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**Virginia General Assembly
House Agriculture, Chesapeake, and Natural Resources Committee
Subcommittee on Agriculture
Public Hearing on House Bill 826
January 26, 2022**

Written Testimony

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Chair Webert and members of the Subcommittee, thank you for this opportunity to submit written testimony on House Bill 826, which would establish a bottle deposit program for the commonwealth of Virginia.

The International Bottled Water Association (IBWA) is the trade association representing all segments of the bottled water industry, including spring, artesian, mineral, sparkling, well, groundwater and purified bottled waters. IBWA represents bottled water bottlers, distributors and suppliers throughout the United States, including several small, medium, and large-size companies doing business in Virginia. IBWA's stated mission is to serve the members and the public by championing bottled water as an important choice for healthy hydration and lifestyle, and promoting an environmentally responsible and sustainable industry.

IBWA members are good stewards of the environment, and we support comprehensive, multi-industry approaches to recycling and solid waste management. However, we have concerns with some of the provisions in HB 826. The bill sets unreasonable goals of achieving a redemption rate of 75% after two years, 85% after four years, and 90% after eight years. A majority of the current bottle deposit programs throughout the United States, even some that have existed for decades, have failed to achieve even a 75% redemption rate.

We are also concerned that there are no limits set for increases made to the redemption fee by the Department of Environmental Quality. Even though the Department must consult with the Producer Responsibility Organization (PRO) if they change the redemption fee, this does not preclude the Department from raising the redemption fee to any random amount. In addition, the penalties that could be imposed upon the PRO should it fail to meet the established goals are unreasonable and would negatively impact its ability to operate the program successfully. If the PRO fails to meet the goal in 5 years after submission of a product stewardship plan, ceding

authority to the Department will be a monumental undertaking with no guidelines in place concerning how the Department would operate the program or how to effectively increase the redemption rate.

Such unrestrained increases in deposit fees will not help jump-start a state's faltering redemption program. Instead, it will have a negative impact on manufacturing, sales, and overall business in the state—not to mention a negative impact on consumers who will be forced to pay extra for everyday products. A more productive scheme would take this opportunity to plan for the future and show how recycling can improve the state and country – and not focus solely on the decreasing redemption numbers. Increasing the deposit at the same time as expanding the program will increase the risk for fraud due to individuals from neighboring states who do not have a deposit program taking advantage of Virginia's deposit program.

Any bottle deposit system should focus on how to increase recycling rates most effectively in the state, promote recycling/waste management industry jobs, provide an equitable fee structure, reduce the risk of fraud, determine how to maintain the solvency of the system, and provide proper economic incentives. Virginia's state leaders can find numerous systems throughout the United States and the world that, if closely examined, can provide sound and proven data to implement a state beverage container deposit program.

IBWA has adopted a set of recommendations for both existing and new deposit programs that can help increase redemption rates, provide better financial results for the state, and ease the burden on consumers and manufacturers. Many programs are operating below their intended or expected capacity, and IBWA's recommendations would bring together the best of what all state deposit programs have to offer.

IBWA's recommendations focus on five key areas that can improve existing deposit programs or can be used when enacting any proposed new system. The recommendations are listed below.

1. Designing Program Administration for Greater Efficiency

This would include utilizing a third-party, non-state entity to manage a cooperative system to run the program. It should also ensure that no single entity that uses the program (manufacturers, consumers, recyclers, end users) face an unreasonably large financial burden for the operation of the program.

2. Reducing Contamination to Retain Quality of Recycled Materials

This provides flexibility to reclaimers to have the ability to refuse products based upon contamination. It also requires increased consumer education to help combat high contamination rates and increased funding for adoption of the best technology to aid in proper material sorting.

3. Instilling Adequate Controls to Reduce Fraud and Abuse

Fraud will be a major issue for any state seeking to establish a deposit program where its surrounding states do not have any such system. These new programs will require increased oversight, regular audits, and development of a strong penalty system to combat fraud and abuse.

