"Pop for Parks": How to Fund B.C.'s Urgent Need for Land Conservation and Encourage the Beverage Industry to Improve its Recycling Rates

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1. Introduction[1]

British Columbia's beverage container recycling system is highly successful: not only was it the first jurisdiction in the world to implement a deposit system for beverage containers,[2] its coverage of beverage containers is comprehensive and it has a relatively high return rate.[3]

In bottle deposit systems, a deposit is paid when a consumer purchases a beverage, and is returned to the consumer when they return the empty beverage container. There is a certain percentage of consumers who do not return the container for a refund, resulting in the beverage industry incurring a "windfall" of funds from unredeemed bottle deposits. B.C. should rethink where its unredeemed beverage container deposit funds are being directed, and whether the regime is disincentivizing the industry to increase container return rates, as well as discouraging innovation and efficiency within the recycling program.

Moreover, B.C. should consider the political popularity of diverting unredeemed beverage deposits to environmental purposes, such as for the purpose of acquiring private land to be dedicated to conservation, as previously proposed by the Ancient Forest Alliance (this funding mechanism has been coined "Pop for Parks").

The first section of this report explains the importance of acquiring B.C. private land for conservation. It then goes over the Pop for Parks funding mechanism as a means to acquire private lands. Next, it describes B.C.'s current approach to unredeemed deposits and why directing unredeemed deposit funds to industry disincentivizes higher return rates and innovation. It then provides a detailed overview of B.C.'s current beverage container recycling system, including its legislative regime and its financial details. Next, it outlines the regimes in place in three U.S. states with bottle deposit systems that direct funds to environmental purposes: Massachusetts, New York and Michigan. It also discusses how there is precedent in Canada for diverting bottle recycling proceeds to environmental funds. Finally, the report concludes by addressing the perceived barriers – structural, financial, legal and political – that are held up as reasons why B.C. is unable to direct unredeemed bottle deposits to environmental conservation.

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[1] The author would like to thank Calvin Sandborn of the Environmental Law Centre and Matt Hulse for their review of this report.

[2] Deposit systems are recognized as highly successful programs: there is a strong correlation between the price of the deposit and what percentage of containers sold are returned (Bottle Bill Resource Guide, "The Fate of Unclaimed or 'Abandoned' Deposits" (2016), accessed 23 November 2016, online: <http://www.bottlebill.org/about/unclaimed.htm>), and as of 2010, Canadian deposit systems had a total return rate of 83%, while non-deposit systems had a total return rate of 41% (CM Consulting, "Who Pays What: An Analysis of Beverage Container Recovery and Costs in Canada" (2010; accessed 23 November 2016), at 11, online: <http://www.bottlebill.org/assets/pdfs/legis/canada/2010-WhoPaysWhat.pdf> ["*Who Pays What report 2010*"]).

[3] Container Recycling Institute, "The Environmental and Economic Performance of Beverage Container Reuse and Recycling in British Columbia, Canada" (August 2015), at 5, linked to from: <http://www.container-recycling.org/index.php?option=com_content&view=article&id=494>.

2. The Importance of Acquiring B.C. Private Lands for Conservation

About 5% of B.C.'s land base is private – which requires the outright purchase of private lands from willing sellers for new protected areas – while 94% is Crown (public) lands which may be established as new protected areas by government legislation. However, a high percentage of B.C.'s most endangered and biologically diverse and rich ecosystems are found on that small proportion of private lands, which tend to be found in temperate lower elevations and valleys where most humans live. As a result, private lands are disproportionately important for conservation efforts in B.C.

It is imperative that the B.C. government establish a plan to acquire private land for conservation. The Ancient Forest Alliance is proposing a minimum $40 million per year fund for that purpose. This would amount to less than one tenth of 1% of B.C.'s annual provincial budget (i.e. 1/1000th) of over $44 billion.[4] The Pop for Parks initiative could generate approximately $10 million–$20 million per year.[5]

Further, studies have shown that for every $1 invested by the government in BC's provincial park system, more than another $8 is generated in the provincial economy as visitors spend their funds in local restaurants, campsites, motels, grocery stores, and gas stations.[6]

Land conservation efforts are good for the economy, the environment and the public.

3. Pop for Parks Funding Mechanism

The University of Victoria's Environmental Law Centre produced a report in December 2015 that outlined several funding mechanism options to establish dedicated private land acquisition funds (the ELC Report).[7] The ideas in this report have received support from the Association of Vancouver Island and Coastal Communities (AVICC),[8] which represents 53 B.C. municipalities[9] and passed a resolution in April 2016 calling on the province to establish a "Natural Land Acquisition Fund" to purchase and protect

[4] British Columbia, Budget and Fiscal Plan 2014/15 – 2016/17 (February 18, 2014; accessed 6 July 2017), at PDF p 11, online: BC Budget <http://bcbudget.gov.bc.ca/2014/bfp/2014_budget_fiscal_plan.pdf>.
[5] See note 7, below.
[6] British Columbia, BC Parks More Than Just a Pretty Place (accessed 6 July 2017), online: <http://www.env.gov.bc.ca/bcparks/bcparks.pdf>.
[7] Environmental Law Centre, University of Victoria, "Finding the Money to Buy and Protect Natural Lands" (December 2015), online: ELC UVic, <http://www.elc.uvic.ca/wordpress/wp-content/uploads/2015/12/FindingMoneyForParks-2015-02-08-web.pdf>.
[8] Ancient Forest Alliance, "Press Release: Association of Vancouver Island and Coastal Communities (AVICC) passes resolution for protection of Vancouver Island's old-growth forests" (9 April 2016), online: <https://www.ancientforestalliance.org/news-item.php?ID=988>.
[9] Association of Vancouver Island and Coastal Communities, "About AVICC" (accessed 7 July 2017), online: <http://avicc.ca/about-the-avicc/>.

endangered ecosystems on private land.[10] In addition, a group of 18 major B.C. conservation organizations have signed-on to a letter supporting the establishment of the provincial fund.[11]

The ELC Report expands on the proposed "Pop for Parks" funding mechanism, which directs unredeemed bottle container deposits to a dedicated land acquisition fund.

Importantly, as the Pop for Parks funding mechanism diverts a funding stream that is currently a windfall for the B.C. beverage industry, it is the only listed funding option that does not require a tax increase on consumers.

As will be elaborated on below, U.S. states like Massachusetts, New York and Michigan keep all or a portion of their unredeemed bottle deposits and direct them to environmental programs. This has proven to be very politically popular, the beverage industry is still generating substantial profits, and beverage prices have been shown not to increase in states with bottle deposit systems.

4. B.C.'s Beverage Container Deposit System

Prior to how B.C.'s return system handles unredeemed bottle deposits, a detailed overview of the entire beverage container deposit system will be provided.

Overview

There are two corporate entities that collect and recycle beverage containers in B.C.: Brewers Distributor Ltd. ("BDL") and Encorp Pacific (Canada) ("Encorp").

BDL is a private company subcontracted by Brewers Recycled Container Collection Council ("BCRRR"), a non-profit society that acts as a stewardship agency for certain alcoholic beverage distributors, to collect domestic cooler, beer, and cider containers. These alcoholic beverage containers will be referred to as "BDL Containers." BDL coordinates recycling collection through alcohol retailers (government-operated liquor stores and private Cold Beer and Wine stores), and also through Encorp's "Return-in" depots.

Encorp is a non-profit society that represents the brand owners of all other beverage types, including wine, spirits, some ciders and coolers, some imported beer, and all non-alcoholic beverages other than milk and milk alternatives (which are exempted from the deposit program). These will be referred to as "Encorp Containers." Encorp operates the "Return it" recycling depots across B.C., where all types of beverage containers (other than milk and milk alternatives) and some other recyclables can be returned.

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[10] Association of Vancouver Island and Coastal Communities, 2016 AVICC Resolutions Disposition (May 2016), at PDF p 4, online: <http://avicc.ca/wp-content/uploads/2016/05/2016-Resolutions-Disposition-Summary.pdf>.

[11] Sixteen organizations are listed here: Ancient Forest Alliance, "Press Release: Support Grows Among Major Conservation Groups for a Provincial Fund to Buy New Parks" (21 January 2016), online: <http://www.ancientforestalliance.org/news-item.php?ID=963>. Additionally, BC Spaces for Nature and the BC Wildlife Federation have signed-on since the date of the press release.

Table 1: B.C. Beverage Container Details	
Population	4.751 million (2016)[12]
Population density	4.8 persons per square kilometre[13]
Number of return locations	Encorp Containers may be returned to 171 locations;[14] BDL Containers may be returned to 1,144 locations.[15]
Beverages covered	All ready-to-drink beverages except meal replacements, milk and milk alternatives (this includes beer, coolers, cider, wine, spirits, and all non-alcoholic beverages)[16]
Containers covered	All container types[17]
Deposit cost (paid by consumers)	Non-alcoholic beverages: up to and including 1 L, 5¢; over 1 L, 20¢ Alcoholic beverages: up to and including 1 L, 10¢; over 1 L, 20¢.[18]
Recycling fee (paid by consumers)	Encorp Containers have a container recycling fee ("CRF") on most of its containers: 2¢ on aluminum cans, 4¢ on plastic bottles, 9-16¢ on glass bottles, 0-4¢ on bi-metal cans, 1-5¢ on drink boxes, and 0-6¢ on gable top containers;[19] BDL Containers: n/a.
Handling fee (paid by administrator of system to retailers for collecting containers)	Note: these are negotiated between the administrator of the system and the collection agent (retailer). Non-alcoholic beverages: not disclosed;[20] Alcoholic beverages: 5¢ per dozen to B.C. Liquor Commission and retailers; 12¢ per dozen to bottle wholesalers + a 10¢ per dozen sorting fee.[21]
Return rate	For Encorp Containers, 78.9% (2015);[22] for BDL Containers, 90.1%-92.2%, depending on container type (2015)[23] *

[12] British Columbia, "Population Estimates" (accessed 6 February 2017), online: <http://www.bcstats.gov.bc.ca/statisticsbysubject/demography/populationestimates.aspx>.
[13] Statistics Canada, "Focus on Geography Series, 2011 Census" (modified 12 November 2015; accessed 6 February 2017), online: <http://www12.statcan.gc.ca/census-recensement/2011/as-sa/fogs-spg/Facts-pr-eng.cfm?Lang=Eng&GC=59>.
[14] CM Consulting, "Who Pays What: An Analysis of Beverage Container Collection and Costs in Canada, 6th edition" (May 2014; accessed 6 February 2017), at 29, online: <http://www.cmconsultinginc.com/wp-content/uploads/2014/07/WPW2014.pdf>.
[15] Brewers Distributor Limited, "Annual Report to the Director 2015 Calendar Year" (24 June 2016; accessed 6 February 2017), at 5, online: <http://envirobeerbc.com/wp-content/uploads/2016/06/BDLs-2016-Annual-Report-to-Ministry-Covers-2015-Calendar-Year.pdf> ["*BDL Annual Report 2015*"].
[16] *Recycling Regulation*, BC Reg 449/2004, at Schedule 1, s 1 ["*Recycling Regulation*"]. Note: milk and milk substitutes are regulated under the "packaging and printed paper" category at Schedule 5 of the *Recycling Regulation*.
[17] Bottle Bill Resource Guide, "British Columbia" (updated 20 November 2014), online: <http://www.bottlebill.org/legislation/canada/britishcolumbia.htm> ["*Bottle Bill Resource Guide, B.C.*"].
[18] *Bottle Bill Resource Guide, B.C.*, see note 17.
[19] Encorp Return-It, "It's Worth It" (accessed 6 February 2017), online: <https://www.return-it.ca/cfm/index.cfm?It=907&Id=7&Se=38&Lo=2&AF=907&AA=Download&AD=245,Dlf1>.
[20] *BDL Annual Report 2015*, at 12, see note 15.
[21] *Bottle Bill Resource Guide, B.C.*, see note 17.
[22] Encorp Return-It, "2015 Annual Report: Executive Summary" (accessed 29 December 2016), online: <https://www.return-it.ca/ar2015/executive-summary.html> ["*Encorp 2015 Annual Report Executive Summary*"].
[23] *BDL Annual Report 2015*, at 10, see note 15.

