



The Commonwealth of Massachusetts

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A Review of the Clean Environment Fund and its Impact on State and Local Government

October 1996

Office of the State Auditor
Division of Local Mandates
A. Joseph DeNucci, Auditor



The Commonwealth of Massachusetts

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October 16, 1996

His Excellency William F. Weld, Governor
The Honorable Thomas F. Birmingham, President of the Senate
The Honorable Thomas M. Finneran, Speaker of the House of Representatives
The Honorable Lois G. Pines, Senate Chair, Joint Committee on Natural Resources and Agriculture
The Honorable Barbara E. Gray, House Chair, Joint Committee on Natural Resources and Agriculture
Honorable Members of the General Court:

I respectfully submit for your consideration this review of the administration of the Clean Environment Fund (CEF) from its inception in January 1990 through June 30, 1996. This report is issued under the State Auditor's authority to review any law having a significant financial impact on cities and towns, and as a follow-up to reports issued in 1992 and 1993 by this office concerning the significant cost impact of recycling and solid waste programs on Massachusetts municipalities.

The Clean Environment Fund was established by the General Court to hold abandoned bottle bill deposits for the support of recycling, composting, solid waste reduction, and bottle bill related programs. This report documents that only 28% of expenditures from CEF has supported municipal recycling programs; and that 72% of CEF expenditures has supported DEP operational expenses. Our report compares these expenditures, totaling \$63.3 million, to the legislative intent for CEF revenue and recommends that the General Court consider increasing the proportion of these revenues dedicated to cities and towns. The report also provides an analysis of the \$107.3 million in overall abandoned deposit escheatage and the oversight provided for its collection. I have made recommendations which would strengthen this oversight and increase confidence in the accuracy of receipts from bottle bill deposits abandoned by consumers.

If you have questions or need additional information regarding this report, please contact Thomas Collins, Director of the Division of Local Mandates, at (617) 727-0980. I look forward to continuing to work with you on this and other issues affecting the quality of state and local government and the services that the Commonwealth provides to its citizens.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Joseph DeNucci".

A. JOSEPH DENUCCI
Auditor of the Commonwealth

OFFICE OF THE STATE AUDITOR

DIVISION OF LOCAL MANDATES

A. Joseph DeNucci, Auditor

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EXECUTIVE SUMMARY

Introduction

This report of the Office of the State Auditor's Division of Local Mandates (DLM) evaluates state implementation of 1989 amendments to the Massachusetts bottle bill. Its focus is the Clean Environment Fund (CEF), a state special revenue fund created by the amendments to hold unclaimed bottle bill deposits, and CEF's impact on state and local government. This report provides a history of the bottle bill, summarizes CEF revenues and expenditures over the period January 1990 to June 1996, and includes recommendations to the General Court concerning CEF administration. DLM's report is issued under the State Auditor's authority to review any state law having a significant financial impact on cities and towns, and as a follow-up to reports DLM issued under the Local Mandate Law in 1992 and 1993 concerning the cost impact of recycling on Massachusetts cities and towns.

In 1983, Massachusetts became the eighth of ten states to implement a deposit system for beverage containers. The bottle bill deposit-redemption cycle begins when beverage wholesalers charge retailers a five-cent deposit on each full bottle bill container. At the end of the cycle, wholesalers pay retailers and redemption centers five cents for each empty container. However, only about four out of five bottle bill containers are returned for deposit redemption. Consequently, for every dollar in bottle bill deposits they collect, beverage wholesalers on average pay out only 80 cents in deposit redemptions. The 1983 bottle bill allowed beverage wholesalers to keep unredeemed or "abandoned" deposits. This revenue helped to offset wholesalers' bottle bill costs.

Effective in January 1990, the bottle bill was amended by St. 1989, c. 653, ss. 68-72, 235-237 ("the amendments"). Under the amendments all unclaimed bottle bill deposits determined to have been abandoned by consumers would escheat to, or become the property of the state. The terms "escheat" and "escheatage" refer to the principle that property reverts to the state if no person is

able to make a claim of ownership. The Department of Revenue (DOR) is charged with administration of abandoned deposit collections from wholesalers of beer and other malt beverages, wine coolers, carbonated soft drinks and carbonated water.

The bottle bill amendments that made abandoned deposits the property of the state also established the CEF, a state special revenue fund to be supported exclusively by abandoned bottle bill deposits. CEF revenue would be dedicated to recycling, composting, solid waste and bottle bill related projects and programs. The amendments contained a formula for apportioning overall abandoned deposit collections between CEF and the state's General Fund during the first five years of escheatage. In FY 1990 the General Fund received 90% of the revenue collected and the CEF received a 10% share. The CEF share increased each year until FY 1995 when 100% of abandoned deposit collections was credited to CEF. The Executive Office of Environmental Affairs (EOEA) is the state agency responsible for bottle bill administration and regulation under the original bottle bill including; deposits, refunds, handling fees, and redemption center registration and reporting. Under the amendments it also oversees CEF expenditures as appropriated by the Legislature.

Summary Findings and Recommendations

- Between January 1990 and June 1996, the state has collected a total of \$107.3 million in abandoned deposits from wholesalers of beverages subject to the Massachusetts bottle bill. Abandoned deposit revenue over the period indicates that 2.1 billion bottles and cans, 19% of all bottle bill containers sold since 1990, were not returned for deposit redemption.
- A total of \$62.5 million of the \$107.3 million in abandoned deposits collected has been deposited in the CEF. The balance of \$44.8 million was deposited in the state's General Fund according to the formula provided by the amendments.

- 72% of CEF expenditures has supported employee compensation and other administrative costs of the Department of Environmental Protection's hazardous waste and solid waste offices. Only 28% has provided support to municipal recycling programs.
- The bottle bill amendments specify that CEF abandoned deposit revenue would be dedicated *solely* to recycling, composting, solid waste, and bottle bill related purposes. However, the largest of three CEF spending categories, 42% of expenditures, supports the hazardous waste cleanup oversight program at the Department of Environmental Protection (DEP), a program that is not consistent with the intent of the legislation establishing the purposes of CEF spending. Another 30% supports DEP's solid waste responsibilities. The smallest category of CEF spending, 28% of expenditures, provides support to municipal recycling programs.
- Over the review period, beverage wholesaler reports to DOR indicate that the bottle bill generates \$87.5 million in annual deposits, \$71 million in annual redemptions, and \$16.5 million in annual abandoned deposits. Inadequate controls over the deposit system prevent DOR from verifying the accuracy of abandoned deposit receipts to the Commonwealth.

The major recommendations of this report are: 1) that the General Court consider earmarking a greater proportion of CEF revenue to the direct benefit of *municipal* recycling, and composting programs, rather than to support state environmental agency operations; 2) that DOR and EOEA strengthen bottle bill oversight through on-site reviews and implementation of uniform accounting, recordkeeping and reporting controls over bottle bill deposits, and; 3) because all other bottle bill states allow wholesalers to retain at least a portion of abandoned deposits, the report recommends a review of the escheatage amendment's impact on the beverage industry and on wholesale beverage prices. A review of the

adequacy of handling fees paid to retailers and redemption centers is also recommended.

This report discusses the history of the bottle bill, tracks annual abandoned deposit revenue since FY 1990, and breaks it into its General Fund and CEF shares. It also summarizes expenditures for three DEP programs and compares expenditures to the legislative intent for CEF revenue. Some of the report's findings are listed in Section One and are discussed in greater detail within the report.

FINDINGS

FY 1990 - FY 1996 CEF Revenue Findings

According to DOR data, based on beverage wholesaler monthly reports for the period January through 1990 June 1996:

- 11.3 billion bottle bill containers were sold;
- 9.2 billion were redeemed (81.1%);
- 2.1 billion were not returned for deposit redemption (18.9%);
- Beverage wholesalers collected \$568.3 million in five-cent deposits and paid out \$461 million in deposit redemptions during the period;
- Beverage wholesalers turned over the \$107.3 million difference to the state between the escheatage amendment's effective date in January 1990 and the end of FY 1996;
- \$44.8 million has been credited to the state's General Fund;
- \$62.5 million has been credited to the CEF;
- Between FY 1991 and FY 1995, abandoned deposit revenue declined each year, presumably because deposit containers were being redeemed at higher rates. Collections declined from \$22.2 million in FY 1991 to \$12.4 million in FY 1995, a decrease of 44%;
- In FY 1996 abandoned deposit revenue increased from \$12.4 million to \$16.3 million, an increase of 31%.

Average annual bottle bill data based on beverage wholesaler monthly reports for the January 1990 through June 1996 period:

- Annual sales - 1.75 billion bottle bill containers;
- Annual redemptions - 1.42 billion bottle bill containers;

- Average annual bottle bill containers not returned for deposit redemption - 330 million;
- Average annual deposits paid by consumers - \$87.5 million;
- Average annual abandoned deposit revenue over the 6.5 year period - \$16.5 million.

