June, detailing 30 recommendations on how to increase markets, lower system costs, reduce contamination and otherwise improve recycling in the state. The report is a follow-up to its draft report released in January, which offered suggestions meant to help California get

back on track to achieve recycling and diversion goals while addressing market development and infrastructure issues. It has influenced several bills currently making their way through the legislature, including the Basel Convention and Truth in Labeling bills.

- In June, **New Jersey** introduced an EPR for packaging bill meant to require producers selling packaging products in the state to “adopt and implement packaging product stewardship plans.”
- **Massachusetts** is still considering several bills related to EPR proposals, plastic bans or reductions and other recycling topics.

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