4. Ensuring Handling Fee Structure to Support Program Effectiveness

While the application of additional fees within the legislation proposed in Virginia would be left up to the PRO, there are certain elements that are important to consider when establishing these fees. This would include applying a uniform system of fees to keep costs at a minimum and a review of what would influence the determination of any such additional fees (cost of material handling, type of material, recovery rate, market demand, and program management).

5. Investing Unclaimed Deposits

Any unclaimed deposits should be used to support the existing program, which HB 826 provides for. However, the dollars that are used to support the operation of the program may be reduced as the redemption rate increases. In cases of reduced dollars available to support the program, it may be necessary to seek additional funding to help stabilize the program for optimal success.

Since the inception of beverage container deposit programs, recycling technology has advanced significantly. The result is that more people are now aware that states' arcane collection systems fail to advance the real objective of recyclables collection – to increase recycling. Even with deposit programs, forcing consumers to pay extra to return used containers, placing a fiscal burden on manufacturers and distributors to subsidize the deposit scheme through fees ultimately passed on to consumers, and requiring retailers to handle the return of used containers and burdening them with state regulation and oversight has not done much to help increase overall recycling numbers.

When looking at Virginia's jobs and economy, it is important to note that the bottled water industry is a strong economic driver in the state. Companies in Virginia that manufacture, distribute, and sell bottled water employ as many as 5,719 people in the state and generate an additional 9,136 jobs in supplier and ancillary industries. Examples of such employment include jobs in companies that supply goods and services to manufacturers, distributors, and retailers, as well as those that depend on sales to workers in the bottled water industry. The jobs currently generated by the bottled water industry in Virginia are good jobs, paying an average of \$50,700 in wages and benefits.

Not only does the manufacture and sale of bottled water create good jobs in Virginia, but the industry also contributes to the economy as a whole. In fact, the bottled water industry is

responsible for over \$3 billion in total economic activity in the state. The industry also generates sizable tax revenues. In Virginia, the bottled water industry and its employees pay over \$147 million in taxes including property, income, and sales-based levies.

In conclusion, IBWA and its members, both in Virginia and throughout the United States, make a product that is healthy, refreshing, and we strive to reduce the environmental impact of our products, both in manufacturing and waste management. IBWA is a strong advocate for comprehensive, multi-industry approaches to recycling and solid waste management that examine all types of programs that offer workable solutions. IBWA would urge the Subcommittee and others who may be involved in this legislative effort to consider our recommendations and address the industry's concerns with the current proposal.

**IBWA Bottle Deposit Working Group
Suggested Recommendations for Legislative Action
November 13, 2019**

Similar to other systems like curbside collection or other types of extended producer responsibility programs, bottle deposit programs have played an important role controlling littering and incentivizing recycling. IBWA offers the following principles to help states with existing programs explore ways to improve system performance.

Designing Program Administration for Greater Efficiency

- The best option is to establish a cooperative organization that is managed by a third-party, non-state entity that includes industry participation.
 - A cooperative would ease the financial and logistical burdens on both the government and business. It has been shown to work effectively in OR.
 - Oversight of the program should be maintained by a relevant state agency.
 - Industry participation should include both beverage producers and retailers
- Include a consumer educational program component to address proper recycling process and goals.
- Evaluation by management entity of what containers would be covered (types and materials), redemption fee, handling and processing fees, industry commitments, state support, etc. to ensure an effective and efficiently run program.
- Seek equitable financial arrangements to ensure that manufacturers, consumers, recyclers, and end users are all providing support to operate a successful bottle deposit program. No single entity should face an unreasonably large proportion of the cost needed to operate the program.

