

Memorandum in Support

ENVIRONMENTAL LAW SECTION

ELS #1-A

April 7, 2009

A. 159-B Part SS
S. 59-B Part SS

By: Budget
By: Budget
Assembly Committee: Ways and Means
Senate Committee: Finance
Effective Date: Immediately

AN ACT to amend the Environmental Conservation Law, in relation to Article 27, Title 10, the New York State Returnable Container Act.

THIS SECTION SUPPORTS LEGISLATION TO AMEND AND STRENGTHEN THE NEW YORK STATE “BOTTLE BILL”

The Environmental Law Section (the “Section”) supports legislation that encompasses certain fundamental amendments to the New York State Returnable Container Act, more commonly known as the “Bottle Bill.” Last week, the New York State Legislature passed legislation (S59-B, A159-B Part SS) – the “Proposed Legislation” that includes several amendments that the Section supports. Specifically, the Section supports the Proposed Legislation’s expansion of the definition of “Beverage”, the higher handling fee, the lower threshold for certain New York City retailers and the incentives for redemption centers. Although not included in the Proposed Legislation, the Section also supports the general concept of transferring a portion of the unclaimed deposits to the State Environmental Protection Fund (the “EPF”) and an increase in the deposit. Of significant importance is the economic benefit associated with a more expansive definition of the types of beverages covered under the Bottle Bill.

Although the Proposed Legislation does not incorporate all of the recommendations outlined below, the Section commends the Legislature in its progress in expanding the Bottle Bill to cover bottled water and to earmark a portion of the unclaimed deposits to the State General Fund, among other changes.

Background of the Current Bottle Bill

The Bottle Bill was enacted in 1983 and furnished a practical and long-awaited solution to the tenacious problem of litter caused by bottles and cans. Weinberg, McKinney's Practice Commentary to ECL § 27-1001. In Section 27-1001 the Legislature expressed the purpose of the bill, which still resonates today. Section 27-1001 states:

The legislature hereby finds that litter composed of discarded soft-drink, beer and ale bottles and cans is a growing problem of state concern and a direct threat to the health and safety of the citizens of this state. Discarded beverage bottles and cans create a hazard to vehicular traffic, a source of physical injury to pedestrians, farm animals and machinery and an unsightly accumulation of litter which must be disposed of at increasing public expense. Beverage bottles and cans also create an unnecessary addition to the state's and municipalities' already overburdened solid waste and refuse disposal systems. Unsegregated disposal of such bottles and cans creates an impediment to the efficient operation of resource recovery plants. Further, the legislature finds that the uninhibited discard of beverage containers constitutes a waste of both mineral and energy resources. The Legislature hereby finds that requiring a deposit on all beverage containers, along with certain other facilitating measures, will provide a necessary incentive for the economically efficient and environmentally benign collection and recycling of such containers.

ECL § 27-1001.

Under the current scheme, the Bottle Bill places a 5-cent refundable deposit on carbonated beverage and beer containers sold in the State. Consumers can redeem their deposits at stores or redemption centers, which in turn get a 2-cent handling fee from the beverage distributors or bottlers. The refundable deposit provides a financial incentive for consumers to recycle, and rewards anyone who returns the bottles and cans.

Over the past 25 years, more than 90 billion bottles and cans have been returned and recycled through the Bottle Bill, resulting in more than six million tons of plastic, glass and metal being kept out of our landfills and incinerators. It is estimated that between 1983 and 2005, the Bottle Bill achieved an average redemption rate of 73.6%, with additional containers being captured by curbside recycling programs. In addition, between 1983 and 2003, New Yorkers reduced greenhouse gas emissions by approximately 5 million metric tons and saved the energy equivalent of 50 million barrels of oil (the equivalent of removing 600,000 cars off the road for one year.)¹

The Bottle Bill also has saved local governments and tax-payers millions of dollars in collection and disposal costs over the past 25 years. Local recycling programs benefit from the removal of large quantities of glass and plastic, which can be expensive to

¹ See "Updating 'Bottle Bill' is a no-brainer for Albany, Buffalo News, January 3, 2009 by Peter Grannis, Patrick Hooker and Carol Ash.

collect and have a low market value. Some municipalities even redeem the deposit containers they collect and use the money to defray their recycling expenses.