Responsible for system	BCRRR is responsible for all beer and cider refillable glass bottles and all alcoholic beverages in aluminum cans;[24] Encorp is responsible for all other beverage containers except milk and milk alternatives (this includes soft drinks, juice, water, wine, coolers and spirits, as well as non-refillable beer bottles).[25]
Reclamation system	All containers may be returned to Encorp's "Return-in" depots; alcohol containers may also be returned to the alcohol retailers (government-operated liquor stores and private Cold Beer and Wine stores), and non-alcoholic beverage containers may be returned to retailers (supermarkets and convenience stores).[26]
Portion of unredeemed deposits directed to environmental protection	None: all unredeemed deposits are retained by Encorp or BDL.
Annual value of unredeemed deposits	$16.6 million from Encorp containers (2015); $3.6 million from BDL containers (2015).[27]

* Note the significantly higher return rate for BDL's containers than for Encorp's containers. This may be in part due to the extra financial incentive that refillable bottles (which are used in the brewing industry) bring, as they allow brewers to save on new bottle costs. It may also be due to the fact that there are more drop-off locations,[28] the deposit on beer cans is higher than on non-alcoholic canned beverages,[29] and the beer industry has been taking back bottles and recycling longer (Encorp was formed in 1994,

[24] Bottle Distributors Limited, "Who runs the beer container recycling program" (accessed 6 February 2017), online: <http://envirobeerbc.com/how-does-it-work/>. Note: BRCCC also collects beer, cider and cooler packaging, as part of the packaging and printed paper collection requirements implemented by the B.C. government in 2011. Brewers Distributor Ltd. (BDL) is a privately owned company that BRCCC subcontracts to collect beverage containers.

[25] *Bottle Bill Resource Guide, B.C.*, see note 17.

[26] *Bottle Bill Resource Guide, B.C.*, see note 17.

[27] See *BDL Annual Report* 2015, note 15.
Deposits Received: $63,102,502
Deposits Refunded: $59,502,982
Deposits remaining = $3,599,520 ($3.6 million)

[28] As of December 31, 2015 there were 1,147 authorized return locations for beer and cider containers: 659 retail liquor stores, 196 government liquor stores, 220 rural agency stores and 7 bottle depots ("Brewers Recycled Container Collection Council (BRCCC), Schedule 5 Stewardship Plan 2016" (revised May 2016), at 11, online: <http://envirobeerbc.com/wp-content/uploads/2016/08/BRCCC-Schedule-5-Printed-Paper-Packacing-Approved-Stewardship-Plan.pdf>). This is as compared with approximately 674: this includes 174 Return-It depots as of 2015 (Encorp Pacific Canada, "2015 Annual Report" (accessed 6 February 2017), at 3, online: <http://www2.gov.bc.ca/assets/gov/environment/waste-management/recycling/recycle/beverage-containers/ar/encorp/2015_encorp_annual_report__assurance_report.pdf>), and over 500 retailers as of 2014 (Encorp Pacific (Canada), "Many Happy Returns: 2014 Annual Report" (accessed 6 February 2017), at 7, online: <http://www2.gov.bc.ca/assets/gov/environment/waste-management/recycling/recycle/beverage-containers/ar/encorp/2014-encorp-annual-report.pdf> ["*Encorp 2014 Annual Report*"]).

[29] *Who Pays What report 2010*, at 26, see note 3.

and BDL's predecessor, Pacific Brewers Distributor was formed in 1970 – and "Canadian brewers have been reusing [and] recycling… for over a century", as of 2010[30]). Importantly, BDL's goal return rate was 85% in its 2009-2014 stewardship plan,[31] as compared with Encorp's 2015 goal return rate of 80.6% (which, as mentioned, was not achieved).

Legislative Regime

In 1970, B.C. enacted the *Litter Act*, which was the first beverage container recycling program in North America and imposed a deposit on soft drinks and beer.[32]

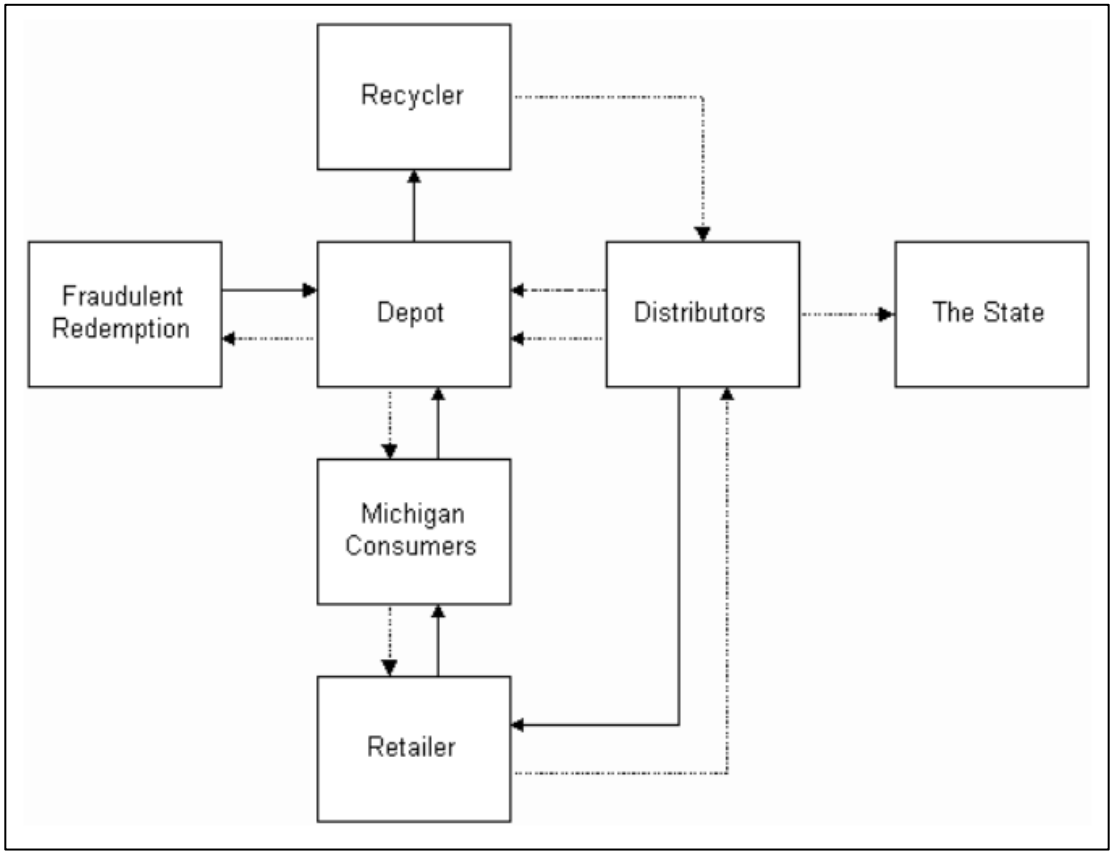
In 1997, the *Beverage Container Stewardship Program Regulation* expanded the scope of beverage containers covered under the program to include any ready-to-serve beverage sold in a container that is sealed by its manufacturer (i.e. bottled water, juice, "new age" drinks, and alcohol), excluding milk and milk substitutes.[33]

In 2004, the *Recycling Regulation* replaced the *Beverage Container Stewardship Program Regulation*, consolidating it with all other stewardship regulations and requiring all stewardship agencies to submit a plan detailing how their beverage container program would function. The *Recycling Regulation* established a 75% recycling target for all types of containers.

[30] Brewers Distributor Limited, "2010 Annual Stewardship Report" (April 1, 2009-March 31, 2010), at 2, online: <http://www2.gov.bc.ca/assets/gov/environment/waste-management/recycling/recycle/beverage-containers/ar/bdl/finalbdlasr2010.pdf>.
[31] *BDL Annual Report* 2015, at 9, see note 15.
[32] *Bottle Bill Resource Guide, B.C.*, see note 17.
[33] *Bottle Bill Resource Guide, B.C.*, see note 17. Note: "new age" drinks is not defined in this source, but has been defined elsewhere to include flavoured water, energy drinks, coconut water, kombucha, sports drinks and nutrient-enhanced teas (Beverage Marketing Corporation, "U.S. New Age Beverages Through 2020" (November 2016), online: <http://www.beveragemarketing.com/shop/new-age-beverages-in-the-us.aspx>).

How the System Functions

Graphic 1: Depot System (Michigan as an example)



Dashed lines are financial flows, and solid lines are container flows. Source: "Depot System Container and Financial Flows," using Michigan as an example (from: http://www.deq.state.mi.us/documents/deq-water-greatlakes-protection-michiganbottle.pdf, at 21).
Note: fraudulent redemption is a problem in Michigan (and most U.S. states with bottle deposit systems, as only 11 states have deposits, so people from out-of-state return their bottles in deposit states). This is not reported to be a problem in Canada.

Encorp

The Encorp Stewardship Plan covers all ready-to-drink beverage containers for soft drinks, juice, water, wine, coolers and spirits, plus non-refillable beer bottles.[34] When a retailer receives beverages subject to a deposit, it pays the manufacturer the deposit value. The consumer pays the deposit value to the retailer when purchasing the beverages. The consumer may return the empty beverage container to a retailer that sells that same beverage container subcategory and brand,[35] or an Encorp "Return It" depot and receive their deposit back. Encorp picks up containers from retailers and pays the retailers the deposit amounts plus a handling fee for every container they collect. Encorp is responsible for recycling the containers.

[34] *Encorp 2015 Annual Report Executive Summary*, see note 22.
[35] *Recycling Regulation*, see note 16.

BDL

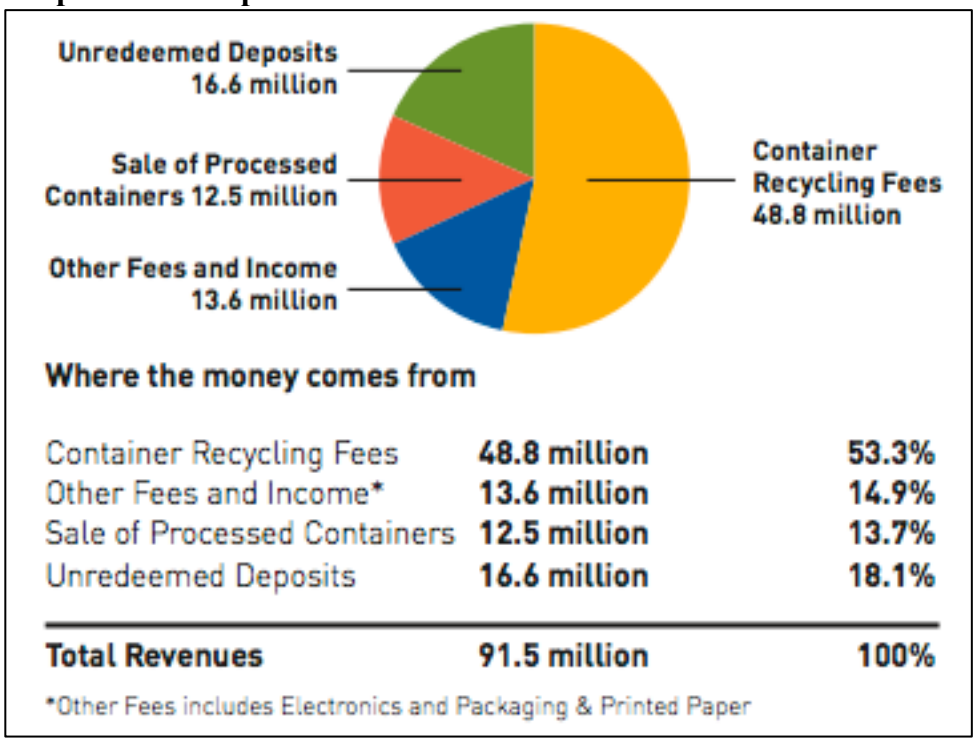
When a retailer (either a government liquor store or Cold Beer and Wine store) receives beverage containers subject to deposits, it pays the manufacturer the deposit values. The consumer pays the deposit value to the retailer when purchasing the beverages. The consumer may return the empty beverage container to a government-operated liquor store, Cold Beer and Wine store,[36] or an Encorp depot and receive their deposit back. BDL picks up containers from Encorp depots and pays Encorp the deposit amounts plus a fee for every container it collects[37] and picks up containers from retailers and pays the deposit amounts. BDL is responsible for recycling the containers.