FY 1991 - FY 1996 Expenditure Findings

- Of the \$107.3 million in total escheatage collected from wholesalers, \$89.8 million (84%) has supported state government responsibilities through either unspecified expenditures from the General Fund or through expenditures from the CEF to support the state's environmental planning, regulatory, and enforcement efforts of the solid waste and hazardous waste cleanup oversight sections.
- \$45.8 million, 72% of total CEF expenditures of \$63.3 million, paid for state agency employee compensation, and for rent, utilities, and administration of state environmental agencies.
 - ◆ CEF provided \$26.7 million to DEP's Hazardous Waste Site Clean Up office (42% of CEF expenditures).
 - ◆ CEF provided \$19.1 million to DEP's main administrative, regulatory, and enforcement budget. Most of this was spent on DEP solid waste staff and administrative support (30% of CEF expenditures).
- Only \$17.5, million of the \$63.3 million in CEF expenditures can be construed as providing direct benefits to municipal recycling, composting, and solid waste programs (28% of CEF expenditures).
- Since FY 1993, the largest of the three categories of CEF spending has been for administration of DEP's hazardous waste cleanup oversight functions. Between FY 1993, when CEF began supporting hazardous waste cleanup oversight and the end of FY 1996, 48% of CEF expenditures has supported

this function. Of six state revenue funds supporting hazardous waste cleanup during the review period, CEF's share has been the largest. Support for hazardous waste programs is a departure from the purposes specified by the bottle bill amendments that created the CEF.

- Fiscal Year 1996 CEF Expenditures - \$16.8 million
- \$7.9 Million supported DEP hazardous waste cleanup through account 2260-8870
- \$4.5 million supported DEP Solid Waste through account 2200 - 0100
- \$4.4 million supported Recycling Coordination through account 2010-0100

Note

Expenditure data throughout this report includes state employee benefits chargebacks deducted directly from CEF revenue by the Office of the Comptroller after the close of each fiscal year. As a result, CEF expenditures over the period exceed CEF revenue by approximately \$800,000. For the same reason, annual expenditures may exceed legislative line item appropriations.

EXPENDITURES

The Clean Environment Fund was established by St. 1989, c. 653, s. 70 which amended G.L. c.94 by adding section 323F. This section established the legislative intent for CEF revenue. According to subsection (a) of s. 323F, "(a)mounts deposited in said fund shall be used, subject to appropriation, solely for programs and projects in the management of solid waste and for environmental protection". Subsections (b) through (d) provide more specific spending restrictions on CEF revenue. The parameters, set by the amendments creating the fund, establish specific categorical spending limitations that require all CEF revenue to be used for recycling, composting, solid waste and bottle bill purposes. These parameters are listed below:

- Not less than 50% of amounts deposited in the fund shall be used for recycling, composting and solid waste source reduction projects and programs;
- Not less than an additional 20% shall be used for recycling, and others solid waste projects and programs;
- Not more than 30% of the amounts deposited in the fund shall be used for other environmental purposes consistent with the purpose of the bottle bill.

These provisions require that CEF abandoned deposit revenue be used exclusively to support to recycling, composting, solid waste, and bottle bill related purposes. However, the largest of three CEF spending categories supports the hazardous waste cleanup oversight program at the Department of Environmental Protection (DEP), a program that is not consistent with the intent of the legislation establishing the purposes of CEF spending. The smallest category of CEF spending supports municipal recycling programs.

Over the period FY 1993 - FY 1996, CEF has provided \$26.7 million in support of hazardous waste cleanup oversight, representing 48% of CEF

spending over this period, and 42% of CEF expenditures over the life of the fund. The second category of CEF spending funds DEP's solid waste responsibilities including implementation of the state Solid Waste Masterplan. A total of \$19.1 million, 30% of CEF spending, has been dedicated to this purpose over the FY 1991 - 1996 period. Therefore, a total of \$45.8 million, 72% of CEF spending, has supported DEP operations.

CEF Expenditures for the Recycling Coordination account that provides support to municipal recycling represents only \$17.5 million, 28% of CEF spending over the period. This program supported the state-owned Springfield Materials Recycling Facility (SMRF), a recycling grant program for cities and towns, other state programs developed to improve recycling economics, and the state's own recycling program. FIGURE ONE shows the proportion of CEF spending dedicated to the three programs over the period covering fiscal years 1991 through 1996.

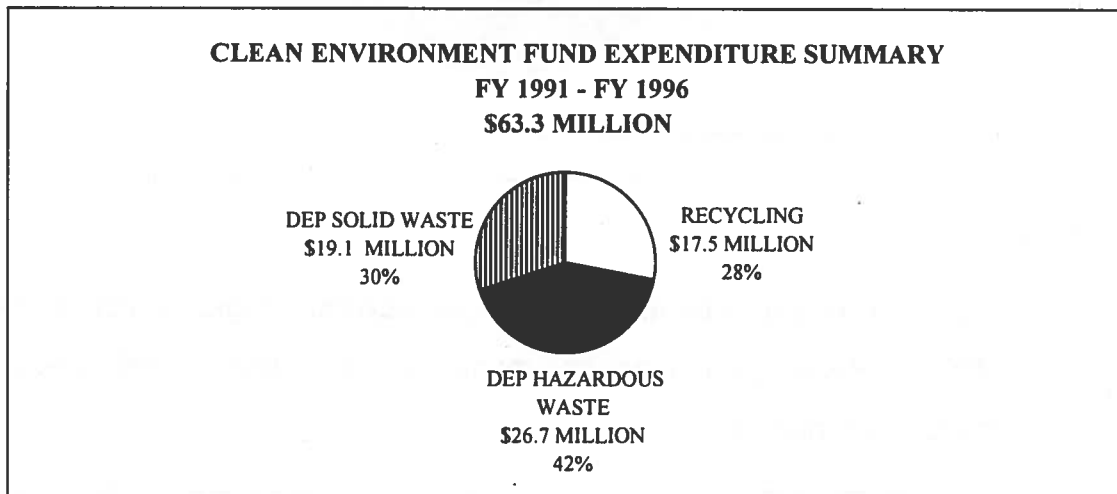


FIGURE 1

Expenditure data throughout this report includes state employee benefit chargebacks deducted directly from CEF by the Office of the Comptroller at the end of each fiscal year. The chargebacks are based on payroll expenditures for each applicable appropriation times the percent of CEF support provided. The chargebacks are included under "employee compensation" which also includes other employee-related expenses.

FIGURE TWO provides a categorical summary of CEF expenditures. During the review period CEF has provided more than \$39.3 million in state employee compensation, 62% of CEF expenditures, to the solid waste and hazardous waste cleanup oversight programs at DEP. Another \$6.5 million, or 10% of CEF expenditures, paid for DEP rent, administration, and miscellaneous expenses.

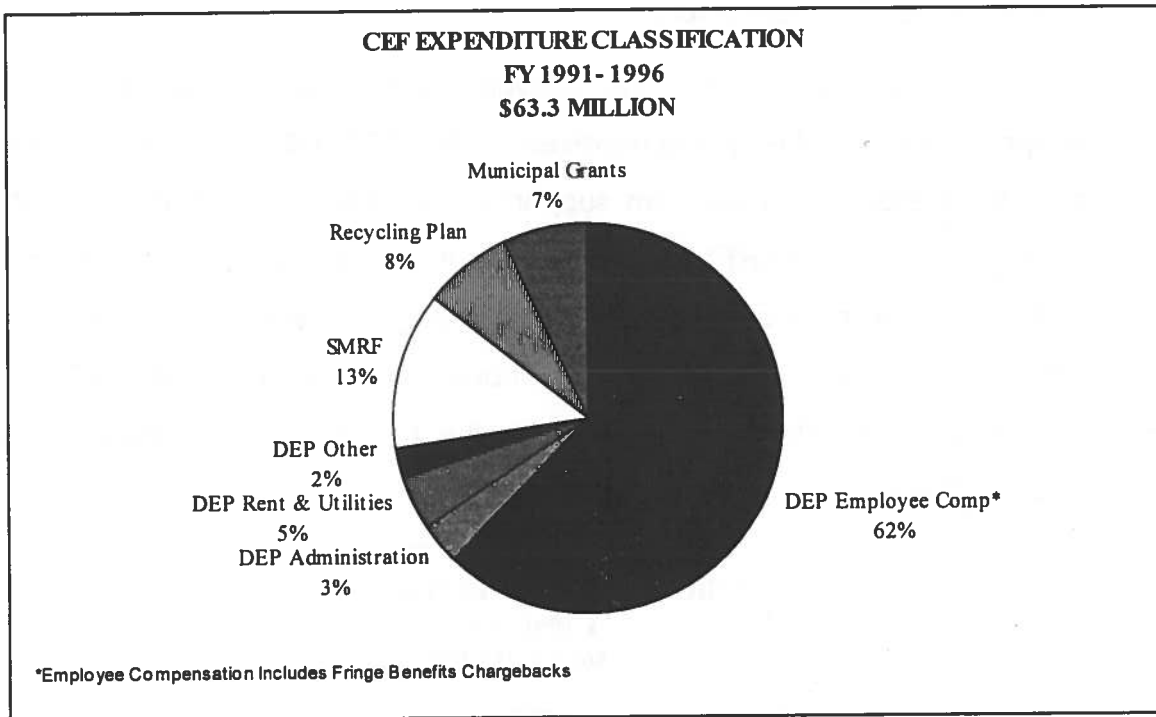


FIGURE 2

Expenditures which benefited municipal recycling programs include those for the SMRF, DEP's recycling plan, and municipal grants which together account for 28% of CEF expenditures.

FIGURE THREE categorizes annual CEF expenditures for the three main programs supported by CEF during the period. It shows the impact of state agency spending, particularly the hazardous waste component, on the amount of CEF revenue available for cities and towns. Spending was dedicated exclusively to recycling, composting and solid waste purposes in FY 1991 and FY 1992. Recycling expenditures were dedicated to support for the SMRF, and solid waste expenditures were legislatively earmarked for the expenses of DEP's Division of

Solid Waste. In FY 1993, CEF support for hazardous waste was initiated and accounted for 44% of expenditures from the fund, while the recycling and solid waste components increased slightly. In FY 1994, combined CEF support for DEP through the solid waste and hazardous waste accounts increased by 153%, while the recycling component decreased, due to lower payments due under the SMRF contract.

