
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

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SUBJECT: Beverage containers

DIGEST: Establishes the Beverage Container Recycling Program and creates an industry-run bottle and can recycling program by July 1, 2024, to replace the current California Beverage Container Recycling and Litter Reduction Act (Bottle Bill), which the bill revises and sunsets July 1, 2024.

ANALYSIS:

Existing law:

- 1) Under the California Integrated Waste Management Act of 1989, requires each city or county source reduction and recycling element to divert 50% of solid waste on and after January 1, 2000. (Public Resources Code §41780). It is a policy goal of the state that not less than 75% of solid waste be source reduced, recycled, or composted by 2020, and annually thereafter. (Public Resources Code (PRC) §41780.01).
- 2) Under the California Beverage Container Recycling and Litter Reduction Act (Act), requires beverage containers, as defined, sold in-state to have a California redemption value (CRV) of 5 cents for containers that hold fewer than 24 ounces and 10 cents for containers that hold 24 ounces or more, and requires distributors to pay a redemption payment to the Department of Resources Recycling and Recovery (CalRecycle) for every beverage container sold in the state. These funds are continuously appropriated to CalRecycle for the payment of refund values and processing fees. (PRC §14500 et seq.)

This bill establishes the Beverage Container Recycling Act of 2021. Specifically, the bill:

- 1) Beginning January 1, 2022, and until July 1, 2024, amends the current Bottle Bill program to:

- a) Change the requirements that a certified recycling center that is a reverse vending machine (RVM) must comply with, in order to be considered “open for business,” by eliminating the requirement that an attendant is provided a minimum number of hours per week and changing the minimum number of hours the recycling center is operational and functioning.
 - b) Remove the option for dealers in unserved convenience zones (areas that are not served by a recycling location) to pay CalRecycle \$100 per day in lieu of redeeming empty beverage containers until a recycling location has been established in the convenience zone. Instead requires dealers in unserved convenience zones to redeem all empty beverage containers at all open cash registers or through an RVM.
- 2) On or before April 1, 2022, requires CalRecycle to appoint an advisory committee for consultation purposes, including forming the Beverage Container Stewardship Organization (BCSO), and creating a beverage container stewardship plan.
 - 3) On or before July 1, 2022, requires each distributor to register with CalRecycle.
 - 4) On or before October 1, 2022, requires distributors to form a BCSO to develop, implement, and administer the beverage container stewardship program.
 - 5) Within 60 days of receipt of request for certification of BCSO, requires CalRecycle to notify distributors of its decision whether to certify BCSO.
 - 6) On and after October 1, 2022, prohibits a dealer from selling, distributing, or offering for sale a beverage in a beverage container in the state unless the dealer is in compliance with the stewardship program.
 - 7) On or before November 1, 2022, and at least annually thereafter, requires CalRecycle to post and update on its internet website a list of distributors and whether each one is in compliance with the stewardship program.
 - 8) On or before April 1, 2023, requires BCSO to develop and submit to CalRecycle a plan for the redemption of empty beverage containers, which must include specified goals and elements including methods to increase the quantity and quality of empty beverage containers recycled or remanufactured, conducting research to improve beverage container collection and recycling operations, proposed methods to encourage manufacturers to purchase empty

beverage containers from the California recycling market, and specified methods and components for the redemption of empty beverage containers.

- a) Requires BCSO to update the plan annually and to submit the proposed modifications to CalRecycle.
- 9) Within 90 days of receipt of the submitted plan, requires CalRecycle to approve, disapprove, or conditionally approve the plan. If CalRecycle fails to act in that time, the plan must be deemed approved. If CalRecycle disapproves the plan, BCSO must resubmit the plan and if the plan does not comply with specified requirements, then BCSO shall not be deemed in compliance until BCSO submits a plan that CalRecycle finds in compliance.
- 10) Requires BCSO to implement the plan within 90 days after approval or conditional approval of the plan and requires full implementation on and after July 1, 2024.
- 11) On or before July 1, 2023, and annually thereafter, requires BCSO to submit to CalRecycle a proposed budget for the stewardship program for the following calendar year. Requires CalRecycle to approve or disapprove the proposed budget, as specified.
- 12) Requires BCSO to establish a stewardship fee to be paid by the distributor members of the organization and to be used to fund the program.
- 13) Requires BCSO to keep minutes, books, and records that clearly reflect the activities and transactions of the organization.
- 14) On or before July 1, 2023, requires CalRecycle, in consultation with BCSO and other interested stakeholders, to adopt regulations for the orderly transition from the requirements of the current Bottle Bill program to the stewardship program.
 - a) On or before January 1, 2023, if CalRecycle finds that it is unable to develop regulations to make an orderly transition from the current Bottle Bill program to the stewardship program, requires CalRecycle to report that finding to the Legislature.
- 15) Beginning July 1, 2023, requires CalRecycle to begin the transition from the current Bottle Bill program to the stewardship program.