Encorp and BDL retain all unredeemed deposits.

Program Financials

Encorp's current "Return-it" program's funding is described in its 2015 Annual Report as follows. Unredeemed deposits comprise 18.1% of its funding:

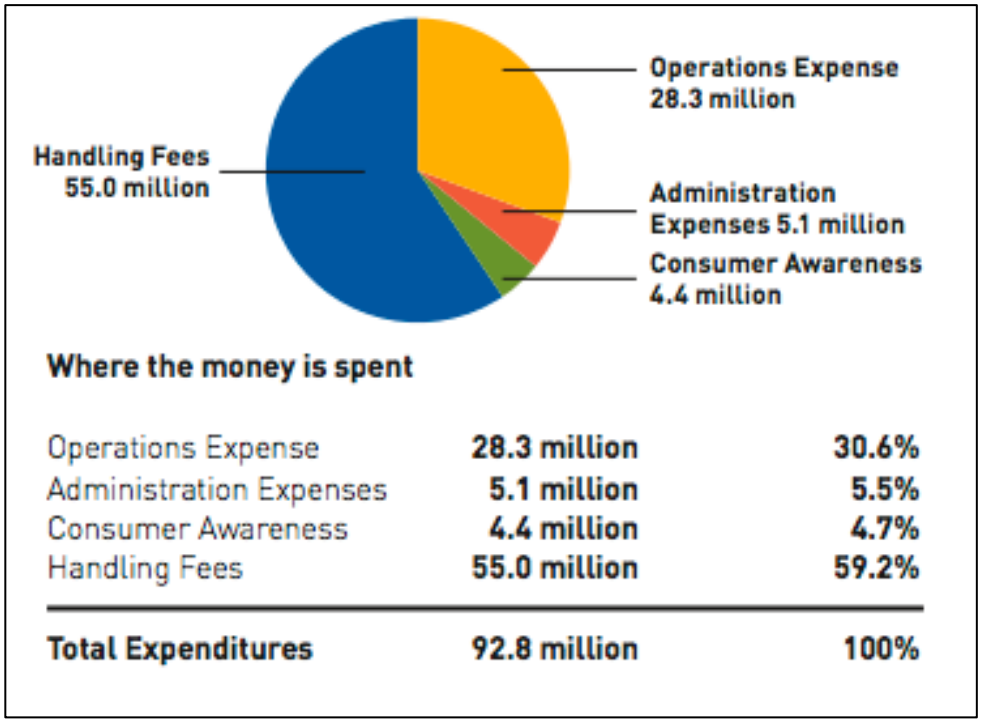
Graphic 2: Encorp Revenues 2015



Note: the interest earned on bottle deposits between the time they are paid and the time they are redeemed is not reported in Encorp's annual report. It may be included in the figure it provides for "unredeemed deposits", or subsumed into "other fees and income." If it is included in "other fees and income", this may affect calculations later in this report slightly.

[36] *Bottle Bill Resource Guide, B.C.*, see note 17.
[37] *Bottle Bill Resource Guide, B.C.*, see note 17.

Graphic 3: Encorp Expenditures 2015



Where the money is spent

Operations Expense	**28.3 million**	**30.6%**
Administration Expenses	**5.1 million**	**5.5%**
Consumer Awareness	**4.4 million**	**4.7%**
Handling Fees	**55.0 million**	**59.2%**
Total Expenditures	**92.8 million**	**100%**

Revenues and Expenditures (source: Encorp Pacific (Canada), "Annual Report 2015" (accessed 6 February 2017), at 38, online: <https://www.return-it.ca/ar2015/pdf/AnnualReport.pdf>).

The 2014 edition of the industry report "Who Pays What", by CMC Consulting, explains Encorp and BDL's funding models:

> Since the implementation of the CRF, the beverage industry bears no direct costs for the operation of the Beverage Container Recovery Program. Any funds that remain after all expenses are paid are placed into reserves. A minimum level of reserves must be maintained in order to ensure the long-term financial viability of the system. If these reserves accumulate beyond reasonable levels, Encorp can do one of two things; it can reduce or eliminate CRFs until the reserve is reduced to an appropriate level, or it can reduce the reserve by spending more money on activities designed to increase collection.
>
> On the other hand, individual brewers internalize their stewardship (collection, transporting, refilling, and recycling) costs.[38]

BDL does not disclose its revenues and expenditures in its annual reports on other readily available filings, so its expenditures have not been analyzed.

Prior to the Current Industry-led System

After 1970, when the *Litter Act* was implemented, but prior to 1997, when the *Beverage Container Stewardship Program Regulation* was enacted, retailers were required to provide a refund to consumers who brought back beer and soft drink containers, and they

[38] *Who Pays What report 2014*, at 28, see note 14.

were responsible for disposing of the containers. This was referred to as a "refund system." It was optional for the retailer to collect a deposit from the consumer, but since it was required to issue a refund upon return, presumably most retailers did. Then the retailers retained the unredeemed deposits.[39] In the "refund system", it was also optional for the bottle producer to collect a deposit from the retailer, and the retailer to return the container to the bottle producer for a refund – if this happened, it rendered the system indistinguishable from a "deposit system."

Some of the containers that are currently collected by the bottle return program did not have deposits at that time (i.e. water and juice containers),[40] so municipalities collected these containers through their curbside recycling program (which only served a minority of B.C. households, at least as of 1991),[41] or through regular municipal garbage collection. Overall, only 40% of the beverage containers sold in B.C. were recovered through return to retailers (for containers with deposits – i.e. beer and soft drinks) or through the municipal recycling system. That means that 60% of the beverage containers ended up in the municipal solid waste stream.[42]

Glass and aluminum beer containers were recovered through a system run by Pacific Brewers Distributors Limited (now BDL).

Data on the cost to administer either of these programs are not publicly available.

5. B.C.'s Approach to Unredeemed Deposits

B.C.'s Container Recycling Fee (CRF)

In B.C., the beverage container recycling program is touted as a shining example of "extended producer responsibility" ("EPR"). EPR is an environmental policy approach in which a producer's responsibility for a product is extended to the post-consumer stage of a product's life cycle.[43] The cost of dealing with the product in its post-consumer stage is either transferred to consumers as an added fee that is incorporated into the purchase price, or absorbed into the profit margins of the producer.

Currently, though industry is tasked with running the program, it is B.C. consumers who are paying for the beverage container recycling program: when consumers purchase most ready-to-drink beverages, alcoholic or non-alcoholic, they pay a deposit and a container recycling fee ("CRF"). The purpose of the deposit is to encourage consumers to return

[39] Ministry of Environment, "A Review of the British Columbia Litter Act" (August 1988), at 14, online: <https://www.for.gov.bc.ca/hfd/library/documents/bib59758.pdf>.
[40] BC Environment, "Beverage Container Recovery System: Private Sector Cost Estimates" (November 1991), at 22; obtain by searching "beverage container recycling" online at <http://a100.gov.bc.ca/pub/eirs/finishDownloadDocument.do?subdocumentId=5952> ["*BC Environment 1991 Report*"].
[41] *BC Environment 1991* Report, at 1, see note 40.
[42] *BC Environment 1991* Report, at 1, see note 40.
[43] The Organization for Economic Co-Operation and Development (OECD) definition is cited at Lifset, R, Atasu, A & Tojo, N, "Extended Producer Responsibility: National, International, and Practical Perspectives" (April 2013), Journal of Industrial Ecology, Vol 17, Issue 2, 162-166, at 162, online: <http://onlinelibrary.wiley.com/doi/10.1111/jiec.12022/full>.

their containers to a recycling depot and reclaim the deposit. The CRF is added to the price of the beverage (and appears as a separate line item on the consumer's receipt), and is a fee designed specifically to cover recycling costs. If consumers return the bottle to a recycling depot or retailer for a refund, they retrieve their deposit, but the CRF is always retained by the beverage industry to operate the program. If consumers do not return their bottle (for example, they recycle it through our municipal recycling program or they throw it in the garbage), both the deposit and the CRF are retained by the beverage industry through their stewardship organizations. The CRF is a built-in fee that exists to fund recycling efforts.

The B.C. beverage container recycling industry report, "Who Pays What" stated in its 2012 edition:

> Since the implementation of the Container Recycling Fee (CRF), the beverage industry (except for the domestic beer industry) bears no direct costs associated with the operation of the Beverage Container Recycling Program. These costs have been transferred to the product consumer/user [emphasis added].[44]

This statement does not mention that it is not just the CRF that funds the recycling program; unredeemed deposits are also used for this purpose. This is where the B.C. beverage container recycling program diverges from a true EPR scheme: it is consumers who are paying for the bottle return system, *not* the profitable beverage industry.

B.C.'s Disincentivization of Higher Bottle Return Rates

In addition to the urgent need for the B.C. government to establish a funding stream to acquire private land for conservation, the current bottle deposit regime incentivizes the beverage industry to keep the bottle return rate low – just above the legislated minimum return rate.

It may seem fitting that unredeemed deposits go towards funding the recycling program. However, this ignores the purpose of the container deposits and creates a reverse incentive to improving the container return rate.

The purpose of container deposits is to encourage consumers to return the product, which will then be recycled, reused or disposed of.[45] Deposits correlate with higher return rates,[46] and there is a correlation between the *amount* of the deposit and the return rate – with higher deposits equating with higher return rates.[47]

The reverse incentive arises from two conditions: 1) the B.C. government legislated a container return rate of only 75%,[48] a target B.C.'s beverage industry has easily achieved for a number of years; and 2) the beverage industry has been permitted to use

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[44] *Who Pays What report 2010*, at 38, see note 3.
[45] John Jackson, "Extended Producer Responsibility in Canada, Europe and the United States" (January 2007), at PDF p 33, <http://www.cela.ca/sites/cela.ca/files/uploads/555_EU_Ch2_EPR.pdf>.
[46] *Who Pays What report 2014*, at 17, see note 14.
[47] Dominic Hogg, *et al*, "Have We Got the Bottle? Implementing a Despot Refund Scheme in the UK" (September 2010), at 19-20, online: <http://www.bottlebill.org/assets/pdfs/campaigns/UK-CPRE-2010.pdf>.
[48] *Recycling Regulation*, s 5(a), see note 16.

unredeemed bottle deposits to fund their recycling program. In 2015 alone, these unredeemed deposits amounted $20.2 million.[49] As a result, the beverage industry now relies on consumers neglecting to return their bottles in order to fund the program and lacks an incentive to improve return rates. Indeed, Encorp reports that its return rate actually *decreased* slightly from 2014 to 2015 – despite its return rate goal increasing.[50] This has also been the case in previous years, as demonstrated in Table 2 below. Further, the increase in the return rate from 1998 (the first year of the program for which data is readily available) to 2015 has been a meager 2.4%.[51]

Table 2: Encorp return rates, 2005-2015

	2005	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**
Return Rate	74.5%	72.4%	76.1%	77.1%	79.3%	80.4%	79.8%	78.7%	80.1%	79.1%	78.9%
% Change		-2.1%	+3.7%	+1.0%	+2.2%	+1.1%	-0.6%	-1.1%	+2.4%	-1.0%	-0.2%

All data available from reports at this link: http://www2.gov.bc.ca/gov/content/environment/waste-management/recycling/product-stewardship/beverage-containers/annual-reports

Although BDL has reported much higher container return rates, the increase has also been minor: from 1998 to 2015, the return rate only increased 1.8%.[52]

These conditions also reduce the likelihood that the beverage industry will make the program more economical, as there will always be the CRF and the unredeemed bottle deposits on which to rely. The principle of EPR demands innovation, and B.C.'s current program has allowed the beverage industry's innovation to stagnate.

