

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 435

Beverage Container Deposits

SPONSOR(S): Rader

TIED BILLS:

IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	<u>Agriculture & Natural Resources Policy Committee</u>	<u></u>	<u>Snider</u>	<u>Reese</u>
2)	<u>General Government Policy Council</u>	<u></u>	<u></u>	<u></u>
3)	<u>Natural Resources Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4)	<u>Full Appropriations Council on General Government & Health Care</u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill establishes a bottle deposit program whereby a consumer pays a deposit on an applicable container and then receives the refund back when the container is returned. The Department of Environmental Protection is charged with overseeing the bottle deposit program and enforcing its provisions, including reporting requirements. In 2008, the Legislature set a statewide goal of reducing solid waste by 75%. States where this manner of program is in place have significantly higher recycling rates than states without deposit programs.

The specific fiscal effects of this bill are unknown; the bill is estimated to have some fiscal effect on state government and private industry, as well as a speculative effect on local governments.

This bill takes effect July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

This bill establishes a framework for a beverage container deposit system, which is intended to increase the rate of recycling for most beverage containing bottles. The process for the beverage container deposit system is that "when a retailer buys beverages from a distributor, a deposit is paid to the distributor for each can or bottle purchased. The consumer pays the deposit to the retailer when buying the beverage. When the consumer returns the empty beverage container to the retail store, to a redemption center, or to a reverse vending machine, the deposit is refunded. The retailer recoups the deposit from the distributor, plus an additional handling fee [...]."¹

Current Situation

There is no law in Florida that places a deposit on beverage containers. However, counties are required to collect and offer for recycling at least four out of the following eight materials: newspaper, aluminum cans, steel cans, glass, plastic bottles, cardboard, office paper, and yard trash.² There are currently 11 states with deposit laws.³

State Recycling Goal

The *Energy, Climate Change, and Economic Security Act of 2008*, which was signed into law by Governor Crist, established a new statewide recycling goal of 75% for solid waste to be achieved by 2020.⁴ The Florida Department of Environmental Protection (DEP) indicates that 10%-19% of the beverage containers specified by this act are presently recycled.⁵ States that have enacted beverage container deposit programs have beverage container recycling rates of 69-95%.⁶ Additionally, beverage containers comprise 40%-60% of litter.⁷ States with deposit laws have seen a reduction of beverage container litter of 69%-95% and overall litter reduction of 30%-65%.⁸ States with deposit laws, which

¹ BottleBill.org. <http://www.bottlebill.org/about/whatis.htm>. Last accessed March 13, 2009.

² s. 403.706, F.S.

³ California, Connecticut, Delaware, Hawaii, Iowa, Maine, Massachusetts, Michigan, New York, Oregon, & Vermont. BottleBill.org. <http://www.bottlebill.org/legislation/usa.htm>. Last accessed March 13, 2009.

⁴ s. 403.7032, F.S.

⁵ "Draft Bill Analysis." Department of Environmental Protection. On file with the Agriculture & Natural Resources Policy Committee.

⁶ *Id.*

⁷ BottleBill.org. <http://www.bottlebill.org/about/mythfact.htm>. Last accessed March 13, 2009.

⁸ "Draft Bill Analysis." Department of Environmental Protection. On file with the Agriculture & Natural Resources Policy Committee.

represent only 29% of the total U.S. population, recycled 40 billion beverage containers in 1999 as opposed to 38 billion recycled in the non-deposit states, which represent 71% of the total U.S. population.⁹

Covered Containers & Beverages and Refund Values

The program covers containers between six fluid ounces and one gallon in capacity. The covered containers must be made of glass, aluminum, steel, bimetal, or plastic. Covered beverages include beer, spirits, wine, tea and coffee, soda, water, and other drinks intended for human consumption. There are a number of exceptions, including syrup, sauces, drugs, dietary supplements, frozen products, soups and broths, and milk. The refund and deposit values for containers between six and 25 ounces is \$0.20, and the value for containers between 26 ounces and one gallon is \$0.30.

Refund & Deposit System

Every covered beverage container sold in Florida, including those in circulation at the time this bill takes effect, must be clearly identified by a stamp, label, or other mark bearing the word "Florida" or "FL." Dealers (e.g. convenience stores) must accept from consumers unbroken containers of the kind, size, or brand sold by the dealer and pay the refund value, unless there is a redemption center located within a mile of the dealer.

The bill authorizes the creation of redemption centers to accept the containers and return them to the distributors. Redemption centers are required to register with the department. Redemption centers are granted the right to choose what kind, size, or brand of containers they will process. Additionally, local governments are permitted to operate redemption centers, and redemption centers may operate reverse vending machines that provide the refund via cash, electronic credit, or a redeemable voucher.

Distributors must accept unbroken containers from dealers and redemption centers and pay the refund value. Distributors are required to pay a handling fee of at least 20% to dealers and redemption centers, in addition to the refund value.

Reporting & Confidentiality

All dealers, distributors, redemption centers, and recycling facilities accepting beverage containers must report to the department:

- The amount and type of containers accepted and rejected;
- The amount of refunds paid out;
- The amount of each type of container transported to a recycled;
- Copies of transport and weight receipts from the recycling facilities.

These records must also be made available upon request to the department or a state auditor.

Additionally, the bill exempts from public records requirements certain reporting, which would reveal a trade secret as defined by s. 812.081, F.S. This appears to create a separate exemption from those already authorized by law. The Florida constitution requires that exemptions be created in a bill dedicated to that purpose.