- 16) Requires BCSO to quarterly reimburse CalRecycle for costs directly related to implementing and enforcing BCSO's activities.
- 17) Establishes the Beverage Container Recycling Program which would replace the current Bottle Bill program. Makes the current Bottle Bill program inoperative on July 1, 2024, and requires that the stewardship program begin in full no later than that date.
- 18) Upon the operative date of the Beverage Container Recycling Program, removes authorization for a refund value to be paid based on weight, and requires a redemption center to immediately pay the refund value on a per-container basis.
- 19) Requires BCSO to certify, and set standards for certification, for redemption centers, processors, and dropoff and collection program. Specifically authorizes BCSO to establish a redemption center.
- 20) Establishes the Beverage Container Recycling Program Fund, which shall become operative on July 1, 2024. Requires fees received by CalRecycle to be deposited into the fund. Provides that moneys in the fund may be expended by CalRecycle upon appropriation by the Legislature for administration of the Beverage Container Recycling Program.
 - a) Creates the Penalty Account in the Beverage Container Recycling Program Fund and requires CalRecycle to deposit civil penalties or fines collected pursuant to this program into the account.
- 21) Requires unredeemed refund values to be retained by BCSO and be used for the following purposes in the following priority:
 - i) Implementation of the beverage container recycling program and provides that BCSO administrative costs may not exceed 2% of the projected unredeemed refund values for the calendar year.
 - ii) Activities to improve the quality of postconsumer beverage container material that is used for recycling purposes.
 - iii) Activities that encourage the remanufacturing of beverage containers.
 - iv) Activities to encourage in-state manufacturing of recycled beverage containers.
- 22) On or before March 1, 2025, and annually thereafter, requires BCSO to submit to CalRecycle, and make available on its internet website, a report that includes

specified information about the stewardship program for the previous calendar year including BCSO's costs and revenues, the quantity of beverage containers disposed of in solid waste landfills, the quality of beverage containers collected for recycling under the plan, and the total volume, number, and weight of beverage containers collected and recycled during the preceding year.

- 23) Establishes a state goal redemption rate of 85% per beverage container type and, if CalRecycle determines that the redemption rate for any beverage container type drops below 85% in 2025, increases the refund value of that beverage container type to \$0.10 commencing January 1, 2027.
- 24) Authorizes CalRecycle to impose administrative civil penalties on any distributor, BCSO, or dealer in violation with the stewardship program.
- 25) Makes various nonsubstantive, conforming changes.

Background

- 1) *Background on the Bottle Bill program.* The Bottle Bill was established by AB 2020 (Margolin, Chapter 1290, Statutes of 1986). The purpose of the program is to be a self-funded program that encourages consumers to recycle beverage containers to prevent littering. The program accomplishes this goal by requiring consumers to pay a deposit for each eligible container purchased. Then the program guarantees consumers repayment of that deposit, the California Redemption Value (CRV), for each eligible container returned to a certified recycler. Statute includes two main goals for the program: (1) reducing litter; and, (2) achieving a recycling rate of 80% for eligible containers.

Over the years, various concerns about the program have been raised such as the structural deficit, the effectiveness of some supplemental programs supported by the program, fraud, and whether some offsets support the goals of the program.

- 2) *Eligible beverage containers.* Only certain beverage containers containing certain beverages are part of the CRV program. Most containers made from glass, plastic, aluminum, and bimal (consisting of one or more metals) are eligible. Wine, spirits, milk, fruit juices (over 46 ounces), vegetable juice (over 16 ounces), and soy drinks are not eligible for CRV. Container types that are not included in the CRV program are cartons, pouches, and any container that holds 64 ounces or more.

- 3) *Participants in the Bottle Bill program.* The various stakeholders in the Bottle Bill program include:
- a) **Consumer.** Every person who, for his or her use or consumption, purchases a beverage in a beverage container from a dealer.
 - b) **Dealer.** A retail establishment which offers the sale of beverages in beverage containers to consumers. However, any lodging, eating, or drinking establishment, or soft drink vending machine operator who engages in the sale of beverages in beverage containers to consumers is not considered a dealer for purposes of the Bottle Bill program.
 - c) **Distributor.** Every person who engages in the sale of beverages in beverage containers to a dealer in the state, including any manufacturer who engages in these sales. “Distributor” includes any person who imports beverages from outside of this state for sale to dealers or consumers in this state.
 - d) **Beverage Manufacturer.** A person who bottles, cans, or otherwise fills beverage containers, or imports filled beverage containers, for sale to distributors, dealers, or consumers.
 - e) **Container Manufacturer.** A person who produces beverage containers for filling by beverage manufacturers, including any person who imports these beverage containers from outside of this state for filling by beverage manufacturers.
 - f) **Recycler.** A recycling center, dropoff or collection program, or curbside program.
 - g) **Processor.** A person, including a scrap dealer, certified by CalRecycle, who purchases empty aluminum beverage containers, bimetal beverage containers, glass beverage containers, plastic beverage containers, or any other beverage containers, including any one or more of those beverage containers, which have a refund value established pursuant to the Bottle Bill, from recycling centers in this state for recycling, or, if the container is not recyclable, not for recycling, and who cancels, or who certifies to the department the cancellation of, the refund value of these empty beverage containers by processing empty beverage containers, in any manner which the department may prescribe.