Finally, these conditions undermine efforts to achieve what we must all agree is the ultimate goal of any effective EPR scheme and recycling program: a 100% container

[49] Unredeemed deposits retained by Encorp: $87,024,402 deposits collected minus $70,381,314 refunds issued = $16,643,088 (*Encorp 2015 Annual Report Executive Summary*, see note 22).
Unredeemed deposits retained by Brewers Distributor Ltd.: $63,102,502 deposits received minus $59,502,982 deposits refunded = $3,599,520 (*BDL Annual Report 2015*, see note 15).

[50] 2014: Plan Target 80.1%, actual return rate 79.1%. From: Encorp Pacific (Canada), 2014 Annual Report Executive Summary (accessed 29 December 2016), online: Return-it <https://www.return-it.ca/ar2014/index.html#/executive-summary>.
Note: the report prepared in 1991 by a contractor for the B.C. Municipal Waste Branch recommended a return rate of 85% for all containers other than beer bottles and refillable bottles – for which a 95% return rate was recommended (*BC Environment 1991* Report, at 12, see note 40.).
2015: Plan target 80.6%, actual return rate 78.9% (*Encorp 2015 Annual Report Executive Summary*, see note 22).

[51] Return rate was 76.47% in 1998 (Annual Report by the Director 1998-1999 Reporting Period (accessed 6 February 2017), at 2, online: <http://www2.gov.bc.ca/assets/gov/environment/waste-management/recycling/recycle/beverage-containers/ar/historical/1998_99.pdf> ["*Annual Report by Director 1998*"]) and 78.9% in 2015 (Encorp Pacific (Canada), "2015 Annual Report" (accessed 6 February 2017), at 4, online: <https://www.return-it.ca/ar2015/pdf/AnnualReport.pdf> ["*Encorp 2015 Annual Report*"]).

[52] Return rate was 91.16% in 1998 (*Annual Report by Director 1998*, at 2, see note 51) and 93% in 2015 (Brewers Distributor Limited, "Many Happy Returns! You're Playing a Major Role!" (accessed 7 January 2016), online: <http://envirobeerbc.com/the-good-news/>).

return rate. Setting the target to anything less is to admit that it is acceptable to allow these containers to enter landfills, the municipal recycling stream, or the environment as litter – incurring financial and intangible costs to society. Further, this admits that the purpose of the redeemable container deposit is not an incentive for citizens to recycle, but a subsidy for an industry that is introducing environmentally harmful single-use containers into the market place. The logical outcome of achieving a 100% return rate is that there would be no unredeemed deposits to fund the recycling program. It would be disingenuous, therefore, for a government or a responsible corporate citizen seeking to achieve this goal to rely on unredeemed deposits as a source of funding for a recycling program. The necessary funds must come from another source, such as the CRF or the profit margins of the beverage industry (in conjunction with a more efficient and economical program).

Unfortunately, the legislated return rate target of 75% and the current use of unredeemed deposits have made Encorp and BDL reliant on this money to finance their deposit program. In turn, this de-incentivizes industry efforts to reach a 100% return rate and allows for disposal of 20% of containers to be subsidized by society in the form of expanding landfills, taxes for municipal recycling programs, and environmental pollution. Alternative sources of funding are available; there is a CRF in place and the beverage industry enjoys healthy profits.

It was not always meant to be this way. A report prepared in 1991 for the BC Municipal Waste Management Branch (the "1991 Report") estimated the costs for the private sector to administer a beverage container recovery system. This report recognized the risk of a reverse incentive for industry if unredeemed deposits were retained by industry, and it proposed a solution:

> Normally, as recovery rates increase, unredeemed deposits fall, thus providing a disincentive to increase recovery rates. One way of reducing this disincentive is to pool all unredeemed deposits from all containers and to credit them to container categories in proportion to the number of containers actually recovered. Therefore a container type with high recovery rates will earn more credit than a container type with low recovery rates. The users of containers with lower return rates have an incentive to increase the return rates.[53]

The 1991 Report even contemplated that government would retain some of the unredeemed deposits, as has been done in the U.S. jurisdictions discussed in this report:

> Gross costs are reduced by all unredeemed deposits, pooled and credited to container categories in proportion to recoveries (separate pools are assumed for containers up to 1 litre and above). Costs to producers or distributors will increase if the Ministry of Environment decides to retain some unredeemed deposits.[54]

A real application of the "polluter pays" principle would require those who do not return their beverage containers (at least some of whom will have thrown them in the trash or littered) to pay to restore the environment, as well as beverage manufacturers who put environmentally harmful single-use containers into the marketplace. For this reason,

[53] *BC Environment 1991 Report*, at 15, see note 40.
[54] *BC Environment 1991 Report*, at 16, see note 40.

unredeemed bottle deposits should be directed to environmental purposes.

It may be tempting to dismiss the reverse incentive argument, as two of the three U.S. states that will be discussed and that direct all or a large portion of unredeemed deposits to the state rather than the beverage industry, have lower return rates than B.C. However, this may be attributed to the states not having legislated return rates for the beverage industry, as well as cultural factors (B.C.'s program was implemented 8-12 years earlier than the U.S. states' programs and 39 of 50 states currently do not have a bottle deposit program).

B.C.'s provincial government should remove the conditions that have created the reverse incentive that is inherent in its beverage container recycling system by legislating a return rate of 100% and directing unredeemed deposits away from Encorp and BDL. This approach more closely aligns with the ideal model of EPR: it places the cost of recycling squarely on the shoulders of the manufacturers; fosters innovation, cost-effectiveness and efficiency; and reduces built-in barriers to achieving a 100% return rate.

Next, this report will consider how U.S. jurisdictions have utilized their bottle return systems to fund environmental initiatives, and removed or reduced this disincentive to higher return rates.

6. Other Jurisdictions' Systems allow for Pop for Parks

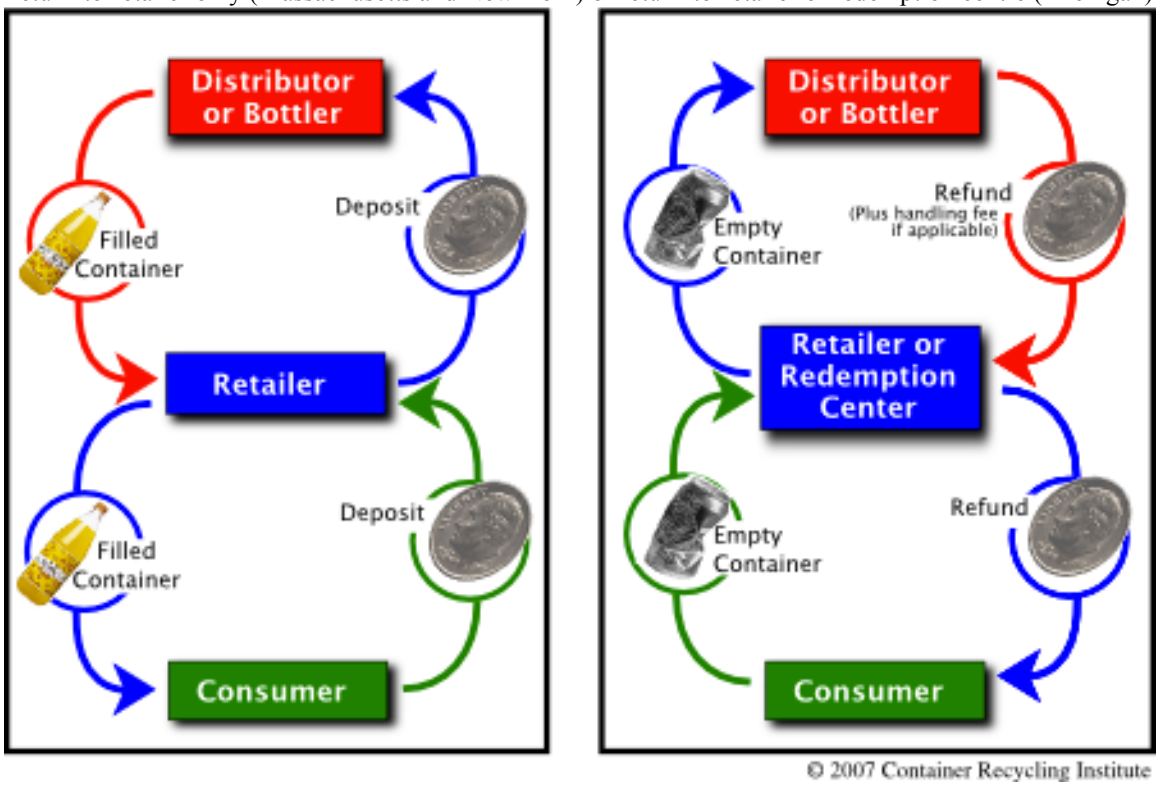
This section considers the beverage container deposit legislation ("bottle bills") in Massachusetts, New York State and Michigan. All three states dedicate at least a portion of their unredeemed deposits to environmental initiatives. In Massachusetts, 100% of unredeemed deposits return to the state; in New York, 80% returns to the state; and in Michigan, 75% return to the state. In these states, the remainder is directed to the beverage industry to assist with their involvement in the program. A notable difference in the way the bottle bill states have structured their systems, as compared with B.C.'s system, is that the U.S. states do not require the bottle manufacturers to implement an industry-run depot system. Rather, any private individual or group in the state may set-up a depot if they meet the legislative requirements.

For reference, Massachusetts' and Michigan's "escheat"[55] legislation (the legislation that provides for the unredeemed bottle deposits to be directed to the state) is found online as a sample for other jurisdictions considering implementing a "Pop for Parks" program.[56]

[55] A common law concept in which property is reverted to the state.
[56] Department of Agriculture, Conservation and Forestry, Chapter 360: Responsibilities of Manufacturers, Distributors, Dealers, Initiators of Deposit, Contracted Agents and Redemption Centers Under the Returnable Beverage Container Law, at 2(c), online: <http://www.maine.gov/sos/cec/rules/01/001/001c360.docx> ["*Massachusetts 001-01 Chapter 360*"].

Graphic 4: "Bottle bill" systems in the U.S.

Return-to-retailer only (Massachusetts and New York) or return-to-retailer or redemption centre (Michigan)



Source: "How a Bottle Bill Works" (from http://www.bottlebill.org/about/whatis.htm).

(1) Massachusetts

Overview

Table 3: Massachusetts Beverage Container Details	
Population	6.812 Million (2016)[57]
Population density	324.1 persons per square kilometre[58]
Number of return locations	159 redemption centres[59] (and all retailers)
Beverages covered	Beer, malt, carbonated soft drinks, & mineral water[60] (wine, dairy products, natural fruit juice, other alcoholic beverages other than beer and malt beverages are exempt).[61]

[57] United States Census Bureau, "Massachusetts" (accessed 6 February 2017), online: <https://www.census.gov/quickfacts/table/PST045216/25> ["*US Census Massachusetts*"].
[58] *US Census Massachusetts*, see note 57.
[59] List of Registered Redemption Centres (updated July 2016), linked to from: <http://www.mass.gov/eea/agencies/massdep/recycle/reduce/bottle-and-can-recycling.html>.
[60] Bottle Bill Resource Guide, "Massachusetts" (accessed 6 February 2017), online: <http://www.bottlebill.org/legislation/usa/massachusetts.htm> ["*Bottle Bill Resource Guide, Mass.*"].
[61] Massachusetts Energy and Environmental Affairs, "Guide to the 1983 Bottle Bill for Distributors & Bottlers" (accessed 6 February 2017), online: <http://www.mass.gov/eea/agencies/massdep/recycle/reduce/1983-bottle-bill-guide-for-distributors-and-bottlers.html> ["*Guide to 1983 Mass. Bottle Bill*"].