The Bottle Bill came into effect before bottled water, iced tea, juice, sports drinks and other non-carbonated beverages became popular, and therefore, it did not include these types of beverages. Today, these drinks account for more than 25% of the market, and sales are growing rapidly.

In addition, the original Bottle Bill allows beverage distributors and bottlers to retain all unclaimed deposits. It is estimated that bottlers and distributors are keeping approximately \$140 million a year in unclaimed deposits from bottles and cans that are not returned—the State is not entitled to any of the unclaimed deposits. Notably, unlike New York, at least three other states— Massachusetts, Michigan and Hawaii—do require beverage companies to turn over unclaimed deposits to public coffers. Over the past few years, various environmental and other groups have lobbied Albany to amend the Bottle Bill to expand its coverage and funnel the unclaimed deposits to the State Environmental Protection Fund.

Accordingly, the Section supports the following concepts that are included in the Proposed Legislation:

1. Expand the definition of beverages covered under the Bottle Bill to include bottled water. Although including bottled water in the definition of “beverages” is a promising first step, the Section supports an even broader definition of beverages which includes other non carbonated beverages such as juice, sports drinks and wine, with the exception of milk and dairy products, infant formula, alcoholic beverages other than wine, beer and malt beverages, nutritional supplements, syrups, concentrates, soups, powdered and frozen beverages, and liquid prescription or over the counter drugs.
2. Increase the handling fee to be paid by deposit initiators to retailers or redemption centers. An increase in the handling fee would act as an incentive to redemption centers to create more centers.
3. For certain smaller retailers, limit the number of returns qualifying stores must accept per person per day.
4. Make municipalities, businesses and not-for-profit organizations located in New York State eligible for financial assistance in creating and/or expanding redemption centers, including mobile redemption centers..

In addition to the above components of the Proposed Legislation, the Section also supports an amendment that would require deposit initiators (e.g., bottler or distributor) to transfer a portion of the unclaimed deposits to the State Environmental Protection Fund (“EPF”). The Proposed Legislation provides for an 80/20 split on the unclaimed deposits, with 80% going to the State’s General Fund and the remaining 20% going to the

bottlers. This departure from the current practice whereby beverage distributors and bottlers keep the unclaimed deposits is supported by the Section and is an encouraging step towards continued funding for environmental initiatives. According to the New York Public Interest Research Group (“NYPIRG”), beverage companies are keeping an estimated \$140 million each year in unclaimed deposits from bottles and cans that are not returned.

The Need for Amendments to the Bottle Bill

As mentioned above, since its enactment, the Bottle Bill has been very effective in reducing litter and increasing recycling rates. However, since the Bottle Bill’s original enactment, the array of beverages available to consumers has expanded exponentially, and consumer drinking habits have changed significantly in response to the wider selection of available beverages. NYPIRG states that recent surveys have shown that non-redeemable containers make up nearly two-thirds of the beverage containers now piling up on New York’s shorelines and up to 10% of total litter volume.

Expanding the definition of “beverage” to include non-carbonated beverages has the potential to result in up to 3 billion additional bottles and cans returned and recycled in New York. Such an amendment would also allow New Yorkers to recycle an additional 90,000 tons of materials at no cost to local governments, save an additional one million barrels of oil annually and eliminate 80,000 tons a year of greenhouse gases.²

The amendments, endorsed by the Section, would build upon what is already one of New York State’s most successful environmental laws. The expanded ambit of the Bottle Bill is likely to significantly enhance the environmental benefits of the current law: prevention of litter; increase in recycling rates; reduction of waste stream; and the complementing of existing curbside recycling programs. In addition to the financial incentive to recycle spurred by the deposit, these amendments to the Bottle Bill would further enhance recycling incentives by making available financial assistance to municipalities, businesses and not-for-profit organizations.

Opposition/Controversy Surrounding Amendments to the Bottle Bill

While there is little dispute about the potential benefits to the environment from an expanded Bottle Bill, there are several opponents to any amendments expanding the reach of the Bottle Bill. Below are some of the opponents’ arguments and an explanation as to why these arguments do not outweigh the benefits of amending the Bottle Bill.

- 1) Bottle and can deposits only target a small part of the waste stream.