- h) **CalRecycle.** State agency which administers, oversees, and enforces the Bottle Bill program.
- 4) *Flow of CRV containers and payments.* The Bottle Bill involves the flow of beverage containers and payments between several sets of parties, including consumers, retailers, recyclers, and manufacturers. At each stage, beverage containers and CRV are exchanged between participants. The Beverage Container Recycling Fund (BCRF) is used to collect and distribute payments for the CRV program.

Consumers generally have three options to recycle: return container to a recycler at a convenience zone (CZ) recycling center; return to an “old line” recycler; or, forego the CRV and give the container to a curbside collector. Once collected, the containers are sold to a processor.

Processors sort, clean, and process the containers into materials ready to be recycled, such as glass cullet or plastic flake, which they are able to sell to manufacturers for use in new beverage containers or other types of products. Beverage manufacturers that use glass and aluminum containers combine the recycled material with virgin material to create new containers and fill them with beverages. Plastic beverage containers generally contain no recycled content; however, recent legislation now requires, commencing in 2022, that plastic beverage containers contain a minimum of 15 percent recycled content. This minimum content standard gradually increasing to 50 percent in 2030.

- 5) *Flow of CRV.* When beverage containers are exchanged, there is a corresponding CRV exchange. When consumers purchase beverages, they pay the CRV to retailers. Retailers pass the CRV to beverage distributors. Beverage distributors pay CRV on all new beverage containers they sell in California to the BCRF after keeping 1.5% (in the 2019-20 FY, about \$21.2 million) for administrative costs. The BCRF is then used to pay CRV to processors for the containers they process. Processors pass the CRV on to the recyclers who collected the empty containers. Recyclers, in turn, pay CRV to consumers who redeem their beverage containers at a recycling center. In this way, consumers are able to recoup their CRV from the recycler.
- 6) *Ways to redeem containers.* Consumers have three different avenues in which they may redeem containers:
 - a) Return the container to a “convenience zone” recycling center located within ½ mile radius of a supermarket. These are generally small centers that only accept beverage containers and receive handling fees from the

BCRF. During 2019-20 FY, CZ recyclers redeemed about 30% of beverage containers.

- b) Return the container to an “old line” recycling center, which refers to a recycler that does not receive handling fees and usually accepts large quantities of materials, frequently by truckload from municipal or commercial waste collection services. Traditional recyclers collect a little more than half of all CRV containers (58%).
 - c) Consumers can also forfeit their CRV and “donate” their containers to residential curbside recycling collection. In the 2019-20 FY, curbside programs collected about 12% of CRV containers. Curbside programs keep the CRV on these containers.
- 7) *Additional Expenditures.* In the past, lower recycling rates resulted in a half-billion dollar surplus in the BCRF, and previous Governors used the surplus to fund several loans to the General Fund. In an attempt to increase recycling and reduce the surplus, the Legislature amended the Bottle Bill a few times between 2000 and 2003 to include additional beverages, reduce the processing fees paid by manufacturers, establish the processing fee “offset” (reduced processing fees based on the “recycling rate” of a material), increase the CRV, increase handling fees to larger CZ recyclers, and establish and increase funding for a number of additional recycling programs. These programs are not directly related to the CRV, but they are intended to help achieve broader recycling goals.

The funding amounts for the supplemental programs are set in statute. A provision within the section that establishes the bulk of the BCRF expenditures requires CalRecycle to “reduce all payments proportionally” if it determines that there are insufficient funds to make any of the payments. Stakeholders refer to this reduction in funding as “proportional reduction.”

Supplemental programs funded by CRV include:

- a) **Processing Payments, Fees, and Offsets.** For many material types, the cost of recycling containers is greater than the value of the recycled material, which is referred to as the “scrap value.” This means that, absent some additional financial support, accepting these containers from consumers and recycling them would be unprofitable for recyclers and processors. In order to close that gap, the state subsidizes recycling by making “processing payments” from the BCRF to recyclers and processors. CalRecycle determines processing payment amounts by estimating

recycling costs through surveys of recyclers every two years and calculating scrap values based on monthly reports from processors.