Containers covered	Any sealable bottle, can, jar, or carton of glass, metal, plastic, or combo. Excludes biodegradables.[62] Excludes containers over 2 gallons.[63]
Deposit cost (paid by consumers)	5¢[64]
Recycling fee (paid by consumers)	n/a
Handling fee (paid by administrator of system to retailers for collecting containers)	Redemption Centres - 3.25¢[65] Retailers - 2.25¢
Return rate	64.08% (2014)[66]; 72% (average 1990-2014)[67]
Responsible for system	The container deposit system's operations and financing are managed by the beverage industry[68]
Reclamation system	Retail stores and redemption centres[69] (redemption centres are permitted to deduct a processing fee from the consumers' refund).[70]
Portion of unredeemed deposits directed to environmental protection	100% of unredeemed deposits are intended to be directed to the Clean Environment Fund, which is used solely for programs and projects in the management of solid waste and environmental protection.[71] However, from 1990-2002, only 27% was used for environmental programs, and the other 73% was used for overhead costs of the Department of Environmental Protection.[72]
Annual value of unredeemed deposits	$33.5 million (2011)[73]

[62] *Bottle Bill Resource Guide, Mass*, see note 60.
[63] *Guide to 1983 Mass. Bottle Bill*, see note 61.
[64] *Bottle Bill Resource Guide, Mass*, see note 60.
[65] *Bottle Bill Resource Guide, Mass*, see note 60, citing Massachusetts Department of Environmental Protection, online: <http://www.mass.gov/eea/agencies/massdep/>.
[66] *Bottle Bill Resource Guide, Mass*, see note 60, citing Massachusetts Department of Environmental Protection E-mail Communication with Sean Sylver 1/8/16.
[67] Container Recycling Institute, "Comparison of Container Deposit Programs in the United States" (September 2014), at 1, online: <http://www.container-recycling.org/images/stories/PDF/COMPARISON%20OF%20CONTAINER%20DEPOSIT%20PROGRAMS%20IN%20THE%20UNITED%20STATES.pdf>.
[68] Bottle Bill Resource Guide, "The Fate of Unclaimed or 'Abandoned' Deposits" (accessed 6 February 2017), online: <http://www.bottlebill.org/about/unclaimed.htm> ["*Bottle Bill Resource Guide, Unclaimed*"].
[69] *Bottle Bill Resource Guide, Mass*, see note 60.
[70] Massachusetts Energy and Environmental Affairs, "Deposit Bottle & Can Recycling" (accessed 6 February 2017), online: <http://www.mass.gov/eea/agencies/massdep/recycle/reduce/bottle-and-can-recycling.html>.
[71] Massachusetts General Laws, Part I, Title XV, Chapter 94: Sections 323D, 323F.
[72] *Bottle Bill Resource Guide, Unclaimed*, see note 68.
[73] *Bottle Bill Resource Guide, Unclaimed*, see note 68., citing August 30, 2012 email from Sean Sylver, Massachusetts Department of Environmental Protection.

Legislative Regime

Massachusetts' *Beverage Container Recovery Law* was enacted in 1981, and was implemented in 1983.[74] It applied a 5¢ deposit to beer, malt, soft drink and mineral water containers.

In 1989, Massachusetts enacted an escheat provision to the law, which rendered all unredeemed deposits property of the state.[75]

In 1990, its first year, 10% of the unredeemed deposits were directed to the state's Clean Environment Fund (CEF) and 90% to the general fund. From 1990-1995, the portion of unredeemed deposits directed to the CEF increased, while the percentage to the general fund decreased. As of 1995, 100% of the unredeemed deposits were dedicated to the CEF.[76] All bottlers and distributors responsible for beverage containers that carry with them deposits must remit the unredeemed deposits to the Department of Revenue on a monthly basis.[77]

Massachusetts' original law's intention was to use the CEF exclusively for solid waste management, including providing support for recycling, composting, solid waste source reduction, and other related environmental programs.[78] However, the actual fund allocation is subject to appropriation by each legislature: instead of receiving all of the unredeemed deposits that were directed to the CEF from 1990 to 2002, only 27% ($60 million) was used to stimulate and support recycling, the bottle bill, and other innovative solid waste programs.[79] The other 73% ($166 million) went toward Department of Environmental Protection overhead costs unrelated to the original mandate of the law.[80]

How the System Functions

When a retailer receives beverages subject to the bottle bill, they pay the manufacturer, brand manager or importer (the "bottle initiator") the deposit values. Consumers pay a 5¢ deposit to the retailer when purchasing qualifying beverages. Consumers may return empty beverage containers to retailers that sell that product, or privately run redemption centres and receive their deposit back (the redemption centre may keep part of the deposit as an administration fee). The bottle initiators must pick-up the containers (every 15 calendar days or after 10,000 containers collected, whichever comes first[81]) and pay the deposit values and a handling fee to the redemption centre or the retailer.[82]

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[74] *Bottle Bill Resource Guide, Mass*, see note 60.
[75] *Guide to 1983 Mass. Bottle Bill*, see note 61.
[76] *Bottle Bill Resource Guide, Unclaimed*, see note 68.
[77] *Guide to 1983 Mass. Bottle Bill*, see note 61.
[78] *Bottle Bill Resource Guide, Unclaimed*, see note 68, citing St. 1989, c. 653, s. 70 as codified in G. L. c. 94, s. 323F.
[79] *Bottle Bill Resource Guide, Unclaimed*, see note 68, citing e-mail with Tom Collins, Director, Division of Local Mandates, MA State Auditor's Office, Jan. 22, 2003.
[80] *Bottle Bill Resource Guide, Unclaimed*, see note 68, citing e-mail with Tom Collins, Director, Division of Local Mandates, MA State Auditor's Office, Jan. 22, 2003.
[81] *Massachusetts 001-01 Chapter 360*, s 9, see note 56.
[82] Maine Department of Environmental Protection, Report to the Joint Standing Committee on Environment and Natural Resources 127th Legislature, Second Session, "Implementing Product Stewardship in Maine"

Beverage containers are required to include on their label their refund value and the fact that they may be refunded in Massachusetts.[83] Redemption centres are subject to licensing and regulation, and are inspected by the Department of Environmental Protection.[84]

Legal Challenges to the Escheat Law

A lawsuit was filed to challenge the escheat law, and the court resolved the case in favour of the state. In October 1991, Suffolk County Superior Court Judge William Bartlett ruled that the escheat law:

a) did not cause an unconstitutional taking of the bottlers' money;
b) was a proper act of the legislature; and
c) that refunds belong to the consumer until escheated to the state.

The Massachusetts Wholesalers of Malt Beverages appealed this ruling, but the Supreme Judicial Court upheld the law in 1993.[85]

(2) New York State

Overview

Table 4: New York Beverage Container Details	
Population	19.745 million (2016)[86]
Population density	158.8 persons per square kilometre[87]
Number of return locations	This data is not readily available.
Beverages covered	Carbonated soft drinks, soda water, beer and other malt beverages, wine products and water which does not contain sugar (including flavoured or nutritionally enhanced water).[88]
Containers covered	An individual, separate, sealed glass, metal, aluminum, steel or plastic bottle, can or jar less than 1 gallon or 3.78 litres.[89]
Deposit cost (paid	5¢[90]

(January 2016), at 7, online: <http://www.nrcm.org/wp-content/uploads/2013/09/2016productstewardshipreporttolegislature.pdf>.

[83] Executive Office of Energy and Environmental Affairs, 301 CMR 4.00: Provisions for Recycling of Beverage Containers, at 4.03(2), online: <http://www.mass.gov/eea/docs/dep/service/regulations/301cmr04.pdf>.

[84] *Massachusetts 001-01 Chapter 360*, s 2, see note 56.

[85] *Bottle Bill Resource Guide, Unclaimed*, see note 68, citing *Mass Wholesalers of Malt Beverages, Inc. v. Commonwealth* (1993) 609 N.E. 2d 67, 414 Mass. 411.

[86] United States Census Bureau, " " online: <http://www.census.gov/quickfacts/table/PST045215/36> ["*US Census New York*"].

[87] *US Census New York*, see note 86.

[88] Bottle Bill Resource Guide, "New York" (accessed 6 February 2017, online: <http://www.bottlebill.org/legislation/usa/newyork.htm> ["*Bottle Bill Resource Guide, New York*"].

[89] *Bottle Bill Resource Guide, New York*, see note 88.

[90] *Bottle Bill Resource Guide, New York*, see note 88.

by consumers)	
Recycling fee (paid by consumers)	n/a
Handling fee (paid by administrator of system to retailers for collecting containers)	3.5¢[91]
Return rate	65% (2015)[92]
Responsible for system	The container deposit system's operations and financing are managed by the beverage industry.[93]
Reclamation system	Retail stores and redemption centres.[94]
Portion of unredeemed deposits directed to environmental protection	The State of New York retains 80% of unredeemed deposits, including interest received on the deposits ($15 million goes to state Environmental Protection Fund and remaining goes to state general fund),[95] and distributes 20% to beverage companies to run the deposit-return system.[96]
Annual value of unredeemed deposits	$104 million (2011)[97]

Legislative Regime

The New York State *Returnable Container Law* was enacted in 1982 and implemented in 1983 to require deposits on soft drink and beer containers.[98]

In 2009, New York passed an escheat law to direct 80% of unredeemed deposits to the state, some portion of which was to be directed to the Environmental Protection Fund (the Fund's budget was increased from $205 million to $222 million in the 2009 state budget). The remaining 20% was to be directed to beverage companies to run the system.[99]

Funding for the Environmental Protection Fund was cut in a deficit reduction plan, and

[91] *Bottle Bill Resource Guide, New York*, see note 88.
[92] *Bottle Bill Resource Guide, New York*, see note 88, citing New York Department of Environmental Conservation E-mail Communication with Jennifer Kruman (1/26/16).
[93] *Bottle Bill Resource Guide, Unclaimed*, see note 68.
[94] *Bottle Bill Resource Guide, New York*, see note 88.
[95] *Bottle Bill Resource Guide, New York*, see note 88.
[96] *Bottle Bill Resource Guide, Unclaimed*, see note 68.
[97] *Bottle Bill Resource Guide, Unclaimed*, see note 68, citing "Deposit Initiator Deposit and Payment Statistics, 2008-2011," prepared by the New York State Department of Environmental Conservation.
[98] *Bottle Bill Resource Guide, New York*, see note 88.
[99] New York Public Interest Research Group, "NYPIRG Victory! Bigger Better Bottle Bill" (accessed 9 January 2017), online: <http://www.nypirg.org/enviro/solidwaste/bottlebill/more_info.html>.

then cut further in 2010 to $134 million.[100]

In 2012, the Environmental Protection Fund's budget was increased to $153 million. To support this increase, the escheat law was amended to require $15 million of the revenue from unredeemed bottle deposits to be directed to the Environmental Protection Fund beginning in 2013, plus any additional funds over and above the total funds the state received from unredeemed deposits in fiscal year 2012-2013.[101] This allowed for any increase in unredeemed deposits from 2012 onwards be directed toward the Environmental Protection Fund. In addition, all monies collected by the state from violations of the *Returnable Container Act* (title 27 of the *Environmental Conservation Law*) are directed to the Environmental Protection Fund, and were guaranteed to be at least $4 million in 2013, and $8 million each year thereafter.[102]

However, monies from the Environmental Protection Fund have been periodically diverted to the state's general fund for budget relief.[103]

How the System Functions

Much like Massachusetts, when a retailer receives beverages subject to a deposit, they pay the manufacturer, brand manager or importer (the "bottle initiator") the deposit value. Consumers then pay the deposit to the retailer when purchasing the beverage. Consumers may return empty beverage containers to retailers that sell that product, or privately run redemption centres and receive their deposit back. Some retailers may have "reverse vending machines" (machines that accept empty bottles and refund deposits) rather than accepting the containers directly. The bottle initiators then must pick-up the containers and pay the deposit values and a 3.5¢ handling fee to the redemption centre or the retailer.[104]

Bottle initiators must register with the New York State Department of Taxation and Finance, report quarterly on deposits collected and redeemed and remit 80% of the unredeemed deposits to the Department of Taxation and Finance.[105] Beverage containers are required to include on their label their refund value and "New York" or "NY".[106] Anyone who wishes to establish a redemption centre must notify the Department of

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[100] New York Public Interest Research Group, "New Release: NYPIRG Praises Governor Cuomo for Maintaining Integrity of State's Environmental Protection Fund" (accessed 9 January 2017), online: <http://www.nypirg.org/media/releases/enviro/NYPIRG%20Praises%20Cuomo%20for%20Maintaining%20State's%20Environmental%20Protection%20Fund.pdf>.

[101] New York State Environmental Conservation Law, Article 27 – Collection, Treatment and Disposal of Refuse and Other Solid Waste, at §27-1012, s 5, online: <http://www.dec.ny.gov/docs/materials_minerals_pdf/rca2015.pdf>.