**CLEAN ENVIRONMENT FUND EXPENDITURE SUMMARY
THREE MAJOR PROGRAMS - \$63.3 MILLION**

	RECYCLING	SOLID WASTE	DEP HAZ/WASTE	FISCAL YEAR TOTALS
FY 91	\$2,563,072	\$1,732,072		\$4,295,144
FY 92	2,149,843	1,657,900		3,807,743
FY 93	2,353,773	1,825,717	\$3,178,297	7,357,787
FY 94	1,928,475	4,701,347	7,955,305	14,585,127
FY 95	4,101,942	4,659,623	7,632,711	16,394,276
FY 96	4,367,985	4,575,412	7,940,109	16,883,506
TOTAL	<u>\$17,465,090</u>	<u>\$19,152,071</u>	<u>\$26,706,422</u>	<u>\$63,323,583</u>

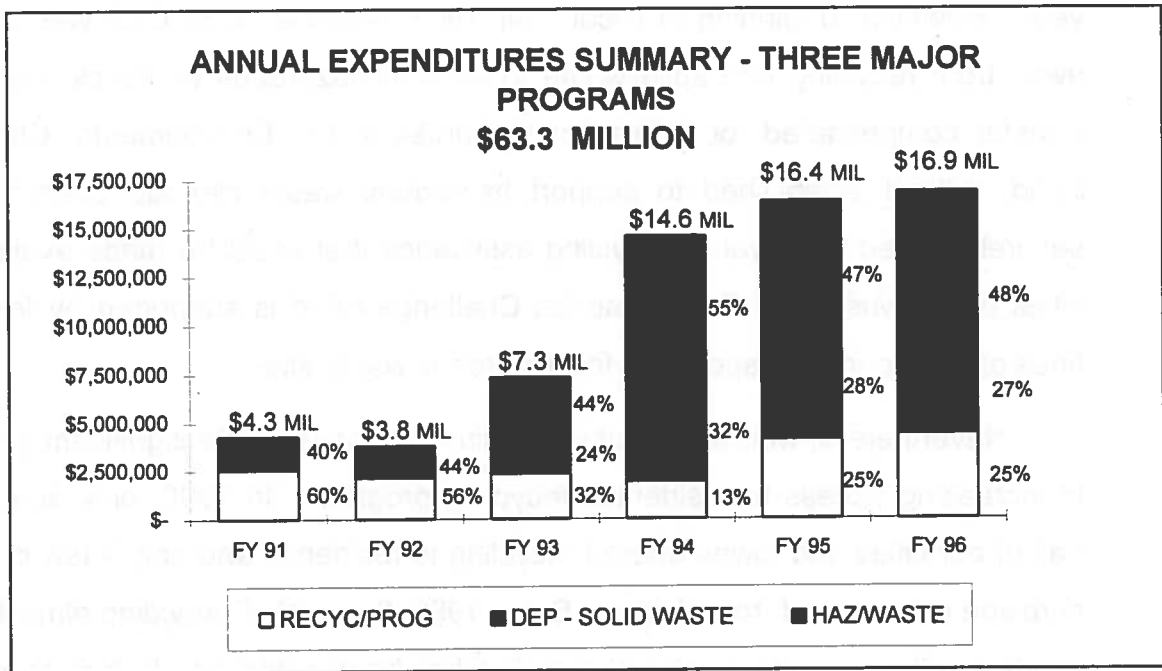


FIGURE 3

In FY 1995 the recycling component increased as DEP began implementing the recycling plan including grants to cities and towns funded by CEF. For FY 1996 the SMRF payments were greatly reduced due to a new contract and this funding was allocated to the recycling plan and grant program. Cities and towns also received recycling grants during this period that were financed by bonds authorized by Chapter 584 of the Acts of 1987.

In its 1992 review of mandatory recycling legislation, "A Financial Effect Determination of Mandatory Recycling on Massachusetts Cities and Towns", and in a 1993 review of DEP solid waste regulations, DLM documented that recycling would increase local waste management budgets in most cities and towns with curbside collection. DLM estimated that statewide municipal implementation costs would be at least \$16 million per year. As an alternative to mandatory recycling, DLM recommended earmarking CEF revenue for funding incentives to support voluntary municipal recycling efforts. CEF revenues were growing rapidly at that time due to the increasing share of abandoned deposits allocated to the CEF each year. However, beginning in fiscal year 1993, revenue from CEF was directed away from recycling and solid waste to support hazardous waste cleanup. This transfer compensated for a revenue shortfall in the Environmental Challenge Fund, a fund established to support hazardous waste cleanup oversight, but severely limited the level of recycling assistance that could be made available to cities and towns. The Environmental Challenge Fund is supported by fees and fines paid by parties responsible for hazardous waste sites.

Nevertheless, Massachusetts municipalities have made significant progress in increasing access to residential recycling programs. In 1990, only about one-half of our cities and towns offered recycling to residents, and only a few provided curbside collection of recyclables. Since 1990, the goal of providing almost every resident with access to municipal recycling has been achieved. In fact, more than two-thirds of Massachusetts residents can have recyclables collected at the curb. The impetus behind the growth of municipal recycling during this period was a

DEP regulatory mandate that prohibits solid waste facilities from accepting waste deliveries containing significant quantities of newspaper, cans, glass, plastic, and yard waste. This regulation effectively mandated municipal recycling without providing for state funding needed to assume local implementation costs.

The \$26.7 million CEF provided to the hazardous waste oversight program severely limited the assistance available to cities and towns during this critical recycling development period. As a result, except for the state recycling grant program, which primarily provides "blue boxes", other recycling containers and public information materials, cities and towns have had to use local resources to finance the operating costs of municipal recycling. Western Massachusetts cities and towns served by the SMRF received more significant state support for recycling from CEF and other sources.

The progress made to date is a good start, but an increase in direct aid to cities and towns for recycling is necessary to sustain this progress. Recycling programs are popular with most residents but they do not always provide financial benefits to cities and towns. In fact, many cities and towns are struggling to maintain existing efforts due to a recent downturn in the market value of recycled materials. Further, the bottle bill itself affects the economics of Massachusetts recycling programs. Because over 80% of deposit bottles and cans are redeemed under the bottle bill, Massachusetts municipalities do not have large-scale access to aluminum and plastic beverage containers, which would be the largest revenue generators for municipal recycling programs. As a result, the dollar value of materials collected by recycling programs in Massachusetts is lower than in states without deposit laws. Increased funding for cities and towns from CEF abandoned deposit revenue would compensate for the bottle bill's impact on municipal recycling economics and help to offset the impact of fluctuations in the market value of other consumer recyclables.

Recommendations

DLM recommends that EOEa prepare a plan to begin to replace the CEF contribution to DEP's hazardous waste cleanup program with increased contributions from other funds. Several state special revenue funds have been established for hazardous waste purposes, (e.g., the Environmental Challenge Fund, the Toxic Use Reduction Fund, and the Underground Storage Tank Fund). Yet, each of these funds pays a smaller share of the hazardous waste cleanup oversight account than does CEF. Further, we recommend that the CEF contribution to the hazardous waste office (\$7.9 million in FY 1996) be reallocated to the municipal recycling and solid waste grant program. Full implementation of this recommendation would make it possible to earmark 70% of CEF expenditures for municipal recycling programs while continuing to provide 30% to DEP's implementation and oversight of the state Solid Waste Masterplan. It would also return abandoned deposit spending to the purposes originally intended by the legislation that created the Clean Environment Fund and provide needed assistance to cities and towns.

DLM also recommends that EOEa improve its oversight of the 175 redemption centers registered with DEP. In cooperation with DOR, the agencies should develop strict internal controls including uniform recordkeeping, accounting, and reporting systems for redemption centers. This could be accomplished within the existing budgetary support provided to DEP's main budget account by CEF.

See Section Five for additional description of the programs funded by CEF.

ABANDONED DEPOSIT REVENUE

According to Department of Revenue records, 11.3 billion bottle bill deposit containers were sold during the period January 1990 to June 1996. During this period an average of 19%, or about 2.1 billion bottles and cans were not returned for deposit redemption. These figures are based on monthly reports required of bottle bill beverage wholesalers under the escheatage amendment. Revenue is based on the number of containers reported abandoned by wholesalers times the five-cent deposit. Wholesalers have collected \$568.3 million in bottle bill deposits over the period and have paid out \$461 million in redemptions. Therefore, as shown in Figure 4, DOR has collected \$107.3 million worth of abandoned deposits under the escheatage amendment.

FIGURE FOUR shows the number of containers reported sold, redeemed, and abandoned over the period FY 1990- FY 1996. A review of the rates of redemption and abandonment (also shown in Figure 4) appears to document a steady increase in redemption rates from about 75% redemption in FY 1990 to 87% redemption in FY 1995. Conversely, this steady increase in redemption rates also indicates a 44% decrease in abandoned deposits over the same period. In FY 1990, 25 out of 100 deposits were abandoned. In FY 1995, only 13 of 100 deposits were abandoned. In FY 1996, the redemption rate appears to have fallen for the first time over the period, as abandoned deposit revenue increased by \$4 million.