The cost to the BCRF of making processing payments is partially covered by the beverage manufacturers who produce these containers when they pay “processing fees” into the BCRF. The processing fees are calculated based on the number of containers each manufacturer sells. While processing fees were established to cover the full cost of making processing payments to recyclers and producers, over time the Legislature has reduced the processing payment by creating the “processing fee offset.” Since 2003, processing fee offsets have been determined on a sliding scale based on recycling rates (the amount of material *collected* for recycling, not the amount of material *actually being recycled* into new containers). As recycling rates for specific materials increase, beverage manufacturers that produce containers from those materials pay proportionally less in processing fees.

- b) **Handling Fees.** Supermarkets with more than \$2 million in gross annual sales are required to have a recycling center within a ½ mile radius, which is referred to as the “convenience zone.” Certified recycling centers within a convenience zone, known as “CZ recyclers” receive a “handling fee” from CalRecycle based on the number of containers they redeem. The handling fees are intended to provide supermarket sites, nonprofit convenience zone recyclers, and rural region recyclers with an incentive to redeem empty beverage containers in the convenience zones.

Supermarkets that do not have a CZ recycler are required to take back containers themselves or pay an “in lieu” fee of \$100 per day.

- c) **Administrative Fees.** Statute provides administrative fees to beverage distributors, recyclers, and processors to defray their costs of program participation. Since 2006, beverage distributors retain 1.5 % of the total CRV collected to cover administrative costs. CalRecycle pays processors 2.5% of their reimbursed CRV; processors then distribute 0.75% to recyclers.
- d) **Curbside Supplemental Payments.** \$15 million is annually allocated to residential curbside recycling collection programs and neighborhood dropoff programs to encourage curbside recycling. The curbside supplemental payment is distributed to individual programs based on each program’s share of beverage containers collected over the previous year.

- e) **Payments to Local Governments.** About \$10 million is annually allocated to cities and counties for beverage container recycling and litter cleanup activities. Payments are distributed proportionally based on each jurisdiction's population.
 - f) **Plastic Market Development (PMD) Payments.** PMD payments are awarded to plastic processors and plastic product manufacturers for empty plastic beverage containers that are processed and recycled into new material in California.
 - g) **Quality Incentive Payments (QIP).** About \$10 million is annually allocated for QIP in order to improve the quality and marketability of collected glass containers. Glass container recycling has significant GHG benefits and supports in-state bottle manufacturing. Curbside glass has significant issues with contamination and requires a great deal of processing prior to recycling. Glass collected at recycling centers is generally much higher quality and more easily recycled into new containers.
 - h) **Local Conservation Corp (LCC) Grants.** LCCs are awarded grants to operate beverage container litter reduction and recycling programs.
- 8) *Recent recycling center closures.* In August 2019, rePlanet closed all 284 of its recycling centers in California. Before its closure, rePlanet was the largest recycling network in California. Following the closures, rePlanet stated, "With the continued reduction in State fees, the depressed pricing of recycled aluminum and PET plastic, and the rise in operating costs resulting from minimum wage increases and required health and workers compensation insurance, the Company has concluded that operation of these recycling centers is no longer sustainable."

Various causes have attributed to the closure of these recyclers. One reason may be the drop in commodity prices, which have been declining over several years. Also, oil prices have declined significantly and reached historically low levels in 2016. In 2011, PET plastic scrap prices were at a peak of \$500/ton and have steadily dropped to \$200/ton in 2016. By November 2020, the price dropped further to \$101/ton. New plastic is manufactured from oil, so when the price of oil is very low, using recycled plastic can be more expensive because it has to be sorted and cleaned.

Additionally, changes to processing payments have not kept pace with the decline in scrap values. According to the Legislative Analyst's Office, the state

subsidizes recycling by making processing payments to recyclers and processors. Processing payments are intended to cover the difference between a container's scrap value and the cost of recycling it (including a reasonable rate of return). Both the costs of recycling and the scrap value of beverage containers can fluctuate significantly based on changing market prices. As a result, processing payments vary over time. Some contend that processing payments have failed to keep up with real time prices and includes a minimum three-month gap, resulting in recycling centers receiving insufficient state payments to make up for the income they may lose from the decline in scrap value.

According to CalRecycle, as of February 26, 2021, there are 1,224 recycling centers in the state. Some counties, such as Trinity, Sierra, and Alpine, have zero recycling centers.