Reducing Contamination to Retain Quality of Recycled Materials

- Increase ability for reclaimers to refuse products based on contamination.
- Provide necessary consumer education on recycling streams, what products are part of the deposit program, and the proper return of containers.
- Standardize quality control and increase oversight of recycling processing to better ensure proper sorting of materials.
- Provide funding (loans, tax credits, grants, etc.) to increase investments in latest technology.
- Provide municipalities with additional leverage when negotiating hauling and recycling contracts with industry that can ease contamination requirements. Possible scenario:
 - Utilize the current Model Bale Specification grades developed by the Association of Plastic Recyclers (APR). Any bales that fail to meet Grade A (94% or above of total PET fraction by weight) or Grade B (83%-93%) could be returned to be reprocessed to achieve Grade A or B quality.

Instilling Adequate Controls to Reduce Fraud and Abuse

- Increased oversight of system.

- This could include state border checkpoints, inspections at return facilities (retailers and redemption centers) to determine accuracy and compliance of reverse vending machines, necessary maintenance, and increased scrutiny of bag drop quantities and quality.
- Regular audits of the system, redemption centers, and distributors to ensure compliance, examine efficiency, and deter fraud. (Similar efforts have been undertaken in HI.)
- Increased penalties for violations, especially for multiple offenses.
 - Fines for violations by individuals:
 - First offense - \$50
 - Second offense - \$100
 - Third offense – Misdemeanor plus \$500
 - Fines for violations by businesses:
 - First offense - \$100
 - Second offense - \$500
 - Third offense – Misdemeanor plus \$1000
 - Penalties could also be based on the number of illegally returned products above the maximum daily limits and/or the number of times someone has violated the deposit law limitations. Example based on the NY law:
 - A person who willfully violates provisions on 5,000 or more containers within 1 year will be guilty of class B misdemeanor (not more than 3 months in jail and not more than \$500 in fines).
 - A person previously convicted of this violation within the past 3 years, who willfully violates the provision again will be guilty of a class A misdemeanor (not more than 1 year in jail and not more than \$1,000 in fines).
 - Any person who willfully violates these provisions on 20,000 or more beverage containers in a year will be guilty of a class E felony (1 1/3 to 4 years in jail).
- Limit the daily number of bottles that can be returned by an individual or business entity.
 - The number should vary based on the redemption fee amount (example: 50 containers per day per individual or business entity at 5 cents per container/25 containers per day per individual or business entity at 10 cents per container).
- The daily limit should be greater for business entity (e.g., restaurant) than an individual.
- Provide small business loans to support the use of increased and uniform technological standards to ensure bottle count integrity.
- Deposit initiation should occur at the time of retail sale. This will improve the collection of deposits on interstate shipments and reduce the possibility of products that are sold to distributors in non-deposit states being sold to stores in deposit states at a reduced cost that undercuts their competitors (full goods fraud).

Ensuring Handling Fee Structure to Support Program Effectiveness

- Apply a more uniform system of fees across all states and utilize technological enhancements to keep costs at a minimum for processing and handling fees.

- Establish a regular system for review before any consideration of a fee increase.
- Fees would be determined based upon:
 - True cost of handling the subject material
 - Type of material (e.g., plastic, glass, aluminum)
 - Recovery rate (better recovery rate could mean lower fee)
 - Market demand (based on pricing for each type of material; those materials with higher demand could have lower fees)
 - Program management (cooperative, joint private/public partnership, state operated)
- Potential for collection, handling, sorting or other fees to be subsidized by bottlers.

Investing Unclaimed Deposits

- Unclaimed deposits should be used to support the bottle deposit program by offsetting industry costs and investing in recycling education, collection, and recycling infrastructure. Whether the program is administered by a third party, or by the state, it is critical to ensure adequate funding for all these efforts on an ongoing basis. Because the redemption rate in a state may vary from year-to-year, the annual amount of unclaimed deposit money available to operate the program may be uncertain. For example, if the redemption rates increase beyond a certain percentage, that will significantly reduce the unclaimed deposit funds available to efficiently operate the program. If that happens, the state should provide additional funds needed to run the program.

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