[102] The New York State Finance law §92-s is referenced in *Environmental Conservation Law*, §27-1012, s 5 and found online: <http://codes.findlaw.com/ny/state-finance-law/stf-sect-92-s.html>. See section 3.

[103] State of New York Comptroller, "Environmental Funding in New York State" (December 2014), at 18-19, online: <https://www.osc.state.ny.us/reports/environmental/environmental_funding_nys_2014.pdf>.

[104] Laws of New York, Environmental Conservation, Article 27, Title 10, "Beverage Container Requirements" (accessed 9 January 2017), available online: <http://www.bottlebill.org/legislation/usa/lawtext/nylaw.htm>

[105] *Bottle Bill Resource Guide, New York*, see note 88.

[106] New York Environmental Conservation Law §27-1011, s 1 (found online: <http://codes.findlaw.com/ny/environmental-conservation-law/env-sect-27-1011.html>).

Environmental Conservation.[107]

(3) Michigan

Overview

Table 5: Michigan Beverage Container Details	
Population	9.928 million (2016)[108]
Population density	67.5 persons per square kilometre[109]
Number of return locations	All retailers.
Beverages covered	Beer, soft drinks, carbonated & mineral water, wine coolers, canned cocktails[110]
Containers covered	Any airtight metal, glass, paper, or plastic container, or a combination, under 1 gallon.[111]
Deposit cost (paid by consumers)	10¢[112]
Recycling fee (paid by consumers)	n/a
Handling fee (paid by administrator of system to retailers for collecting containers)	n/a [113]
Return rate	94.2% (2014)[114]
Responsible for system	The container deposit system's operations and financing are managed by the beverage industry.[115]
Reclamation system	Retail stores[116]

[107] Official Compilation of Codes, Rules and Regulations of the State of New York, Title 6, Chapter IV, Subchapter B (6 CRR-NY), Part 367.9 Redemption Centers (found online: <https://govt.westlaw.com/nycrr/Document/I4eac4efbcd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)>).
[108] United States Census Bureau, Michigan (accessed 6 February 2016), online: <https://www.census.gov/quickfacts/table/PST045215/26> ["*US Census Michigan*"].
[109] *US Census Michigan*, see note 108.
[110] Bottle Bill Resource Guide, "Michigan" (accessed 6 February 2017), online: <http://www.bottlebill.org/legislation/usa/michigan.htm> ["*Bottle Bill Resource Guide, Michigan*"].
[111] *Bottle Bill Resource Guide, Michigan*, see note 110.
[112] *Bottle Bill Resource Guide, Michigan*, see note 110.
[113] *Bottle Bill Resource Guide, Michigan*, see note 110.
[114] *Bottle Bill Resource Guide, Michigan*, see note 110., citing Michigan Department of Treasury, Bottle Deposit Information Chart, 1990-2014, online: Bottle Bill <http://www.bottlebill.org/assets/pdfs/Michigan%202014%20with%20percent%20redeemed%20For%20Distribution%20Through2014.pdf>.
[115] *Bottle Bill Resource Guide, Unclaimed*, see note 68.
[116] *Bottle Bill Resource Guide, Michigan*, see note 110.

Portion of unredeemed deposits directed to environmental protection	75% of unredeemed bottle deposits goes to the State for environmental programs; 25% is distributed to retailers to "offset their handling costs."[117]
Annual value of unredeemed deposits	$17.8 million (2011)[118]

Legislative Regime

The Michigan *Beverage Container Act* was enacted in 1976 by a state-wide referendum, and implemented in 1978. It imposed a 10¢ deposit on beer, soft drinks and mineral water[119] (this continues to be the highest deposit in the country). It was expanded in 1988 to apply to wine coolers and canned cocktails.[120]

Michigan's escheat law was passed in 1989, and provided for 25% of unredeemed deposits to be retained by bottle retailers (note: not distributors, as it is the retailers who are responsible to take back all containers) and the other 75% to be directed to the Cleanup and Redevelopment Trust Fund, overseen by the Michigan Department of Treasury.[121]

The law was amended in 1996 to specify how Michigan must distribute its share of the unredeemed deposits: 75% must be directed to the Cleanup and Redevelopment Trust Fund, 80% of which is to be directed to the Cleanup and Redevelopment Fund and immediately available for appropriation for municipal landfill cost-share grants (matching federal Superfund dollars), response activities addressing public health and environmental problems, redevelopment facilitation, or emergency response actions. Half of the remaining allocation (10%) is deposited into the Community Pollution Prevention Fund, and the other 10% is deposited into and must remain in the Cleanup and Redevelopment Trust Fund until the amount accrues to a maximum of $200 million.[122]

How the System Functions

Much like the other two states discussed, when a retailer receives beverages subject to a deposit, they pay the manufacturer or distributor the deposit value. Consumers then pay

[117] *Bottle Bill Resource Guide, Unclaimed*, see note 68.
[118] *Bottle Bill Resource Guide, Unclaimed*, see note 68, citing "Bottle Deposit Information," prepared by the Michigan Department of Treasury, Office of Revenue and Tax Analysis.
[119] John Stutz & Carrie Gilbert, "Michigan Bottle Bill A Final Report to: Michigan Great Lakes Protection Fund" (10 July 2000), online: <http://www.deq.state.mi.us/documents/deq-water-greatlakes-protection-michiganbottle.pdf> ["*Stutz, Final Report to Michigan Great Lakes Protection Fund*"].
[120] *Stutz, Final Report to Michigan Great Lakes Protection Fund*, see note 119.
[121] Bottle Bill Resource Guide, "Michigan Escheat Legislation" (accessed 6 February 2017), 445.573c, Sec. 3c (2), online: <http://www.bottlebill.org/legislation/usa/lawtext/unclaimed/mich.htm>.
[122] *Bottle Bill Resource Guide, Unclaimed*, see note 68, citing Michigan Recycling Coalition, "Used Beverage Container Deposits," *2011 State of Recycling in Michigan: A Way Forward*, at 10 [updated link: <http://www.michiganrecycles.org/images/bak-12-17-2013/newpdf/StateofRecycling2011MRC.pdf>].

the deposit to the retailer when purchasing the beverage. Consumers may return empty beverage containers to retailers that sell that product and receive their deposit back. Some retailers may have reverse vending machines rather than accepting the containers directly. The manufacturer or distributor then must pick-up the containers and pay the deposit values to the retailer.[123]

Legal Challenges to the Escheat Law

A lawsuit was filed to challenge the escheat law, but the court found in favour of the state. A lower court ruled in 1991 that the unredeemed deposits were the property of the beverage industry and that the law resulted in an unconstitutional "taking" by the state. The case was appealed and the Court of Appeals, in 1994, overturned the lower court ruling. It said the amendment "constituted a valid exercise of legislative powers."[124] The State Supreme Court chose not to hear an appeal, so the Court of Appeals' ruling stands.

A Note on Maine and Connecticut

Both Maine and Connecticut also recapture unredeemed container deposits for general government use.

Some have questioned whether following the models posited above might reduce the effectiveness of container recycling programs, however it is important to note that the Michigan system not only uses unredeemed deposits for environmental purposes – it also achieves a higher rate of redemption (94%) than B.C. does, all without the use of redemption centres (only return-to-retail).

(4) Maritime Provinces' "Half-back" System

Significantly, there is Canadian precedent for diverting beverage container deposits to an Environmental Trust Fund. Though their programs do not rely on unredeemed deposits, Canada's maritime provinces use a "half-back system" (where half of the deposit is retained) to fund environmental programs. For example, New Brunswick funds its provincial Environmental Trust Fund (used for beautification and conservation and managed by the Department of the Environment) through a "half-back" system, whereby half the bottle deposit is not refunded. Half of the retained portion of the deposit goes to fund the beverage container recycling program that is run by industry, along with unredeemed deposits and revenue from selling the materials, and the other half of the retained deposit goes to the Environmental Trust Fund, which funds environmental projects, including supporting projects where land was purchased for conservation.[125] Therefore, of the 10¢ deposit for non-refillable container, 5¢ returns to the consumer,

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[123] Michigan Compiled Law, Chapter 445 Initiated Law 1 of 1976, "Beverage Containers" 445.571 (accessed 10 January 2017), available online: <http://www.bottlebill.org/legislation/usa/lawtext/milaw.htm>

[124] *Bottle Bill Resource Guide, Unclaimed*, see note 68, citing *Michigan Soft Drink Association v. Department of Treasury (1995)* 206 Mich App 392; 522 NW2d 643 lv den 448 Mich 898; 533 NW2d 313.

[125] For example: Nature Trust of New Brunswick, "Projects: The Campaign for Coastal Land" (accessed 6 February 2017), online: <http://www.naturetrust.nb.ca/wp/blog/the-campaign-for-coastal-land/>.

2.5¢ to the beverage industry, and 2.5¢ to the Environmental Trust Fund. The half of the deposit that isn't returned could be regarded as a recycling fee, analogous to B.C.'s CRF. One notable difference between New Brunswick and B.C.'s system is that the stream of revenue to New Brunswick's Fund depends on sales of beverages, not non-redeeming consumers.

Prince Edward Island,[126] Nova Scotia[127] and Newfoundland[128] have similar programs.

An alternative to dedicating unredeemed deposits to a fund that is used to purchase private land for conservation is to dedicate a portion of the deposit to conservation, like the programs in the maritime provinces. As one could consider the half of the deposit that is retained by government to be akin to a fee, the below table shows the difference in fees between B.C. and the "half-back" provinces.

[126] Prince Edward Island Canada, "Beverage Container Program" (17 August 2016) online: <https://www.princeedwardisland.ca/en/information/communities-land-and-environment/beverage-container-program>.
[127] Nova Scotia, "Recycling Beverage Containers" (accessed 6 February 2017), online: <https://novascotia.ca/nse/waste/beverage.asp>.
[128] Multi-Materials Stewardship Board, "Recycle Your Beverage Containers" (accessed 6 February 2017), online: <http://mmsb.nl.ca/waste-diversion-programs/beverage-containers/>. Note: the portion of the deposit that is retained helps fund the program, along with unclaimed deposits, but any surplus of the unclaimed deposits then are directed to the government's Waste Management Trust Fund, which is used to advance waste management in the province.

Table 6: Consumer Fees by Province

Consumer Fees in Cents per Unit Sold (as of April 2010)												
Province	**BC**	**AB**	**SK**	**MB**	**ON**	**QC**	**NS**	**NB**	**NF**	**PEI**	**YK**	**NWT***
Type of Fee	**CRF**	**CRF**	**EHC**	**CRF**	**-**	**-**	**Half-Back**	**Half-Back**	**Half-Back**	**Half-Back**	**RFF**	**CHF***
Aluminum Cans	2	0	5	2			5	5	3	5	5	5
PET up to and including 1L	4	3	6	2			5	5	3	5	5	5
PET over 1L	5	6	6	2			5	5	3	5	10	10
PVC or HDPE up to and including 1L	4	3	6	2			5	5	3	5	5	5
PVC or HDPE over 1L	5	5	6	2			5	5	3	5	10	10
HDPE Milk up to and including 1L		3										5
HDPE Milk over 1L		5										10
Plastic up to and including 1L		3	6	2			5	5	3	5	5	5
Plastic over 1L		5	6	2			5	5	3	5	10	10
Polystyrene Cups (with sealed foil lid)	4	1		2			5	5	3	5		
Polypropylene up to and including 1L	4	3	6	2			5	5	3	5	5	5
Polypropylene over 1L	5	5	6	2			5	5	3	5	10	10
Pouch up to and including 1L	0	0		2			5	5	3	5		5
Glass up to and including 1L	10	6	7	2			5	5	3	5	5	10
Glass over 1L	10	9	7	2			5	5	3	5	10	10
Drink box up to and including 500ml	0	2	3	2			5	5	3	5	5	5
Drink box 501ml to 1L	4	2	3	2			5	5	3	5	5	5
Drink box over 1L	0	2	3	2			5	5	3	5	10	10
Gabletop up to and including 500ml	0	0	3	2			5	5	3	5		5
Gabletop 501ml to 1L	0	0	3	2			5	5	3	5		5
Gabletop over 1L	0	0	3	2			5	5	3	5		10
Gabletop Milk up to and including 1L		0										5
Gabletop Milk over 1L		0										10
Bi-metal up to and including 1L	0	6	5	2			5	5	3	5	5	5
Bi-metal over 1L	0	0	5	2			5	5	3	5	10	10
Bag-in-the-Box over 1L	0	0		2			5	5	3	5		10
Wine/Spirits under 500ml							5	5	10	5	5	10
Wine/Spirits equal to or greater than 500ml							10	10	10	10	10	10

category not applicable
material covered under another category

* In NWT, the 1 litre container is generally included with the over 1 litre containers.