- 9) *Rollercoaster recycling rates = rollercoaster fund balance.* When the program was first implemented, the recycling rate for eligible containers increased from 52% to 85%, exceeding the statutory goal of 80%. Additionally, the total number of containers recycled tripled due to the higher recycling rate and several expansions in the types of eligible containers over the years. In the past, the high recycling rate combined with the large number of additional expenditures resulted in budgetary shortfalls within the BCRF.

However, in recent years, the recycling rate for beverage containers has fallen and according to the most recent quarterly BCRF report, *Status of the Beverage Container Recycling Fund FY 2019-2020*, based on data through June 2020 and published on February 17, 2021, the recycling rate is projected to decrease to 71.1% for the 2019-20 FY. This decrease in recycling rates had led to a surplus of funds in the BCRF due to unredeemed CRVs. However, that report also projects a swing from a structural surplus of \$73.4 million for the 2019-20 FY to a \$28.5 million structural deficit for 2020-21 FY, and an \$11 million structural surplus in 2021-22 FY.

- 10) *Limitations of the current Bottle Bill program.* According to a 2017 CalRecycle publication, the Bottle Bill program is limited in its abilities to adapt to changes in consumer products and behavior, developments in recycling systems, and fluctuations in the global commodities market. These limitations have created challenges and missed opportunities to maximize the benefits of recycling beverage containers, especially climate change benefits. To that end, CalRecycle proposed a policy framework outlining key components of reform and based on the following principles:

- a) *Improving recycling and remanufacturing.* According to CalRecycle, the program has been successful in its initial goal of reducing litter by providing recycling collection opportunities for consumers. However, collection does not ensure that a product is recycled into a new commodity. Future investments should be dedicated to creating clean, recyclable streams of material to facilitate recycling and remanufacturing. To facilitate recycling and remanufacturing, CalRecycle will focus on reform efforts on maintaining redemption opportunities for consumers and increasing the stream of clean recyclable materials.
- b) *Sharing responsibility.* According to CalRecycle, historically, the consumer has shouldered most of the financial burden to sustain the program. Program responsibilities and financing should be rebalanced among all program participants. Under the current program, consumers pay \$0.05 or \$0.10 on each beverage container purchased, and in order to get their money back, consumers must travel to a recycling center to return the container. In contrast beverage manufacturers pay \$0.00024 for each polyethylene terephthalate (PET) container they sell in California.
- c) *Enhancing adaptability and sustainability.* According to CalRecycle, increases in the recycling rate have resulted in a structural deficit in the BCRF. In addition, the program does not respond quickly to fluctuations in the global commodities market. The program must be both nimble and fiscally sustainable to advance the state's economic and environmental goals. A comprehensively reformed program must be fiscally stable and include a mechanism preventing future structural deficits.

Comments

- 1) *Purpose of Bill.* According to the author, "SB 38 provides a comprehensive reform to California's antiquated beverage container redemption and recycling program, known as the Bottle Bill. This bill establishes a new streamlined stewardship program that places redemption and recycling responsibilities on those who are distributing beverages inside California.

"Created in 1986, the current Bottle Bill system has prevented billions of single-use beverage containers from becoming litter on our streets and going into landfills. But after three decades, the system is slow to adapt to changes, often has significant structural deficits, and relies too heavily on consumers for financing while not maintaining convenience for them to redeem deposits. After more than 30 years, the Bottle Bill has become convoluted and beyond

simple fixes.

“In 2017, Governor Brown first called for a comprehensive solution to the problems plaguing today’s outdated system. SB 38 builds on the recommendations that came out of the Governor’s stakeholder meetings, the Legislative Analyst’s Office report, and the Senate Environmental Quality Committee oversight hearing on beverage container recycling that year. The bill requires distributors to form a stewardship program, which is similar to how bottle bill programs are run in most other states, and must be approved by CalRecycle.

“SB 38 will reduce the state’s bureaucratic function by creating a distributor stewardship program and allowing CalRecycle’s focus to be where it is most efficient – on oversight and enforcement – of the beverage container redemption and recycling program.”

2) *Stopgap changes to the Bottle Bill program.* Some changes proposed by SB 38 would take effect on January 1, 2022, and be operative until July 1, 2024, when the BCSO starts implementing its plan. These include (1) changing the requirements of certified recycling centers that are RVMs and (2) changing the “take-back” responsibility of dealers in unserved convenience zones.

a) **Loosening requirements of RVM recycling centers.** In 2018, AB 2493 (Bloom, Chapter 715, Statutes of 2018) gave flexibility to recycling centers utilizing RVMs or unmanned automated equipment by changing the requirements that the recycling center had to meet to be considered “open for business.” AB 2493 removed the requirement that an employee be present during operating hours, and instead allowed such recycling centers to provide an attendant for at least 10 hours per week. This change allowed more flexibility in the program and more convenience zones to be considered “served.” SB 38 loosens these requirements further by completely removing the attendant requirement and only requires that the facility be operational and functioning no less than the nearest dealer’s hours. This change brings about many questions. What if the equipment malfunctions? With no attendant present, what are the consumer’s options?