SECTION 3

NUMBER OF DEPOSIT CONTAINERS SOLD, RETURNED & ABANDONED
IN MASSACHUSETTS FY 1990 - 1996

YEAR	SOLD*	RETURNED	% RETURNED	ABANDONED**	% ABANDONED	ABANDONED DEPOSIT REVENUE
FY 1990***	664,621,553	497,801,543	74.9%	166,990,300	25.1%	\$8,349,515
FY 1991	1,967,450,580	1,524,774,199	77.5%	443,119,500	22.5%	22,155,975
FY 1992	1,624,223,652	1,288,008,112	79.3%	336,215,560	20.7%	16,810,778
FY 1993	1,759,782,744	1,435,982,719	81.6%	324,085,220	18.4%	16,204,261
FY 1994	1,682,250,416	1,382,809,841	82.2%	300,401,860	17.8%	15,020,093
FY 1995	1,902,084,860	1,654,319,200	87.0%	247,765,660	13.0%	12,388,283
FY 1996	1,765,732,229	1,437,306,029	81.4%	328,426,200	18.6%	16,421,310
FY 1990-1996	11,366,146,034	9,221,001,643	81.1%	2,147,004,300	18.9%	\$107,350,215
AVERAGE****	1,748,637,851	1,418,615,637		330,308,353		\$16,515,417

- Sold - Based on deposits received By Wholesalers during fiscal year as reported to DOR
- ** Abandoned - Based on revenue received by DOR during fiscal year
- *** FY 1990 January - June
- **** Average Based on 6.5 Years

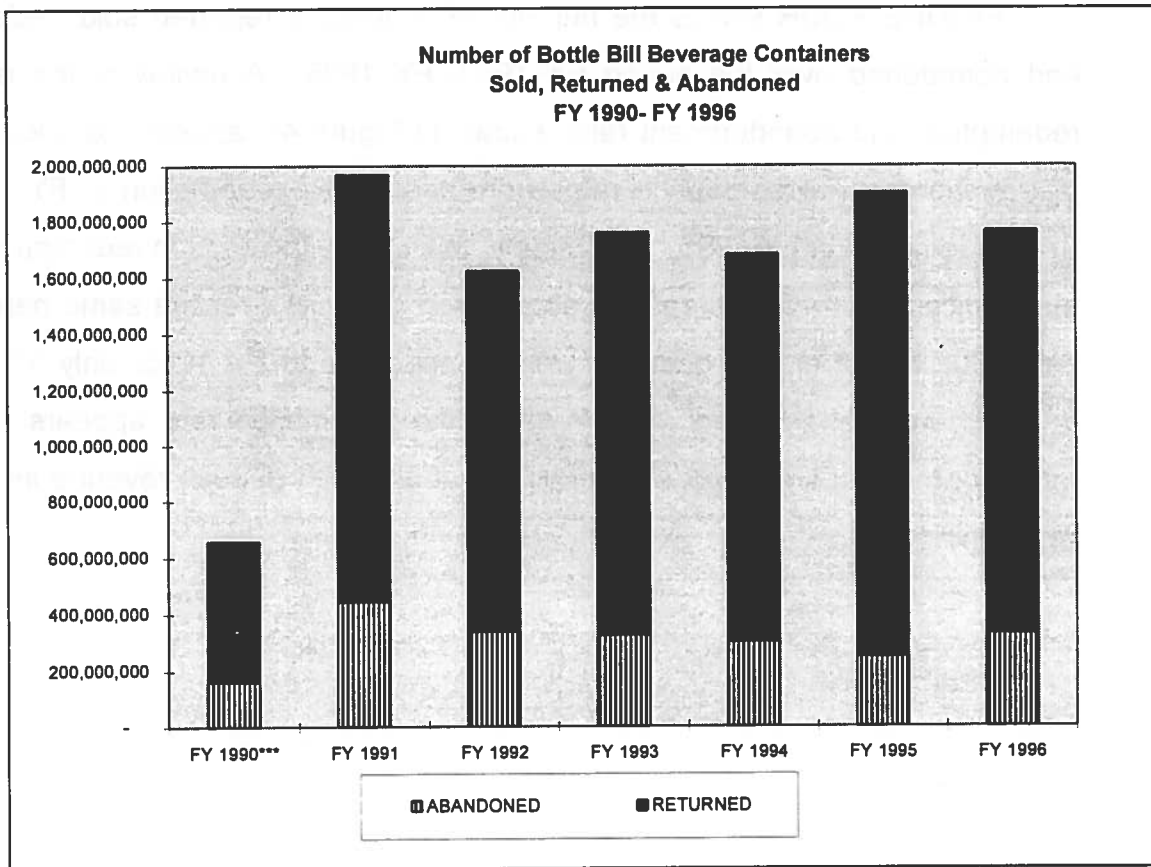


FIGURE 4

FIGURE FIVE shows the annual proportions and amounts of the \$107.3 million in abandoned deposit collections credited to the state's General Fund and to the CEF, according to the formula provided by the amendments. The General Fund share decreases each year as the CEF share increases until FY 1995, when all abandoned deposit escheatage is credited to the CEF. Over the period, the General Fund received \$44.8 million while \$62.5 million has been credited to the Clean Environment Fund.

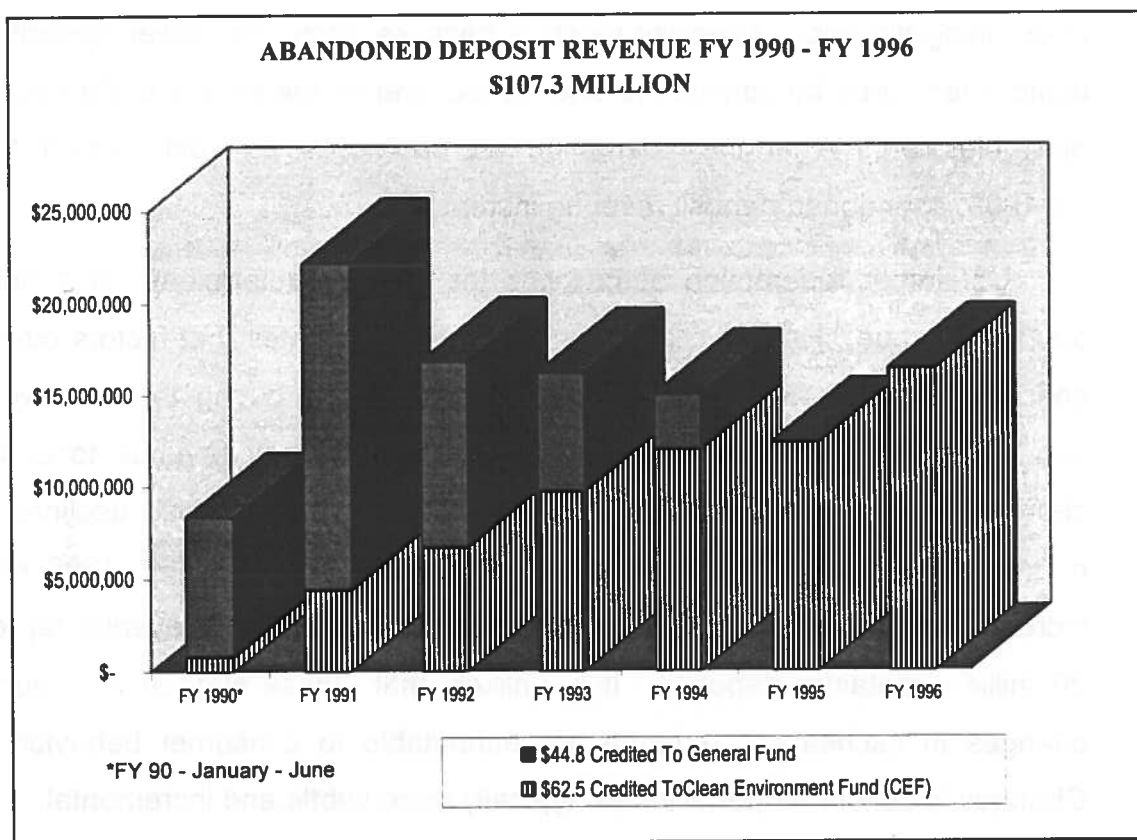


FIGURE 5

In FY 1991, the first full year of beverage escheatage, abandoned deposit collections were at their peak of \$22.1 million. Thereafter, collections declined each year until FY 1996. Collections for fiscal year 1992 dropped to \$16.6 million. Fiscal year 1993 and 1994 collections were \$16.2 and \$15.0 million respectively. FY 1995 collections declined further to \$12.3 million - a 44% decrease from the \$22.1 million collected in FY 1991. Between FY 1995 and FY 1996 the annual

abandoned deposit revenue trend changed direction as the redemption rate declined from 87% in FY 1995 to 81.4% in FY 1996. Consequently, abandoned deposit collections increased in FY 1996 for the first time since the escheatage amendment took effect in 1990, bringing CEF collections to \$16.4 million.

According to DOR and EOEA representatives, the primary factor influencing abandoned deposit collections is the deposit redemption behavior of consumers. Increasing redemption rates during the period FY 1990 - FY 1995 period resulted in declining abandoned deposit revenue because each year fewer deposits were being abandoned by consumers and turned over to the state's escheatage fund by wholesalers. When the redemption rate decreases, as it did from FY 1995 to FY 1996, abandoned deposit revenue increases.