From: http://www.bottlebill.org/assets/pdfs/legis/canada/2010-WhoPaysWhat.pdf at 81

It is important to note that Alberta and B.C. are the only provinces that charge consumer fees to fund the operation of the bottle return program. All other provinces use them to fund environmental programs.[129] It is time for B.C. to step up to become a recycling leader again, and direct its unredeemed deposits to environmental purposes.

7. Why B.C. Can (and Should) Implement Pop for Parks

There are no apparent structural, financial, legal or political reasons for B.C.'s unredeemed bottle deposits not to be diverted to an environmental fund.

[129] *Who Pays What report 2010*, at 84, see note 3.

Structural Comparison

The most notable structural difference between B.C. and the three U.S. states' systems included in this report is that B.C. has a network of depots in addition to allowing for return-to-retailer, while one of the states has a purely return-to-retail model and the two other states have a return-to-retail plus redemption centres model.

In the two U.S. jurisdictions that have redemption centres as a return option (Massachusetts and New York), the redemption centres are privately run; interested operators must obtain a license from the state and must have an agreement with the beverage distributors. The redemption centre market is an open market, subject to competition – as opposed to B.C. where the beverage industry runs the full network of depots. In these two states, if there is a need for a redemption centre, a private individual or group will open one (subject to regulated limitations, for example, on geographical location, based on population levels and distance from next redemption centre). These redemption centres subsist on the handling fees paid by the beverage industry. In B.C., the depots are run as part of the overall industry-led program. There is less financial incentive to specifically make the network of depots more economical, as their funding comes from the large block of funds that are dedicated to the overall program. In Michigan, the only return option is return-to-retail, which would presumably be a less expensive program – and yet, the state achieves a 94.2% return rate.

Encorp (and presumably BDL[130]) expends funds to increase awareness of their respective beverage container return systems; this does not appear to be the case in the U.S. states. For example, in order to "increase the awareness of the Return-it depot network," in 2015, Encorp had a contest in which it gave away a hybrid vehicle, two kayaks and an e-bike.[131] The awareness generation value of this campaign is questionable, especially as Encorp reported net consumer awareness at 99% in the year prior (and at least the three years prior to that)[132] and awareness of locations to which containers can be returned ranging from 92-95% from 2012-2015.[133] Encorp has spent over $16 million on consumer awareness generating activities in the past four years,[134] yet it has had an extremely high net consumer awareness rate of 99% and 92-95% awareness of return locations since at least 2012.[135] Further, its return rate has remained almost stagnant

[130] As mentioned at note 137, BDL does not publicly release its financial records.
[131] *Encorp 2015 Annual Report*, at 17, see note 51.
[132] *Encorp 2014 Annual Report*, at 3, see note 28.
[133] 92% in 2015 (*Encorp 2015 Annual Report*, at 4, see note 51); 92% in 2014 (*Encorp 2014 Annual Report*, at 4, see note 28); 95% in 2013 (Encorp Pacific (Canada), "The Changing Landscape of Recycling: 2013 Annual Report" (accessed 6 February 2017), at 5, online: <http://www2.gov.bc.ca/assets/gov/environment/waste-management/recycling/recycle/beverage-containers/ar/encorp/encorp_2013-annual-report-non-fin-report.pdf> ["*Encorp 2013 Annual Report*"]); and 92% in 2012 (Encorp Pacific (Canada), "2012 Annual Report" (accessed 6 February 2017), at 5, online: <http://www2.gov.bc.ca/assets/gov/environment/waste-management/recycling/recycle/beverage-containers/ar/encorp/encorp_2012_annual_report.pdf> ["*Encorp 2012 Annual Report*"]).
[134] $4.4 million in 2015 (*Encorp 2015 Annual Report*, at 38, see note 51); $3.9 million in 2014 (*Encorp 2014 Annual Report*, at 51, see note 28); $3.5 million in 2013 (*Encorp 2013 Annual Report*, at 4, see note 133); and $4.3 million in 2012 (*Encorp 2012 Annual* Report, at 53, see note 133).
[135] Net consumer awareness has been reported as 99% in Encorp's 2011-2015 reports.

during that period.[136] Despite this 99% consumer awareness rate, and 92-95% location awareness rate, Encorp is not achieving a 92-99% return rate. Clearly, there are barriers other than awareness that are interfering with consumers returning their beverage containers. In Michigan, as mentioned, the state has a more than 94% return rate – the highest in the U.S. – and this is without redemption centres (only return-to-retail). It also has the highest deposit amount: 10¢ per container. As mentioned, studies have shown that higher deposit amounts correspond with higher return rates. Perhaps, rather than Encorp focusing efforts on consumer awareness activities, B.C. could legislate a higher deposit amount – this should reduce the cost for the program overall.

Cost Comparison

The cost to run the U.S. programs is very difficult to determine as they are industry-run and financials are not required to be disclosed.[137]

Anecdotally, the Canadian programs are more expensive than the U.S. programs;[138] this is supported by an analysis of the per-container recycling costs under the B.C. system and the U.S. jurisdictions' systems, as follows. However, a report that compared the Alberta system, which closely resembles B.C.'s system, and Michigan's return-to-retailer system, found that if Michigan were to adopt an Alberta model, it would cost less than Michigan's current model. It is therefore difficult to say with certainty which system costs more to the industry.

Per-container recycling cost under U.S. return-to-retailer system

A report prepared for the Michigan Great Lakes Protection Fund in 2000 (the "2000 Report") estimated the per-container cost for retailers to process beverage containers with reverse vending machines is 2¢-2.4¢[139] and per-container cost for retailers to process beverage containers (including labour and overhead) without the use of reverse vending machines to be 2.5¢.[140]

The 2000 Report found the cost to distributors varied from 0.6¢-1.4¢ per container, depending on material type, if reverse vending machines are used (as they crush or shred the containers), and 1.6¢-4.4¢ per container, depending on material type, if the containers are manually sorted by the retailer.[141]

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[136] 78.9% in 2015 (*Encorp 2015 Annual Report*, at 3, see note 51); 79.1% in 2014 (*Encorp 2014 Annual Report*, at 3, see note 28); 80.1% in 2013 (*Encorp 2013 Annual Report*, at 2, see note 133); 78.7% in 2012 (*Encorp 2012 Annual* Report, at 2, see note 133); 79.8% in 2011 (Encorp Pacific (Canada), "Annual Report 2011" (accessed 6 February 2017), at 2, online: http://www2.gov.bc.ca/assets/gov/environment/waste-management/recycling/recycle/beverage-containers/ar/encorp/encorp2011.pdf>).

[137] Personal communication with CRI.

[138] Personal communication with CRI.

[139] 2¢/container for aluminum, 2.4¢ for plastic, and 2.3¢ for glass (*Stutz, Final Report to Michigan Great Lakes Protection* Fund, at 8, see note 119).

[140] *Stutz, Final Report to Michigan Great Lakes Protection* Fund, at 7-8, see note 119..

[141] *Stutz, Final Report to Michigan Great Lakes Protection* Fund, at 8, see note 119.

Table 7: U.S. Per-Container Processing and Handling Costs

	Retailer	
	RVM	No RVM
Aluminum	2¢	2.5¢
Plastic	2.4¢	2.5¢
Glass	2.3¢	2.5¢
	Distributor	
Aluminum	1.1¢	2.3¢
Plastic	0.6¢	1.6¢
Glass	1.4¢	4.4¢
	Total	
Aluminum	**3.1¢**	**4.8¢**
Plastic	**3.0¢**	**4.1¢**
Glass	**3.7¢**	**6.9¢**

RVM = reverse vending machine
Note: this table does not include program start-up costs to retailers and distributors, but rather maintenance costs (though does consider the upfront cost of reverse vending machines).

Per-container recycling cost under B.C.'s stewardship system

As per the expenditure estimates provided in Graphic 2, earlier in the report, Encorp spent $92.8 million in 2015 to recycle 999,290,000 beverage containers.[142] If the $4.4 million spent on consumer awareness activities and the $5.1 million spent on administration is deducted (as those costs are not included in the corresponding U.S. figures), the operations and handling costs amount to $83.3 million. This amounts to 8.3¢ per container, on average.

The 8.3¢ per container cost in B.C. compared with the 3¢-6.9¢ per container in the U.S. certainly indicates the cost to recycle is higher in B.C. However, this could be as a result of inefficiencies in the system – for example, underusing reverse vending machines or comparable technology.

Report Comparing Alberta and Michigan's Systems

However, the 2000 Report provides information conflicting with these calculations. The 2000 Report compared Alberta's depot system (which is similar to B.C.'s) and Michigan's return-to-retailer system, and actually found that if Michigan were to switch to a depot system like Alberta's, it would cost beverage distributors and retailers less (this assumes that distributors would retain 25% of the unredeemed bottle deposits that retailers are entitled to under the current system, as retailers would be removed from the system).[143] Alberta and B.C.'s systems function very similarly, the main difference being that retailers in B.C. must take back a certain number of non-alcoholic beverage containers, whereas Alberta relies solely on depots for non-alcoholic beverage container

[142] *Encorp 2015 Annual Report*, at 36, see note 51.
[143] Total annual operation costs for Michigan's "return-to-retailer" system: $94.99 million (*Stutz, Final Report to Michigan Great Lakes Protection* Fund, at 8-9, see note 119); Depot system cost estimated cost: $59.21 (*Stutz, Final Report to Michigan Great Lakes Protection* Fund, at 22, see note 119).

returns.

Therefore, an argument that the beverage container recycling systems in B.C. cost more than those in the U.S. and therefore the beverage industry should be compensated in the form of unredeemed deposits – *despite* 75-100% of the unredeemed deposits in the three U.S. states studied going to the state – should not be accepted.

Based on the above, it is unclear whether B.C. or the U.S. systems cost more to administer.

Coca Cola's Statement on Deposit Systems

Further, The Coca Cola Company, in its 2015 annual report, said the following in relation to bottle deposit programs:

> Legal requirements apply in various jurisdictions in the United States and overseas requiring that deposits or certain ecotaxes or fees be charged in connection with the sale, marketing and use of certain beverage containers. The precise requirements imposed by these measures vary. Other types of statutes and regulations relating to beverage container deposits, recycling, ecotaxes and/or product stewardship also apply in various jurisdictions in the United States and overseas…
>
> Our policy is to comply with all such legal requirements. Compliance with these provisions has not had, and we do not expect such compliance to have, any material adverse effect on our Company's capital expenditures, net income or competitive position (underline added).[144]

Coca Cola's statement indicates that involvement in bottle deposit programs has not had a financial impact on the company, further evidence that the beverage industry is able to accommodate the cost of bottle deposit systems.

Political Popularity

Diverting bottle deposits to environmental programs is politically popular. In 2004, in response to a proposal to expand the scope of New York's bottle bill to cover more containers, a polling firm conducted a poll of New York voters and found that 86% of those polled support the unredeemed deposits being diverted from the beverage industry to fund environmental programs.[145] It found that support was "robust across all measured subgroups" (across gender, income level, age, political affiliation, and geographical location).[146]

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[144] United States Securities and Exchange Commission, Form 10-K (fiscal year ended December 31, 2015), at 10, online: <http://www.coca-colacompany.com/content/dam/journey/us/en/private/fileassets/pdf/investors/2015-annual-report-on-form-10-k.pdf>.