The committee should amend the bill to remove these changes to RVM recycling center requirements, reverting the bill back to existing law.

b) **Changing “take back” responsibility for dealers.** Currently, dealers in an unserved convenience zone (an area that does not have a certified recycling center) have two options: (1) to submit an affidavit to CalRecycle and “take

back” empty beverage containers from consumers or (2) pay \$100 per day to not have to take back or redeem the empty beverage containers. SB 38 removes the option of paying an in-lieu fee and instead requires all dealers within unserved convenience zones to redeem the beverage containers and explicitly allows dealers to do so through an RVM on the dealer’s premises. This responsibility will remain in effect until July 1, 2024, when the Beverage Container Recycling Program takes effect.

Dealers are already able to utilize RVMs, or other mechanisms, to fulfill their takeback responsibility, as long as the RVMs take back all material. Given that existing law already allows dealers to use RVMs in fulfilling their take back responsibility, a question arises as to why this technology needs to be specifically called out in statute.

- 3) *Changing some Bottle Bill terminology and definitions.* Commencing July 1, 2024, some new terminology and definitions will be used in the bottle bill:
 - a) **Deposit beverage.** “Deposit beverage” replaces the term “beverage.” The definition of “deposit beverage” is also amended to not exclude beverages based on its container and to provide that it is only considered a “deposit beverage” if it falls within specific volume amounts (amounts differ depending on whether it is a carbonated and noncarbonated beverage). According to the author, the purpose of specifying volumes that apply to “deposit beverage” is consistent with the beverage sizes that consumers typically purchase and with other state bottle bill programs. Additionally, these sizes are consistent with what is typically accepted by RVMs. Does specifying volumetric amounts that would be considered a “beverage” preemptively restrict the inclusion of future beverages that fall outside of the specified amounts? Should “larger” beverage containers automatically be excluded from the Act because it is incompatible with automated technology?
 - b) **Redemption centers.** The term “redemption center” replaces “recycling center.” Dealers that have over \$1 million in sales would also be considered “redemption centers,” and would be required to register with BCSO.
 - c) **Redemption rate v. recycling rate.** The success of the existing Bottle Bill program has been measured based on the “recycling rate” of beverage containers. “Recycling rate” is defined as “the proportion of empty beverage containers by type returned to processors *for recycling*” (emphasis added). Thus, the definition of recycling rate does not refer to

the amount of beverage containers that are *actually* recycled, just those that are *collected or redeemed for* recycling. Usually, when a person thinks of recycling a beverage container, it is thought that the material for the beverage container is actually being used to make another product. SB 38 instead uses the term “redemption rate,” providing a more accurate description of the disposition of the beverage containers.

- 4) *Expanding consumer redemption opportunities under the BCSO.* One of the tenets of the Bottle Bill is to ensure consumers have adequate opportunity to redeem their empty beverage containers and get their deposit, or CRV, back. Under the existing Bottle Bill program, CalRecycle designates “convenience zones.” If a certified recycling center is not available within a convenience zone, dealers within that zone act as a backstop to ensure consumer convenience and are required to either redeem, or take-back, the beverage containers or to pay an in-lieu fee. The policy behind this system is that it should be just as easy for a consumer to get back their deposit as it was for them to pay it in the first place.

SB 38 takes a different approach to convenience - the concept of convenience zones is eliminated and instead dealers with sales over a threshold amount (\$1 million) are required to redeem empty beverage containers regardless of proximity to a redemption center. As to not disrupt the business operations of “smaller” dealers (those with sales between \$1 million and \$4 million) who may have more limited resources, SB 38 allows those dealers to limit the amount of beverage containers to 24 containers per person, per day. Additionally dealers, as redemption centers, are authorized to use reverse vending machines and bulk redemption machines, as approved by BCSO. BCSO would also be required to provide a searchable database of redemption centers, by county, to consumers.

SB 38 additionally requires dealers to post the phone number and website, both which would be established by CalRecycle, that would provide redemption opportunities information. It may be helpful to additionally inform consumers that they can redeem their empty beverage containers at that particular store, if applicable, increasing consumer access to redemption opportunity information.

To increase convenience to consumers in knowing which stores they can redeem their empty beverage containers, the committee may wish to amend the bill to require dealers subject to the take back requirements to post a sign indicating as such, in accordance with standards set by BCSO in its plan.