Consumer redemption behavior is the primary determinant of abandoned deposit revenue. However, a review of the data indicates that factors other than consumer habits are involved. Revenue fluctuations during the last two fiscal years highlight the problem of using abandoned deposit revenue to document changes in consumer behavior. For example, in 1995 revenue declined \$2.63 million (18%) from FY 1994 levels. Between FY 1995 and FY 1996 revenue increased by \$4 million (33%). Each million dollar change in revenue represents 20 million container deposits. It is unlikely that these sudden and significant changes in escheatage revenue are attributable to consumer behavior alone. Changes in consumer behavior are typically more subtle and incremental.

Recommendations

DOR and EOEA recognize that several other factors may have an influence on consumer habits, redemption rates, and abandoned deposit revenue trends, but beyond speculation their impact is unknown. These factors include: the changing market share of container sizes and types; the availability and convenience of redemption centers; the impact of municipal recycling programs on bottle bill redemptions; local anti-scavenging laws; illegal redemptions including

those from out of state; changes in DOR collection regulations and wholesaler accounting practices; and the general strength of the economy. *This report recommends further study by DOR and EOEA of these and other factors that may influence redemption rates and abandoned deposit revenue.*

The 1989 bottle bill amendments added abandoned deposit collection to the responsibilities of DOR, without providing it the resources necessary to implement this new role. Clearly, the bottle bill and its revenue stream is a complex system. Thousands of retailers, 175 redemption centers, and 51 beverage wholesalers are subject to its provisions. Bottle bill sales average 1.75 billion containers per year, generate \$87.5 million in consumer deposits, and involve millions of deposit transactions between wholesalers, retailers, consumers, and redemption facilities.

Despite the complexity of the revenue stream and the largely unexplained fluctuations in annual collections, DOR currently devotes only one full-time equivalent employee to its bottle bill deposit oversight program. DOR does not audit beverage wholesalers' Deposit Transactions Funds. Rather, its oversight is limited to desk reviews. Anomalies discovered in monthly revenue filings and allegations of redemption fraud are investigated and followed up to the extent possible. *This oversight should be strengthened through implementation of strict internal controls. These controls should ensure that uniform accounting, recordkeeping, and reporting systems are implemented by wholesalers and redemption centers, and that DOR auditors perform on-site reviews. Accordingly, DLM recommends that a portion of CEF revenue be earmarked to DOR for this purpose.* This could be accomplished through legislation or through an interagency service agreement between EOEA and DOR. Greater oversight and closer collaboration in general between these two agencies would help to maximize revenue due the Commonwealth, help explain revenue trends and improve the accuracy of revenue projections.

Based on information from other bottle bill states, DLM further recommends that DOR, EOEA, and representatives of the beverage and redemption industries

conduct a study of two bottle bill issues. Its purpose should be to ensure a fair and economically viable redemption system that is critical to continued success of the bottle bill.

- *The adequacy of handling fees paid to redemption centers and retailers by beverage wholesalers.* Many bottle bill states require a 3 cent handling fee. In Massachusetts the handling fee is 2.25 cents. The handling fee has only increased one quarter of one cent since 1983. Representatives of the redemption industry claim that their operating costs have increased significantly over this period.
- *Whether the bottle bill should be amended to allow wholesalers to keep a portion of abandoned deposits.* Massachusetts is the only state that claims 100% of abandoned deposits. Maine and Michigan have claimed 50% and 75% of unclaimed deposits, respectively. The seven remaining bottle bill states allow wholesalers to retain 100% of abandoned deposits to partially offset the handling fees they pay to redeemers as well as their own cost of handling empty containers. Representatives of the Massachusetts bottling industry estimate that wholesaler's bottle bill expenses add one dollar to the cost of each case of beverages.

THE MASSACHUSETTS BOTTLE BILL

Origin and Application

In 1983, Massachusetts became the eighth of ten states to implement a beverage container deposit system, or "bottle bill." The original bottle bill, Chapter 571 of the Acts of 1981, was approved by the Legislature over the Governor's veto in November 1981. The law was to take effect in January 1983. An initiative petition seeking to repeal the bottle bill, as passed by the Legislature, became referendum Question 4 on the 1982 state election ballot.

The public debate over the bottle bill referendum was similar to arguments for and against the bill heard during legislative deliberations. Proponents favored the bottle bill because deposits on non-reusable bottles and cans would establish an economic incentive for consumers to return empty containers for deposit redemption. Once returned, containers could be recycled and reprocessed, rather than being discarded, thereby saving landfill space and reducing litter. Bottle bill proponents also pointed out that manufacturing processes that reuse recycled material consume less energy and fewer natural resources than do processes that use raw materials exclusively. The proponents also claimed that the need to collect and reprocess empty containers would create economic opportunities and additional employment.

Opponents of the bottle bill predicted that beverage industry implementation costs would require price increases and that higher prices in addition to the cost of the deposit itself, would hurt consumers. They also claimed that the bottle bill would slow the growth of municipal and charitable recycling programs, because fewer beverage containers would be available to these programs. As a result, revenue from the sale of empty beverage containers would be greatly reduced by the bottle bill. Health and sanitation risks associated with storing empty containers were also anticipated by opponents. As an alternative to the bottle bill, a beverage industry group representing bottlers, wholesalers, supermarkets, and

package stores made a commitment to continue to fund a corporation they had established to clean up roadside litter, to conduct anti-litter education programs, and to provide financial assistance to municipal and private recycling programs.

The pro-bottle bill position prevailed as 59% of voters in the 1982 state election approved of the bottle bill. As a result, the law took effect on January 17, 1983. The Executive Office of Environmental Affairs (EOEA) was charged with oversight and implementation of the original bottle bill. EOEA's bottle bill regulations include container packaging, deposit, refund, and handling fee provisions as well as registration and oversight of redemption centers.

The Massachusetts bottle bill requires a deposit of at least five cents per container on carbonated soft drinks, carbonated water, wine coolers, beer, and other malt beverages. Fruit juice, dairy products, tea, wine, liquor, and uncarbonated water and soft drinks are not subject to bottle bill deposits in Massachusetts. The original bottle bill required a ten-cent deposit on larger containers, but this provision was repealed in May of 1983. Handling fees for dealers and redemption centers were originally set at not less than one-cent per returned container. The handling fee was raised to 2 cents during 1983, and again in 1990 to its current level of 2.25 cents per container. Beverage wholesalers pay this fee to retailers and redemption facility operators in addition to five cents for each deposit container returned. Wholesalers are required to provide for pick up of empty containers they sell to retailers. They are not required to pick up at redemption centers. As a result most redemption centers must deliver their empty containers to wholesalers.

In the bottle bill deposit-redemption cycle, deposits change hands four times between wholesalers, retailers and consumers. The cycle begins when beverage wholesalers charge retailers a five-cent deposit for each full container delivered. The retailer is compensated for the five cents it pays to the wholesaler when it collects a five-cent deposit from the consumer at the point of retail sale. On the

return cycle, the process is reversed. Consumers return empty containers to retailers or redemption centers and redeem their deposits. Retailers and redemption centers collect the five-cent deposit value plus a handling fee, currently 2.25-cents per container, from wholesalers or their agents. Finally, redeemed bottles and cans are sold on the recycled materials market for subsequent reprocessing and reuse.

Not all containers, however, are returned for deposit redemption. According to industry and environmental sources, most unreturned containers are discarded by consumers. Some are also recycled directly through community recycling programs. A small number of containers are rejected because they don't meet the standards for deposit redemption. For example, returned containers must be empty and relatively clean. Breakage of glass bottles is also a minor source of deposit abandonment.

As the originator of each deposit transaction, the wholesaler holds all consumer deposits until the end of the redemption cycle. Accordingly, each time a consumer fails to return a bottle or can having a five-cent deposit value, a wholesaler ends up with an "extra" nickel. The retailer, however, breaks even because it has paid a five-cent deposit for each bottle bill container purchased from the wholesaler and collects five cents when the container is sold.

The Bottle Bill Amendments

The original Massachusetts bottle bill did not address the disposition of unredeemed deposits. The Supreme Judicial Court has ruled that, prior to the January 1990 effective date of the bottle bill amendments, the legislative intent of the bottle bill was that beverage wholesalers would retain all unredeemed deposits. See *Mass. Wholesalers of Malt Beverages, Inc. v. Attorney General*, 409 Mass. 336 (1991). This revenue helped to offset the beverage industry's capital and operating costs of implementing the bottle bill, such as equipment and

facilities needed to collect empty containers, and mandatory handling fees that wholesalers pay to retailers and redemption centers.

In 1989, the Massachusetts bottle bill was amended pursuant to St. 1989, c. 653, ss. 68-72, 235-237 ("the amendments"). Under the amendments, all deposits determined to have been abandoned by consumers would "escheat" to, or become the property of the Commonwealth as of January, 1990. The Department of Revenue administers collection of abandoned deposit revenue. The amendments also created the Clean Environment Fund which would be supported by abandoned bottled deposit escheatage. The Executive Office of Environmental Affairs is responsible for oversight and administration of CEF spending.

Escheatage

The words "escheat" and "escheatage" reflect a principal that the state has a right to property if no person is able to make a claim of ownership. Maine and Michigan have also added an escheatage amendment to their respective bottle bills. Maine's law provides for the state to claim one-half of abandoned deposits and allows deposit initiators to keep the other half. Michigan's bottle bill provides for the state to take a 75% share, leaving their wholesalers 25% of abandoned deposit revenue. In the seven other bottle bill states wholesalers retain all unredeemed deposit revenue for their own use. In Massachusetts, the state claims 100% of abandoned deposits.