[145] Container Recycling Institute, "Press Release: New Poll Shows Strong Support for NY's Bottle Bill and Proposed Reforms" (12 February 2004), online: <http://www.container-recycling.org/index.php?option=com_content&view=article&id=315:new-poll-shows-strong-support-for-nys-bottle-bill-and-proposed-reforms&catid=91> ["*CRI Press Release re. Poll*"].

[146] *CRI Press Release re. Poll*, see note 145.

A similar poll in Vermont in 2010 found that 90% of Vermonters think the state's bottle bill is "a good idea", and 75% of people polled supported the bill. Further, 86% of respondents supported expanding the bill to include additional container types. A spokesperson from the group that did the polling research stated: "[o]ver nine in ten among every major subgroup-regardless of gender, age or party affiliation-agrees [sic] that the Bottle Bill is a 'good idea.' We rarely see such strong agreement in support of any program."[147]

B.C.'s Liability for a Compensation Claim

This is not a fulsome analysis of the liability or notification requirements of amending existing legislation or enacting new legislation. However, a cursory review of the relevant law indicates there are no apparent legal barriers to legislating that unredeemed beverage container deposits be directed to the government.

As the B.C. *Recycling Regulation* is silent on what happens with unredeemed beverage container deposits, the beverage industry does not have a legal right to these profits. However, even if it did, "[a] provincial legislature can destroy private rights, contractual or otherwise, within the province, if and when it thinks proper."[148] Further, a decision by the Ontario High Court of Justice Trial Division, in which the claimants were dis-entitled to mining claims by the legislature, found that the provincial legislature can take away rights without compensation:

> In short, the legislature, within its jurisdiction, can do everything that is not naturally impossible, and is restrained by no rule, human or divine. If it be that the plaintiffs acquired any rights — which I am far from finding — the legislature has the power to take them away. The prohibition "Thou shalt not steal" has no legal force upon the sovereign body, and there would be no necessity for compensation to be given — we have no such restriction upon the power of the legislature as is found in some states.[149]

Provincial legislatures are only bound by constitutional limits, and enacting and running a recycling program in the Province is within the provinces' constitutional authority to manage municipal solid waste.[150] Clear statutory language may be required, but it does not appear that there are any barriers in terms of having to compensate industry for its loss of the revenue stream from unredeemed beverage container deposits.[151]

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[147] Vermont Public Interest Research Group, "Poll Reveals the Bottle Bill to be Wildly Popular" (11 February 2011), online: <https://vtdigger.org/2011/02/11/poll-reveals-the-bottle-bill-to-be-wildly-popular/>.

[148] Canadian Encyclopaedic Digest, Constitutional Law, at [para]VIII.28.(c).

[149] *Florence Mining Co. v. Cobalt Lake Mining Co.*, 1908 CarswellOnt 398, [1909] O.J. No. 196, 12 O.W.R. 297, at para 16 (affirmed in *Florence Mining Co. v. Cobalt Lake Mining Co.*, 1910 CarswellOnt 699, 43 O.L.R. 474, C.R. [1911] 2 A.C. 412 at 441).

[150] Canadian Council of Ministers for the Environment, "Canada-Wide Action Plan for Extended Producer Responsibility" (October 2009), at 14, online: <http://www.ccme.ca/files/current_priorities/waste/pn_1499_epr_cap_e.pdf>.

[151] Indeed, the court has found that even in the case of expropriations of debt owed by the government to individuals, if there is clear statutory language, there is no requirement to notify or compensate those

The Beverage Industry's Preferential Treatment, as compared with the Paper and Packaging Industry

> *In 2011, the Province amended the Recycling Regulation to make businesses supplying packaging and printed paper responsible for collecting and recycling their products.*
>
> *This was done to shift recycling costs from B.C. taxpayers to producers, and to give producers more incentive to be environmentally friendly by producing less packaging and waste (emphasis added).*
>
> From: B.C. Government's website[152]

The B.C. government's approach to the residential packaging and printed paper ("PPP") industry is an example of true EPR – unlike the bottle deposit regime.

In response to the B.C. government implementing an EPR program in relation to PPP producers in 2011, paper producers formed the non-profit organization Multi-material BC ("MMBC") to create and implement a stewardship plan for residential PPP.[153] The PPP program incentivizes producers to use less packaging and create packaging that is easier to recycle.[154] In 2014, 80.1% of the product sold was collected, slightly higher than the return rate for beverage containers reported by Encorp for that year.[155] Unlike, beverage container recycling, the funding for MMBC is entirely provided by industry, and its EPR system is fully funded by industry as well.[156]

The PPP industry does not charge a deposit, and currently does not charge recycling fees.[157] The B.C. government's approach to the PPP industry is an example of true EPR: producers who profit from the sale of the product are fully responsible for collecting and disposing of the waste generated by those products. This incentivizes producers to minimize waste and to plan for its products' end-of-life, thereby using easier-to-recycle materials and components.

As mentioned, B.C.'s current beverage container recycling regime, however, does not engage these principles of EPR. It *disincentivizes* producers from achieving return rates

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individuals -- the state can be retroactive in its effect: *Authorson (Litigation Guardian of) v. Canada (Attorney General)*, 2003 CarswellOnt 2773, 2003 CarswellOnt 2774, 2003 SCC 39, at para 14.

[152] British Columbia, "Packaging and Printed Paper" (accessed 6 February 2017), online: <http://www2.gov.bc.ca/gov/content/environment/waste-management/recycling/product-stewardship/packaging-and-printed-paper>.

[153] Recycle BC, Homepage (6 February 2017), online: <http://www.multimaterialbc.ca/>.

[154] British Columbia, "Increased Recycling – Less Packaging: Shifting costs away from taxpayers" (accessed 6 February 2017), at 2, online: <http://www2.gov.bc.ca/assets/gov/environment/waste-management/recycling/recycle/paper-package/mmbcrecyclingbro.pdf>.

[155] Multi-Material BC, "Annual Report to the Director 2014 Calendar Year" (1 July 2015), at 25, online: <http://www2.gov.bc.ca/assets/gov/environment/waste-management/recycling/recycle/paper-package/ars/2014-mmbcs-annual-report.pdf>.

[156] Multi Material BC, "Annual Report 2015" (accessed 7 July 2017), at PDF p 2, online: <https://recyclebc.ca/wp-content/uploads/2017/02/MMBCAR2015.pdf >.

[157] Multi Material BC, "Packaging and Printed Paper Stewardship Plan" (19 November 2012; updated 8 April 2013; accessed 6 February 2017), at 31, online: <http://www.multimaterialbc.ca/wp-content/uploads/2014/10/MMBC-PPP-Stewardship-Plan-Apr8-2013.pdf>.

much higher than their legislated requirement, as higher return rates result in less funding. It also does not hold the producer responsible for the containers that are not returned, and that incurs costs to the public through municipal recycling services, landfill services, or the incalculable cost of littering in the environment.

A Potential Increase in the CRF, if any, is Minimal

An argument used against diverting unredeemed bottle deposits to a land acquisition fund is that the cost will be borne by consumers. However, a 2011 study by the Massachusetts Department of Environmental Protection found when comparing beverage prices in Massachusetts with neighbouring states without bottle bills, the prices were the same[158] – running contrary to the argument that costs will be passed on to consumers.

The beverage industry relies on a number of sources for revenue: the CRF, material sales, income from accepting other industries' products (i.e. paper and packaging, or electronics) at its depots, and unredeemed container deposits. Two of these sources or revenue are uncertain: the material buy-back cost and the unredeemed deposits. Uncertainties are compensated for by the CRF, as well as a reserve fund, and the CRF is modified annually to ensure the program is operating in an economically sustainable manner. If the unredeemed deposits are removed (or reduced) as a revenue source in order to fund parks acquisition, the CRF may be modified (despite the Massachusetts study referenced above). A brief calculation demonstrates that any possible increase would be minimal:

> As above, the estimated cost for Encorp to recycle each container in 2015 was 8.3¢. For the purposes of this calculation, it is assumed this covers the cost to recycle. Encorp's expenditures in 2015 were $83.3 million, and unredeemed deposits totaled $16.6 million.[159] This results in estimated revenues of $66.7 million to spend on recycling. If this is divided by the number of containers recycled in 2015 (999,290,000), Encorp has an estimated 6.7¢ per container to spend on recycling, if the unredeemed deposit revenue is removed. This leaves a 1.6¢ gap between revenue without unredeemed deposits and the estimated cost of recycling a container. This would result in a potential increase in the average CRF of 1.6¢. For a 12-pack of beer or soft drinks, this amount to a 16¢ total price increase to be paid by the consumer.

It is unlikely that a consumer would notice this estimated 16¢ on a $25 beer purchase. Yet the benefits to B.C.'s environment, citizens and visitors from a dedicated land acquisition fund could be enormous.

Further, having a dedicated land acquisition fund, funded by unredeemed deposits, aligns with the principles of EPR and the polluter pays principle and it is required to eliminate the reverse incentive for industry that may prevent B.C. from achieving the ultimate goal of a 100% return rate.

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[158] Massachusetts Department of Environmental Protection, "Preliminary Survey: Comparison of Beverage Pricing, Consumer Choice and Redemption System Performance in Massachusetts and Neighboring States" (July 2011), at 2, online: <www.mass.gov/eea/docs/dep/recycle/reduce/06-thru-l/bbsurv11.doc>.
[159] *BDL Annual Report* 2015, see note 15.

Lastly, how to fund the bottle deposit system is ultimately a decision of the beverage distributors. They are profitable, and whether they choose to raise the CRF, or raise the base price of their products, will inevitably be determined after careful study of the market and what it will allow.

8. Conclusion

B.C. was a leader in implementing its deposit legislation back in 1970. However, it is now lagging behind other jurisdictions in that it is incentivizing industry to keep return rates lower than they could be, which incurs costs to society in the form of expanded landfills, taxes for municipal recycling programs, and environmental pollution. There are successful case studies in the U.S. and other Canadian provinces in which this reverse incentive is removed, and unredeemed beverage container deposits are directed to environmental purposes.

B.C. must acquire ecologically sensitive private land to put toward conservation purposes if it is to keep up with a growing population.

There do not appear to be any logistical, financial, legal or political barriers to implementing this same approach in B.C.: structurally, the programs are relatively similar. Cost-wise, there is conflicting data on which programs are more expensive to administer. Legally, it does not appear that the beverage industry has any legal right to the unredeemed bottle deposits. Even if it does, provincial legislatures can destroy private rights when it thinks proper. Importantly, diverting unredeemed bottle container deposits to environmental causes is a very politically popular idea. Prior to the amendments to New York's bottle bill, when asked where the unredeemed bottle deposits went, only 19% of New York voters polled knew they went to industry – 23% already assumed they went to the state.[160] And 86% supported those funds being devoted to environmental issues.

Lastly, a recycling fee is already built into the cost of a beverage in B.C.: each beverage a consumer purchases carries with it a CRF. This fee is meant to be variable, and to change as the cost of recycling changes. If unredeemed deposits are diverted to environmental purposes, and the beverage industry decides to compensate by increasing the recycling fee (rather than cutting into its own profits), the mechanism for this already exists. This is despite data showing that beverage prices in states with bottle bills are not any higher than in states without bottle bills.

Overall, directing unredeemed deposit funds to environmental conservation aligns with voters' expectations, aligns with the principles of EPR and the "polluter pays" principle, and simply makes good economic sense.

[160] *CRI Press Release re. Poll*, see note 145.

Appendix A: Jurisdictional Comparison Chart

	Population (mil)	**Pop density (pop/km^2)**	**Bottle deposit**	**Unredeemed deposits (mil)**	**Return rate (%)**	**Portion to environmental programs (%)**	**Responsible for running system**
British Columbia	4.751	4.8	5¢, 10¢, 20 ¢	$16 (2014)	78.9% for Encorp; 93% for BDL (2015)	0	Beverage industry
Massachusetts	6.794	324.1	5¢	$33.5 (2011)	64.08% (2014)	100%	Beverage industry
New York State	19.795	158.8	5¢	$104 (2011)	65% (2015)	80%	Beverage industry
Michigan	9.922	67.5	10¢	$17.8 (2011)	94.2%	75%	Beverage industry
New Brunswick	0.75	10.5	10¢, 20¢	Not available	81%	Not available	Beverage industry