- 5) *Expansion of handling fee eligibility.* Under the current Bottle Bill program, handling fees are paid to operators of supermarket sites, rural region recyclers, and nonprofit convenience zone recyclers. Dealers that operate a RVM may apply to be a certified recycling center as an operator of a supermarket site. Handling fees, which are funded by unredeemed CRVs, were intended to provide an incentive to these specific recyclers to open a recycling center within the convenience zone. SB 38 expands handling fee eligibility to all redemption centers, including dealers with sales that exceed \$1 million, regardless if the dealer is operating a certified redemption center. Further, it is unclear if a redemption center can be eligible for handling fees even if it does not accept all material types, which is the current requirement. This explicit requirement is not in the bill, implying that a redemption center, including dealers, can be eligible for handling fees even if they do not accept all material types.

If the purpose of the handling fee was to provide an incentive to open locations where consumers can redeem their CRV, is it appropriate for a dealer, who already is making money off of the sale of these beverages, to receive an additional incentive? Is this consistent with the original purposes of a handling fee? On the other hand, by requiring all dealers with over \$1 million in sales to redeem empty beverage containers, an argument can be made that their actions are consistent with those of redemption centers.

A question arises as to if redemption rates are high, and thus the amount of unredeemed CRVs low, will there be enough unredeemed CRVs to cover all redemption centers and dealers, including those that do not accept all material types?

- 6) *Leans towards automation.* SB 38 would make various changes to the Bottle Bill program that favors the use of automated equipment.
- **Paying based on count versus weight.** Commencing July 1, 2024, dealers and redemption centers will be required to redeem beverage containers based on the actual amount of containers being redeemed, instead of by weight, as is allowed under existing law. Under existing law, if a consumer redeems their empty beverage containers at a recycling center, the redemption is based on weight (which results in the consumer receiving a little less than what is actually paid as the CRV). One criticism that some have of recycling centers are the wait periods. If wait times are already an issue when the recycling centers are permitted to pay based on weight, it is likely those wait times will increase when the redemptions are required to be based on count. A

potential consequence of this change is that redemption centers will be more motivated to purchase automated machinery, such as RVMs, that are able to count beverage containers at faster rates than a person. Could this promotion of automated means also mean a decline of jobs at recycling centers?

- **Automatic increase in CRV.** Studies have shown that when a redemption value is increased, the redemption rate will also increase as people are more motivated to redeem their beverage containers. An increase in redemption rate, coupled with the requirement that CRVs be paid based on count and not weight, could mean that more people will be looking to redeem their beverage containers, and in higher quantities. More people redeeming beverage containers, coupled with a requirement to redeem based on quantity, could lead to longer lines at redemption centers; with operators of redemption centers looking for ways to make the process more efficient.

7) *Ensuring compliance of distributors.* To provide incentives for stakeholder compliance, other stewardship programs have prohibited certain groups from selling their product in the state unless they were in compliance with the stewardship program. For example, under the Used Mattress Recovery and Recycling Act, manufacturers, renovators, and distributors (the entities required to form a stewardship organization under the act) are prohibited from selling, offering for sale, or importing mattresses into the state unless the manufacturer, renovator, or distributor is in compliance with the act, including registration with CalRecycle. SB 38 does not contain this same prohibition against distributors of deposit beverages.

The committee may wish to amend the bill to prohibit a distributor from selling, offering for sale, or importing deposit beverages into the state unless the distributor is in compliance with the act.

8) *Development of other stewardship programs.* The Legislature has enacted various extended producer responsibility programs. Over time, those programs developed, incorporating elements not previously considered but later realized to be necessary. For example, in response to a California State Auditor audit of the mattress stewardship program, the program was amended to increase mattress recovery opportunities. Additionally, in both the mattress and carpet stewardship programs, subsequent legislation inserted contingency plans in the event a stewardship organization ceased to operate the program, either on its own accord or by decertification of CalRecycle. The contingency plans provided for the transfer of liabilities, assets, and responsibilities to a

subsequent organization, and, in some cases to CalRecycle. Moneys that are collected by the organization from the consumer for the purposes of implementing the program were also transferred.

While a Bottle Bill stewardship program should be given those same considerations, it should also be taken into account the program's unique situation. How does the transfer of assets apply in a Bottle Bill stewardship program whose revenue consists of both consumer money (CRV) and distributor member money (stewardship fee paid by distributor members of BCSO)? Additionally, the purpose of this bill is to relieve CalRecycle of its administrative duties of the Bottle Bill, allowing it to focus on oversight and enforcement. If, pursuant to contingency plans, CalRecycle becomes administrator of the bill program, would that defeat the purpose of the bill?