Two Massachusetts beverage industry groups challenged the escheatage provision seeking a judgment that the bottle bill, as amended, takes the property of wholesalers without compensation. See *Mass. Wholesalers Of Malt Beverages, Inc. & another v. The Commonwealth & others*, 414 Mass. 411 (1993). The court held that the escheatage amendment does not effect a taking of wholesalers' property. Rather, it ruled that the amendment is a proper exercise of

legislative power to establish that refund values, once they are deemed to have been abandoned by consumers, will become the property of the state.

In the above case, however, the court struck down one amendment, St. 1989, c. 653, s. 237. According to this provision, each wholesaler was to pay, into an escrow account, a sum equal to the refund value of all containers that it sold during the three months prior to the effective date of the amendments. The amount at issue has been estimated to have been \$30 million (approximately 600 million containers sold x five cents). Three years after the amendments took effect, the court ruled that the retroactive funding portion of the amendments was an unconstitutional, retroactive taking of wholesalers' property. The court also ruled that the retroactive provision is severable from the amended bottle bill. Consequently, the Commonwealth's right to claim abandoned deposits after the effective date of the amendments was affirmed by this decision, and the Commonwealth has collected abandoned deposits from wholesalers since 1990.

The full effect of the court's ruling against the retroactive funding provision has yet to be determined. The Commonwealth has established a \$7.3 million reserve account for payment of a partial final judgment based on a settlement agreement with the Massachusetts Soft Drink Association. A settlement concerning the level of compensation due to the Massachusetts Wholesalers of Malt Beverages has not been reached, and is still under review by Suffolk Superior Court.

The Clean Environment Fund

The bottle bill amendments also established a special state revenue fund, the Clean Environment Fund (CEF), to be supported exclusively by beverage container deposits abandoned by consumers in the Commonwealth. Its purpose is to use abandoned deposit revenue to support environmental programs and projects.

Under the original bottle bill, EOEa is responsible for implementing several sections of the bottle bill, including, definitions, refund value, handling fees, container returns, and container packaging. EOEa has promulgated regulations to carry out these sections of the bottle bill. The 1989 escheatage amendment added oversight and administration of CEF spending to the responsibilities of the Environmental Affairs Secretariat.

The amendments provide for an escalating share of abandoned deposits to be credited to CEF during fiscal years 1990 through 1994. The remaining portion of abandoned deposit revenue was to be deposited into the Commonwealth's General Fund until FY 1995, when all abandoned deposit revenue would be credited to the CEF. The amendments specify that, CEF funds would be dedicated to "programs and projects in the management of solid waste and for environmental protection; provided, however, that no funds shall be used for costs associated with incineration." See G.L. c. 94, s. 323F. More specifically, however, this section, further stipulates the purposes of CEF spending as follows:

- Not less than fifty percent of amounts deposited in the Fund shall be used for recycling, composting and solid waste source reduction projects and programs;
- Not less than an additional twenty percent of amounts deposited in the Fund shall be used for recycling and other solid waste projects and programs;
- Not more than thirty percent of amounts deposited in the Fund shall be used for other environmental programs consistent with the purpose of the "bottle bill", so-called.

Abandoned Deposit Collection Procedures

Since the effective date of amendments to the bottle bill, the DOR has been charged with administering the collection of abandoned deposits from wholesalers the amendments require each wholesaler to:

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- Keep deposits and handling fees segregated from other revenues;
 - Establish and maintain a Deposit Transaction Fund (DTF) to be used exclusively to hold deposits on behalf of consumers and the Commonwealth;
 - File a monthly report with DOR that includes the number of non-reusable deposit containers sold, and the number of containers redeemed in accordance to DOR regulations;
 - Pay abandoned deposit amounts to the Commonwealth through the DOR each month;

Deposits are considered abandoned if they are not redeemed after three months. Redemptions paid out each month are compared to deposits collected in the third month prior to the reporting month. The difference is basically the abandoned amount. This section also provides that interest earned on deposits held for the state, in wholesaler's Deposit Transaction Funds, may be withdrawn by bottlers and distributors. DOR is required to reimburse wholesalers for "over-redemptions" a situation where a particular wholesaler's deposit redemption expenditures exceed deposits collected. Failure to file monthly reports, or to pay abandoned deposit amounts due, carries the same sanctions as may be imposed by DOR for failure to pay taxes.

EXPENDITURES SUMMARY: PROGRAMS FUNDED BY CEF

Since FY 1991 the Clean Environment Fund has supported three budget line item appropriations under the control of the Executive Office of Environmental Affairs (EOEA). Over the period FY 1991 through FY 1996, \$63.3 million has been charged against CEF revenue in support three DEP programs. One program provides direct recycling assistance and is funded completely by CEF. CEF also pays for DEP's solid waste program through partial support of DEP's overall administration, regulatory, planning, and enforcement account. The third and largest CEF spending category provides support to DEP's administration and oversight of hazardous waste site cleanup.

Recycling Coordination-Solid Waste Management Programs & Projects

CEF support for Line Item 2010-0100 FY 1991-FY 1996= \$17.5 million

This account is under the direct control of the Executive Office of Environmental Affairs (EOEA). It is funded entirely by Clean Environment Fund abandoned deposits. EOEA allocates funds from this account to DEP and other state agencies through Interagency Service Agreements. The largest allocation is to DEP's recycling account, line item 2200-0881. During the FY 1991-1995 period, this appropriation paid for the operating costs of the state-owned Springfield Materials Recycling Facility. In FY 1994, DEP began to implement a plan to promote municipal recycling participation, to stimulate demand for post-consumer recycled materials, to remove barriers to recycling, and to increase state agency recycling and procurement of recycled content supplies. The recycling plan is one element of the state Solid Waste Master plan. The goal of this plan is to recycle 46% of municipal solid waste by the year 2000.

Over the FY 1991-1996 period, \$17.5 million (28%) of the \$63.3 million in CEF expenditures has been made available to this account. Roughly \$8.3 million of the \$17.5 million paid for the operating costs of the state-owned Springfield

Materials Recycling Facility (SMRF). DEP expended \$4.8 million for a recycling plan developed in FY 1994. In addition to the other recycling plan elements CEF has also provided \$4.4 million in grants to cities and towns during the FY 1994 to 1996 period. Expenditures from account number 2010-0100 are summarized in FIGURE SIX.

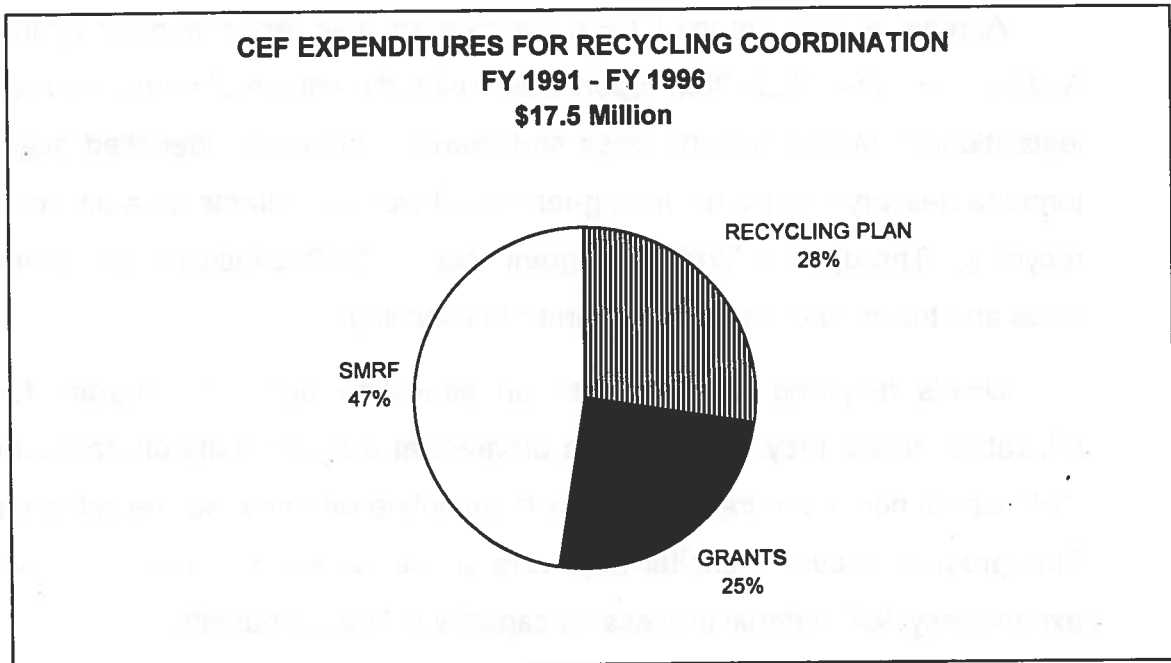


FIGURE 6

Of the three appropriations supported by the CEF, only this line item (2010-0100, as allocated primarily by 2200-0881) provides direct assistance to municipal recycling programs. The major share (47%) of spending from this account has benefited 100 western Massachusetts communities which receive free processing of recyclable at the Springfield Materials Facility. Municipalities did not receive the proceeds from the sale of recycled materials under the first five year contract, nor did they take any market risk. In FY 1996 cities and towns can be guaranteed \$20 for each recycled ton delivered under the second five year contract.