The department has stated that the amount of containers accepted is a trade secret.¹⁰ The department also reports that a similar provision is in place for Recovered Materials Dealers.¹¹ The department also states that even if this provision were removed from this bill, it could use Ch. 403, F.S. to exempt the trade secret information from public records requirements, and as such, it is recommended that this provision be removed from the bill.

⁹ "Container Recycling Institute Statement," Container Recycling Institute, Jan. 16, 2002. <http://www.container-recycling.org/assets/pdfs/reports/bear/2002-1-Stmt-CRI.pdf>. Last accessed March 15, 2009.

¹⁰ Email from Stephanie Culp, Deputy Director, Legislative Affairs, Department of Environmental Protection. Forward of email from Linda Frohock, Senior Management Analyst II, Division of Waste Management. March 12, 2009.

¹¹ s. 403.7046, F.S.

Penalty

Any violation of this bill results in a non-criminal infraction punishable by a civil penalty of \$100, which shall be deposited into the department's Administrative Trust Fund. The bill proscribes tendering any container for a refund if the container was not purchased in Florida. Businesses accepting container returns must post notice of this requirement and of the penalty.

Preemption

County and municipal governments are prohibited from imposing or collecting any assessment or fee on deposit beverage containers for the same or similar purpose of this bill.

Effective Date

This bill shall take effect on July 1, 2009.

B. SECTION DIRECTORY:

Section 1. Creates s. 403.778, F.S., the "Florida Beverage Container Deposit Act."

Section 2 Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: Insignificant; only civil fine moneys will be collected.
2. Expenditures: Some minor costs associated with promulgating rules to implement the Act. Additional duties and responsibilities will be placed upon the department in order to receive and manage the required documentation from the redemption centers as well as to audit dealers, distributors, redemption centers and recycling facilities that accept empty deposit beverage containers.¹²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill could create some up-front loss of revenue for curbside recycling programs, and perhaps a minor reduction in tipping fees at landfills. It could also produce some cost savings by reducing litter. If a local government chooses to operate a redemption center, the handling fee could provide a new revenue stream.¹³
2. Expenditures: The bill does not appear to require an expenditure by local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Benefits¹⁴

- Generally: An increase in recycling of beverage containers is expected to create savings in costs for energy and raw materials, which may eventually translate into lower manufacturing costs and lower product costs.
- Dealers: Dealers who accept containers for redemption receive at least 20% of each refund from the bottler/distributor.
- Distributors/Bottlers: Distributors/bottlers receive revenue from unredeemed deposits. As an example, Michigan also has a \$0.10 deposit for containers, and the total amount for

¹² "Draft Bill Analysis." Department of Environmental Protection. On file with the Agriculture & Natural Resources Policy Committee.

¹³ Id.

¹⁴ Id.

unredeemed deposits in 2000 was reported to be \$23.5 million. If this same pattern were to occur in Florida, which has a larger population than Michigan, the additional annual revenue for distributors/bottlers could total over \$40 million.

- Redemption Centers: Redemption centers will receive a handling fee of at least 20% of each refund from the bottler/distributor. Redemption centers may also be able to derive some monetary benefits from the sale of recyclable materials such as aluminum, steel, glass and plastic bottles.

Costs¹⁵

- Dealers: For dealers, there will be costs incurred to address new labeling requirements, update registers and computer systems, and to create space for redeemed containers (if applicable). There may also be a need for additional staff, recycling pickups and installation of reverse vending machines (if applicable).
- Distributors/Bottlers: For distributors, there will be costs incurred to address new labeling requirements, pick up redeemed empty containers (if applicable), to update finance tracking systems, and a possible need for additional staff.
- Redemption Centers: For redemption centers there will be costs incurred in start up, center operation, staff salary, pest management, and financial tracking needs.

D. FISCAL COMMENTS:

- The Department of Environmental Protection declined to provide a more specific fiscal analysis of this legislation.¹⁶
- States with deposit bills that employ separate redemption centers and/or reverse vending machines see a net increase in jobs in multiple sectors (haulers, recyclers, vending machine manufacturing and maintenance, etc), a new private industry of redemption center operation and competition among centers to best provide for consumers interested in redeeming beverage containers.¹⁷

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure to funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article I, Sec. 24(c) of the Florida Constitution governs the creation of public record exemptions, which this bill appears to create. The Constitution requires that a law creating exemptions must justify the public necessity for the exemption, be no broader than necessary to accomplish the stated purpose of the law, and that the law be solely for the purpose of creating the exemption. The bill accomplishes more than solely creating a public records exemption and does not provide a public necessity justification.

¹⁵ Id.

¹⁶ Email from Stephanie Culp, Deputy Director, Legislative Affairs, Department of Environmental Protection. Forward of email from Linda Frohock, Senior Management Analyst II, Division of Waste Management. March 12, 2009.

¹⁷ "Draft Bill Analysis." Department of Environmental Protection. On file with the Agriculture & Natural Resources Policy Committee.

B. RULE-MAKING AUTHORITY:

The Department of Environmental Protection is authorized to adopt rules necessary to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill appears to be silent on the issue of unredeemed deposits. Since some consumers will pay the deposit but not return the container, the deposit is not refunded to the consumer. The bill is silent on what will happen to this money. In some states, the distributor keeps the money, while in other states the state government receives some or all of the money. Potentially, this could provide an additional revenue source for the state.¹⁸

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

¹⁸ Michigan, for example, provides 75% of the unredeemed deposit to state environmental programs, while 25% of the unredeemed deposit is kept by the retailer. <http://www.bottlebill.org/legislation/usa/michigan.htm>. Last accessed March 25, 2009.