The committee may wish to require the author, before the bill is heard on the Senate Floor, to consider and include, if appropriate, the following elements that have been incorporated into other stewardship programs:

- *Contingency plans and processes in the event a BCSO is decertified or no longer wishes to administer the program.*
- *A prudent reserve in its budget*
- *Prohibition against BCSO from expending revenues from unredeemed CRVs to pay for civil penalties or costs associated with litigation between the organization and the state.*

9) *Mixed results for California EPR programs.* To date, the Legislature has enacted 4 EPR programs of which CalRecycle has enforcement authority – paint, carpet, mattresses, and pharmaceutical and sharps waste – showing varying degrees of success. While CalRecycle does not appear to have oversight issues with the paint stewardship program, CalRecycle was subject to an audit for its oversight of the mattress recycling program. The carpet recycling program has encountered the most challenges of the EPR programs with the enforcement history of the carpet stewardship organization being extensive and complicated. Only enacted in 2018, the pharmaceutical and sharps waste program is still in development.

10) *Success in Oregon.* There are 10 states in the United States that have bottle deposit programs, with Oregon having one of the highest redemption rates. While other states have experienced declining redemption rates over the last several years, Oregon has instead seen an increase. In Oregon, the program is a type of stewardship program run by the Oregon Beverage Recycling Cooperative (OBRC), a cooperation owned by Oregon beverage distributors and grocery retailers. The OBRC manages the deposit flow, reimburses grocery

retailers for refund values redeemed by the public, picks up and processes returned beverage containers across the state, and operates redemption centers.

11) *Major shift for many stakeholders.* As with any reform to long standing programs, shifting the Bottle Bill from a state-run redemption and recycling program to an industry-run stewardship program will result in Bottle Bill participants having to modify their operations. Some of these affected stakeholders include:

- **CalRecycle.** CalRecycle will no longer be the primary administrator of the program and will instead take on more of an oversight and enforcement role. CalRecycle will be responsible for establishing a website regarding beverage container redemption opportunities.
- **Distributors.** Distributors will be required to form the BCSO and run the stewardship program. Some of the main responsibilities of the BCSO include certifying and setting standards for redemption centers, processors, and dropoff or collection programs; reimbursing dealers and redemption centers for CRV amounts that have been paid to consumers; and paying handling fees to redemption centers and dealers.
- **Dealers.** Dealers with over \$1 million in sales are required to take-back empty beverage containers, in comparison to existing law which gives dealers in unserved convenience zones a choice to either take-back beverage containers or pay an in-lieu fee.
- **Redemption centers.** Redemption centers will no longer be subject to statutory operating requirements. Instead, those operating requirements will be set by BCSO in its plan.
- **Waste haulers.** A waste hauler typically relies on valuable recyclable material collected via a curbside collection program as a part of its business model. This includes empty beverage containers that they are able to redeem for its CRV, using the CRV to subsidize other curbside items that have little or no value. It is unclear what role waste haulers will have under the stewardship program.

12) *Pilot Program extension.* In an effort to increase consumer redemption opportunities, existing law authorizes CalRecycle, until January 1, 2022, to approve up to five recycling pilot projects. Potential budget trailer language could extend that program for another 3 ½ years, until July 1, 2025. Since SB 38 does not take effect until January 1, 2022, it does not contain language

referring to the pilot program.

If the pilot project is extended, the committee may wish to require the author to amend the bill to incorporate that extension.

13) *Other Bottle Bill considerations.* As the bill continues to move through the legislative process, the author should consider all of the following:

- **Immediate payments.** SB 38 requires redemption centers to accept, and immediately pay a refund value for, all empty beverage containers. What does it mean to be immediate in the context of reverse vending machines? In bag drop systems? What types of payment are considered “immediate”?
- **Electronic payments.** The existing Bottle Bill program specifically authorized payments to be made electronically (PRC §14531). That provision, however, is not in SB 38. Would electronic payments still be permitted after July 1, 2024?
- **Continuance of the Bottle Bill Pilot program.** Assuming the Bottle Bill pilot project program is extended until July 1, 2025, the author should consider what role the pilot projects have in this EPR structure, if any.

14) *Pending policy issues.* As this bill moves forward, the author will need to work with committee staff to ensure the policy concerns are addressed.

Related/Prior Legislation

SB 372 (2019, Wieckowski) was substantially similar to this bill. The bill was held on the Senate Floor.

SB 168 (2017, Wieckowski), as heard in committee is nearly identical to this bill. The bill was later amended to impose minimum postconsumer content standards on plastic beverage containers. SB 168 died on the Assembly Floor.

SOURCE: Author

SUPPORT:

Alliance of Nurses for Healthy Environments

Climate Hawks Vote
Consumer Watchdog
Dc Metals & Recycling
Environment California
Food & Water Watch
Greenaction for Health & Environmental Justice
Recycling Zone, Inc.
Save Our Shores
Story of Stuff
Tomra North America, INC.

OPPOSITION:

None received

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