Municipalities have also received direct recycling assistance from a DEP grant program funded by this account. CEF provided \$4.4 million to cities and towns. The grant program contains the following elements: public education

materials and postage grants to promote recycling; a recycling and composting equipment grant program; a household hazardous waste collection and equipment grant program; and a recycling transfer station grant program. These programs are designed to increase participation of municipal recycling programs and to make recycling more cost effective.

Another element of the CEF grant program was recommended by the State Auditor in a June, 1992 DLM report concerning the impact of mandatory recycling legislation on Massachusetts cities and towns. This report identified guaranteed tonnage delivery provisions in long-term solid waste contracts as a disincentive to recycling. Through the 2200-0881 grant account DEP is focusing on payments to cities and towns to eliminate this barrier to recycling.

DEP's recycling plan includes an education outreach program for K-12 education, and a recycling research program at the University of Massachusetts. CEF also funds a program designed to stimulate demand for recycled material. This program provides capital to private sector companies willing to develop or expand recycled material processing capacity in Massachusetts.

EOEA also coordinates a program, to increase direct recycling and recycled products procurement by state agencies with CEF funding through an allocation of 2010-0100 to the Department of Procurement and General Services. CEF also supports a Mass Highway Department program designed to demonstrate the benefits of using recycled material for highway construction, and a Department of Environmental Management initiative to install recycling containers at state parks.

Environmental Compliance Operations

CEF Support of 2200-0100 = \$19.1 million: FY 1991-1996

The DEP operations line item, 2200-0100, is DEP's main budget account. Account 2200-0100 funds the Department's core programs to protect public health

and the environment, including the bureaus of Resource Protection and Waste Prevention. Through these programs, including air quality, wetlands and waterways, water pollution control, water supply, hazardous waste management, industrial wastewater and solid waste management, the Department implements an integrated, ecosystem-based approach to pollution prevention and environmental protection. This account also funds management and support services, systems development, fiscal affairs, human resources and administration.

Over the FY 1991-1996 period, CEF has provided \$19.1 million to the administration, planning and compliance assurance functions of DEP. State employee compensation is the major component, 83% of spending from this account. Other costs typical of state agency operations such as rent, utilities, offices supplies, equipment, etc. are also expended from this account. The categorical breakdown of line item 2200-0100 expenditures and CEF's \$19.1 million share over the period is shown FIGURE SEVEN.

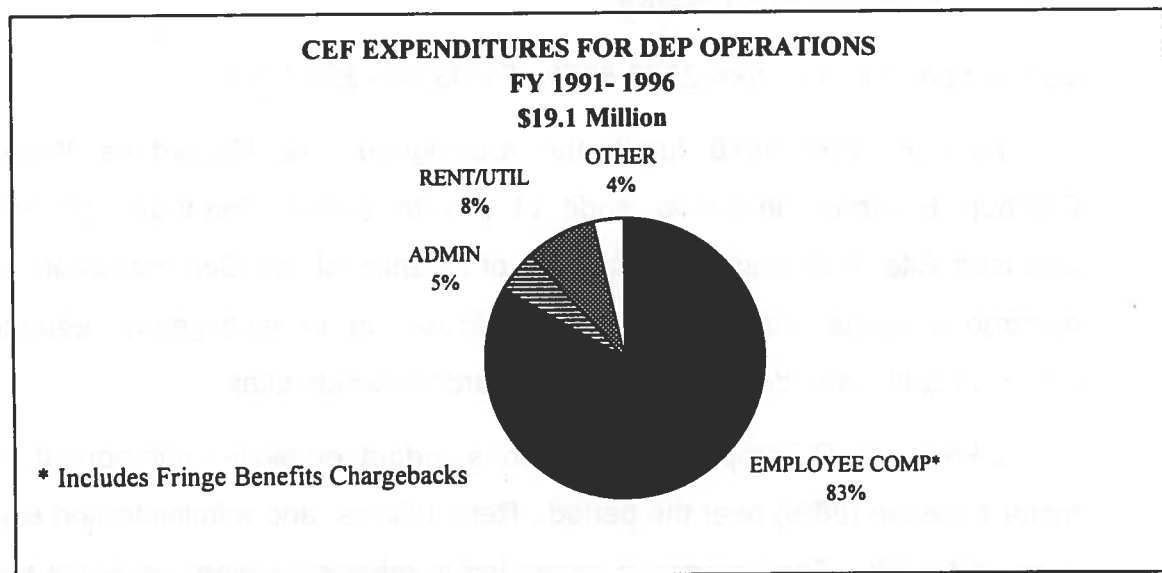


FIGURE 7

Since FY 1991 three state funds support this line item. The Clean Environment Fund, has contributed an average of 12% of this appropriation, while the General Fund and the Environmental Permitting and Compliance Fund make up the balance.

State budget line item directive language in fiscal years 1991 through 1993 earmarked the \$1.6 million CEF contribution to this line item for the operation and maintenance of DEP's Division of Solid Waste. In FY 1994 both the appropriation and the CEF fund split percentage were increased and the line item directive language reference to the Division of Solid Waste was eliminated. As a result, CEF support for DEP operations line item 2200-0100 increased to approximately \$4.6 million per year during the FY 1994 to FY 1996 period, thereby increasing support for overall DEP solid waste operations. DLM did not determine if CEF funding for line item 2200-0100 exceeded DEP's spending on solid waste programs, thereby supporting other DEP functions as well.

Hazardous Waste Site Cleanup

CEF support for Line Item 2260-8870: FY 93-96 - \$26.7 Million

Account 2260-8870 funds the redesigned 21E Hazardous Waste Site Cleanup Program, including audit of private sector cleanups conducted by Licensed Site Professionals, oversight of cleanup of the Commonwealth's worst hazardous waste sites, oversight and follow up of emergency responses to chemical spills, and discovery of new hazardous waste sites.

Like the DEP Compliance Operations budget, employee compensation is the major expense (88%) over the period. Rent, utilities, and administration expenses account for 9%. The balance is expended in other subsidiary accounts typical of state agency operations. The line item text specifies that the appropriation is for the expenses of the hazardous waste cleanup and underground storage tank programs. A summary of FY 1993 - 1996 spending is shown in FIGURE EIGHT.

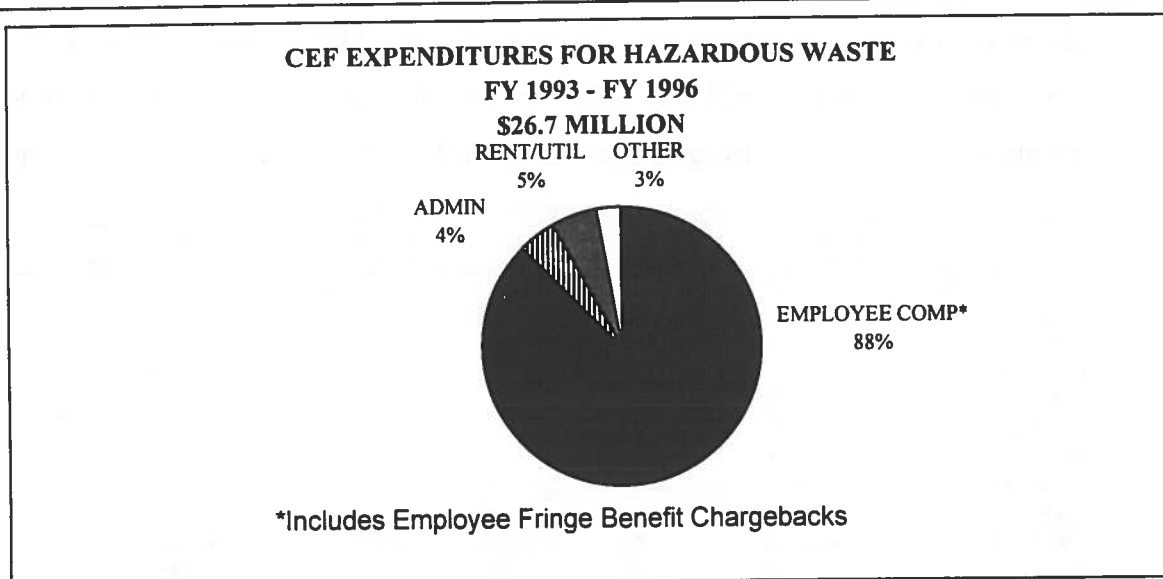


FIGURE 8

The hazardous waste cleanup program was to have been supported exclusively by payments from parties responsible for hazardous waste sites. These payments are credited to the Environmental Challenge Fund (ECF). However, due to insufficient payments from responsible parties into this fund, the CEF and other funds have made up shortfall.

In FY 1990, the hazardous waste cleanup appropriation was funded totally by the Environmental Challenge Fund. The Environmental Challenge Fund proportion decreased to 70% in FY 1992 while 30% was also contributed by the General Fund. IN FY 1993, the Environmental Challenge Fund contributed a 30% share of 2260-8870, the General Fund contribution was increased to 45%, and a CEF contribution was initiated at 25% of the hazardous waste budget. For FY 1994 and FY 1995, the General Fund contribution was replaced by increasing the CEF contribution to 42%, and adding an additional 10% from the Toxic Use Reduction Fund plus another 16% from the Underground Storage Tank Fund. The Environmental Challenge Fund contributed 32% to the hazardous waste cleanup budget in FY 1994 and FY 1995. In FY 1996, five funds supported the hazardous waste cleanup oversight account: the Environmental Challenge Fund;

General Fund; Underground Storage Fund; Local Aid Fund; and Clean Environment Fund. FIGURE NINE shows the proportion of hazardous waste cleanup expenditures charged against six different funds between 1990 and 1996.