Although soda containers constitute only about 2.7% of the waste stream, the impact on greenhouse gas emissions as a result of land filling the beverage containers is about 20%. After the initial passage of the Bottle Bill, litter in New York declined by 30%. Also, it is estimated that 2/3 of the bottles and cans

² Figures from the New York State Department of Environmental Conservation.

littering the beaches are non-deposit containers. A more expansive definition of beverages covered under the Bottle Bill will help address this issue.

- 2) Deposits are not necessary where there is curbside recycling.

Deposits and curbside recycling do not compensate for each other. The quality of recycled material through deposit programs is much higher than curbside recycling. Curbside recycling does not address consumption away from home, where containers are more likely to end up as litter. In addition, the combination of both curbside recycling and deposit centers is more effective than curbside recycling alone.

- 3) Deposit centers negate the values of curbside programs.

According to NYPIRG, despite the increase in curbside recycling, there has been a decrease in recycling of aluminum cans (65% to 49%). Deposits also reduce curbside collection costs by removing cumbersome low-value glass and plastic bottles from the waste stream.

- 4) Deposits are more expensive than curbside recycling.

Initially, establishing deposit centers is more expensive than curbside. However, over time, statistics show that beverage container recovery rates in states with deposits are more than 2.5 times higher than in states without bottle bills. At the end of the day, the cost of recycling is borne by producers and consumers not by the government and tax payers.

- 5) Deposits are a tax. Smaller retailers do not have the space to process the anticipated increase in volume of bottle returns.

When there is a refundable deposit system in place, the consumer (not taxpayer) bears the cost. The consumer initially pays the deposit and then is reimbursed if the container is returned. The beverage distributors and bottlers can absorb the cost of collection. Whether they pass these costs on to their consumers is a decision the bottler/manufacturer makes. When more deposit containers are returned, taxpayers pay less for disposal, less for litter pickup, and less for curbside recycling.

- 6) Amendments increasing the deposit, expanding the definition of "beverage" and earmarking the unclaimed refunds for the Environmental Protection Fund will increase the cost of beverages.

First, a portion of any increase in price will be part of the refundable deposit. Also, prices for bottled water and other beverages are already very elastic. Importantly, because of the recent changes in the economy, Governor Paterson's November Special Session Deficit Reduction Plan calls for the expansion of the Bottle Bill as a way to address the deficit. The Public

Employees Federation (PEF) also has identified the expansion of the Bottle Bill as a key step in raising revenue and closing the budget gap. The PEF estimates that the proposed amendments to the Bottle Bill will generate \$200 million in additional revenues in a full fiscal year.

7) New Yorkers do not support the amendments to the Bottle Bill.

According to the “Survey of New York Register Voters: Attitudes Toward New York’s Bottle Bill and Proposed Reforms” prepared by Public Policy Associates, Incorporated, New Yorkers are strongly in favor of expanding the Bottle Bill. In fact, when asked specifically if they would support a proposal to transfer unclaimed deposits from the beverage industry to the State for support of environmental programs, 86 % supported the proposal.³ In addition, in response to a question about whether New York is spending too much or too little, or about the right amount to protect and improve the environment, 62% responded saying that we were spending too little on the environment.

Despite the opposition’s characterization of any amendments as a tax and an additional burden on smaller retailers, the benefits to amending the Bottle Bill outweigh any initial incidental costs to amending the Bottle Bill. Moreover, one-way, throw-away, no-deposit, no-return beverage containers may be seen as a hidden tax themselves since State citizens are now absorbing the cost of disposal of the beverage containers not currently covered by the Bottle Bill. In the face of budget cuts and the benefits already seen as a result of the existing Bottle Bill, amending the Bottle Bill by adopting the Proposed Legislation along with the other proposed amendments set forth above makes sense both economically and environmentally. Moreover, as the value of sustainability continues to grow, the trend both in Europe and the United States is to require manufacturers to bear the responsibility for the waste resulting from the products they create (e.g., consumer electronics). Hence, it makes sense that the beverage producers and their consumers should bear the cost of their product’s waste instead of taxpayers and municipalities.

For the reasons stated above, the Environmental Law Section **SUPPORTS** the Proposed Legislation to amend the Bottle Bill in addition to the other amendments as outlined above.

Memorandum prepared by: The New York State Bar Association Environmental Law Section.

³ See Survey of New York Register Voters: Attitudes Toward New York’s Bottle Bill and Proposed Reforms” prepared by Public Policy Associates, Incorporated dated February 2004.