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A TREASURE HUNT: FOLLOW THE NICKELS

By Robert M. Landauer

When the 2003 Legislature begins work on Monday, it should dig into its pockets for spare change. It could find some \$20 million of nickels per biennium to keep public agencies operating effectively.

All it needs to do is to tweak the first-in-the nation Oregon Bottle Bill.

The Department of Environmental Quality estimates that 1.4 billion deposit containers are sold in Oregon each year. That's \$70 million yearly at a nickel deposit per bottle or can. About 16 percent end up in landfills. That's \$11.2 million paid by people for whom it is more tempting to toss the containers into the garbage than to collect the deposit. Also, an unknown but probably large number of bottles and cans are broken, crushed, littered or recycled with no deposits claimed.

Who keeps the unclaimed nickels? The state doesn't get a dime. The beverage distributors hold all of these unredeemed deposits, says DEQ.

Patricia Franklin, executive director of the Container Recycling Institute (www.bottlebill.org): "Beer distributors and soft drink bottlers argue that the unredeemed deposits, coupled with the sale of the scrap materials and the 'float' (deposits collected from retailers invested for short-term returns) help to offset the added costs of the container deposit system."

There are costs. But some states regard the unclaimed deposits as a tax-free windfall profit that rightfully belongs to the public, she says.

Franklin recounts that Massachusetts, Michigan and Maine passed so-called escheat laws requiring all or part of the unclaimed deposits to revert to the state. Bottlers and distributors fought each law in court.

A lower court in Massachusetts ruled that the law did not constitute a taking of the bottlers' money; was a proper act of the legislature; and refunds belong to the consumer until escheated to the state. The ruling was upheld in two appeals.

A Michigan court ruled that unclaimed deposits belonged to the beverage industry and that the law constituted an unfair taking by the state. The Court of Appeals overruled, saying that the law "constituted a valid exercise of legislative powers." The Supreme Court upheld that ruling.

Big money is at stake. Massachusetts collected \$35 million in 2002 – and more than \$281 million since January 1991. All of the money goes to the Clean Environment Fund for hazardous waste cleanup, solid waste disposal and recycling.

In Michigan, \$23.5 million of unclaimed deposits went into a trust fund in 2000, with 75 percent earmarked to environmental cleanup and recycling programs.

Oregon's Bottle Bill needs updating to see that unclaimed deposits revert to the public, as does much other abandoned property.

Lawmakers also need to refresh the deposit law's financial incentives. When the 1971 Legislature passed the Oregon Bottle Bill, the Portland-area consumer price index was 39.7. During the following 31 years, inflation boosted it 462 percent, to 183.5. To create the same incentive to recycle rather than to litter, the nickel deposit would now be 23 cents. A nickel's worth of incentive in 1971 amounts to a penny of enticement now.

An unsurprising effect is that Oregon's beverage container recycling rate, although almost twice the U.S. average of 44 percent, has been declining. It fell from 90 percent in 1995 to 84 percent in 2000 and probably still is dropping.

Lawmakers aren't going to quadruple the deposit, but they could double it, to 10 cents per bottle or can (as in Michigan), increasing redemptions and reducing litter -- a win-win deal.

Also, the economic, anti-litter, recycling and reuse benefits could multiply if Oregon, as several states do, included containers of wine, liquor, wine coolers, juice, tea and non-carbonated waters in its deposit law.

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