FISCAL YEAR		ENVIRONMENTAL CHALLENGE FUND	GENERAL FUND	CLEAN ENVIRONMENT FUND	TOXICS USE REDUCTION FUND	UNDERGROUND STORAGE TANK FUND	LOCAL AID FUND	LINE ITEM 2280 - 8870 TOTAL
1990	%	100%	0	0	0	0	0	
One Fund	\$	7,099,397	0	0	0	0	0	7,099,397
1991	%	93%	7%	0	0	0	0	
Two Funds	\$	9,590,231	721,845	0	0	0	0	10,312,076
1992	%	70%	30%	0	0	0	0	
Two Funds	\$	6,751,160	2,893,354	0	0	0	0	9,644,514
1993	%	30%	45%	25%	0	0	0	
Three Funds	\$	3,525,453	5,229,421	2,996,635	0	0	0	11,751,509
1994	%	32%	0	42%	10%	18%	0	
Four Funds	\$	4,800,898	0	6,301,180	1,500,280	2,400,449	0	15,002,807
1995	%	32%	0	42%	10%	16%	0	
Four Funds	\$	4,755,019	0	6,421,057	1,485,966	2,377,545	0	15,039,587
FY 96	\$	35%	8.55%	43.74%		4.16%	8.55%	
Five Funds	%	5,200,881	1,270,501	6,499,616		618,182	1,270,501	\$ 14,859,661

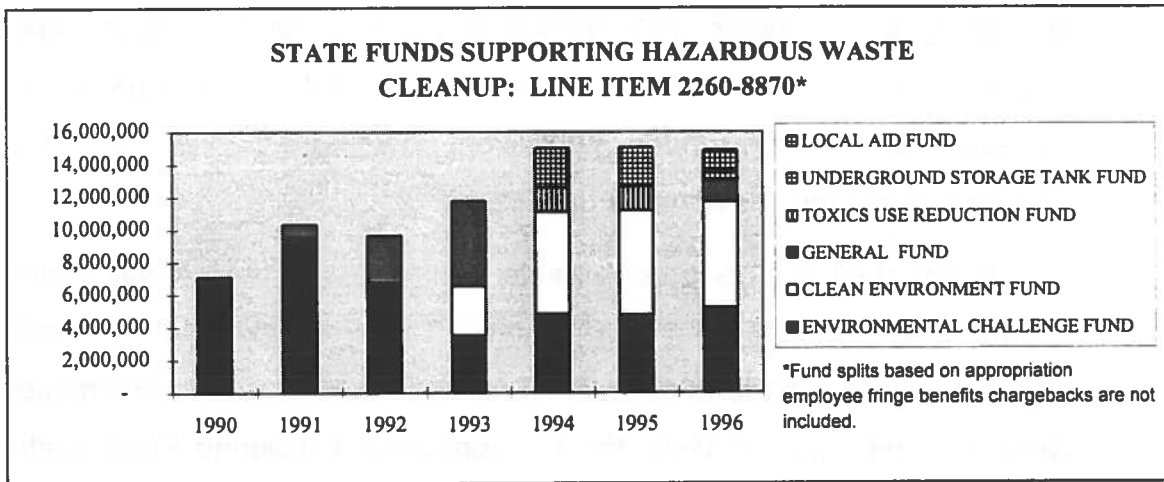


FIGURE 9

Since FY 1994, CEF has provided the largest share of the budget for hazardous waste cleanup despite specific legislative language earmarking CEF expenditures exclusively to solid waste, recycling, and other environmental purposes related to the bottle bill.

APPENDIX I

The Massachusetts General Laws: Chapter 11, Section 6B

The Division Of Local Mandates

The division of local mandates, as provided for in section six of this chapter, shall have the responsibility of determining to the best of its ability and in a timely manner the estimated and actual financial effects on each city and town of laws, and rules and regulations of administrative agencies of the commonwealth either proposed or in effect, as required under section twenty-seven C of chapter twenty-nine of the General Laws.

The division shall have the power to require the chief officer of any appropriate administrative agency of the commonwealth to supply in a timely manner any information determined by the division to be necessary in the determination of local financial effects under said section twenty-seven C. The chief officer shall convey the requested information to the division with a signed statement to the effect that the information is accurate and complete to the best of his ability.

The division when requested under the provisions of subsections (d) and (f) of said section twenty-seven C, shall update its determination of financial effects based on either actual cost figures or improved estimates or both.

The division shall review every five years those laws and administrative regulations which have a significant financial impact upon cities or towns. For the purposes of this section "significant financial impact" is defined as requiring municipalities to expand existing services, employ additional personnel, or increase local expenditures. Said division shall determine the costs and benefits of each such law and regulation, and submit a report to the general court of each session together with its recommendation, if any, for the continuation, modification or elimination of such law or regulation.

APPENDIX II

BOTTLE BILL HISTORY

- 1976** Bottle bill referendum question defeated.
- 1979** Bottle bill legislation approved by Legislature. Vetoed by Governor. No override.
- 1981** Bottle Bill legislation approved by Legislature. Vetoed by Governor. Legislature overrides veto. Law to take effect in January 1983. St. 1981, c. 571.
- 1982** Initiative petition to repeal bottle bill becomes referendum question.
- Nov. 1982** Repeal question is defeated.
- Jan. 1983** Bottle bill becomes law on Jan. 17, 1983. Requires deposit of at least 10 cents on 32 ounce + containers, five cents on smaller containers. Handling fee is one cent per container.
- May 1983** All deposits made five cents by amendment to original bottle bill. St. 1983, c. 96. Handling fee is raised to two cents per container.
- July 1983** Bottle bill amended to require wholesalers to keep records and to file monthly reports with Alcoholic Beverage Control Commission (ABCC) concerning deposits, refunds and handling fees. St. 1983, c. 233, s. 64
- Jan. 1984** ABCC regulations take effect to implement bottlers reporting of deposits, etc.. Regulations require a report for last six months of 1983 and monthly, thereafter. 204 CMR 3.00 et seq.
- 1985** Bottle deposit escheatage legislation filed in House of Representatives.

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- 1987** Administration proposes escheatage of unclaimed deposits retroactive to the 1983 effective date of bottle bill. Based on ABCC records, Budget Bureau of A & F estimates that unclaimed deposits since 1983 equal \$100 million.
- Jan. 1988** Governor's fiscal year 1989 budget proposal seeks \$70 million in unclaimed deposits retroactive to 1983.
- Jan. 1988** Two beverage wholesaler groups seek a court ruling that: abandoned deposits belong to wholesalers under original bottle bill; deposits need not be held in escrow for consumers and Commonwealth.
- Feb. 1988** Attorney General files a suit claiming that, under abandoned property law, deposits not redeemed by consumers become property of the state. Attorney General, on behalf of state, asks the court to require wholesalers to pay the state \$70 million, and to compel certain wholesalers to pay fines for failure to file ABCC reports.
- Jan. 1990** The Budget Control and Reform Act of 1989 amends the bottle bill conferring the right to all future abandoned deposits to the Commonwealth. These amendments also:
- Established the Clean Environment Fund and set forth the purposes and restrictions of CEF spending. St. 1989, c. 653, s.70.
 - Required wholesalers to establish Deposit Transaction Funds, file monthly reports and make monthly payments with Department of Revenue. St. 1989, c. 653, s. 70.
 - Prescribes that an ascending portion of abandoned deposit collections are to be deposited in the Clean Environment Fund. Amounts not deposited in CEF shall be deposited in the state's General Fund. St. 1989, c. 653, s. 235.
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- Ends ABCC reporting requirement. St. 1989, c. 653, s. 236.
- Requires start-up funding of wholesalers Deposit Transaction Funds equal to all refund values received during last three months of 1989. St. 1989, c. 653, s. 237. This provision was deemed by court in 1993 to be an unconstitutional retroactive taking of wholesalers' property.

1991 Court decision: *Mass Wholesalers of Malt Beverages, Inc. v. Attorney General* (1991) 567 N.E. 2d 183, 409

This case was brought in 1988 and issues were decided under the original bottle bill prior to escheatage amendment. The Court ruled that unclaimed beverage container deposits paid by consumers did not escheat to the Commonwealth as abandoned property, but rather was property of Wholesalers.

1993 Court Decision: *Mass Wholesalers of Malt Beverages, Inc. v. Commonwealth* (1993) 609 N.E. 2d 67, 414 Mass. 411

The Supreme Judicial Court (SJC) ruled that the 1989 bottle bill escheatage amendment was proper because it explicitly gives consumers and the Commonwealth the right to all beverage containers deposits after the amendment's January, 1990 effective date.

The amendment requiring wholesalers to set aside an amount equal to three months of deposits received prior to the effective date of the amendments effected an unconstitutional retroactive taking of bottlers income. The SJC remanded the case to Superior Court for implementation of the SJC decision.

Feb. 1996 Superior Court issues a partial final judgment to effect the 1993 Supreme Judicial Court decision. The judgment is based on a settlement agreement between the Commonwealth and the Massachusetts Soft Drink Association. A settlement agreement

with the Massachusetts Wholesalers of Malt Beverages, Inc. is still pending.

June 1996 Pursuant to the settlement agreement the Legislature establishes a \$7.3 million reserve account to compensate Massachusetts Soft Drink Association members for retroactive taking provisions of the escheatage amendment.

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