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Evaluation of Recycling Legislation Pending before the 119th Session of the Ohio General Assembly

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EVALUATION OF RECYCLING LEGISLATION PENDING BEFORE THE 119TH SESSION OF THE OHIO GENERAL ASSEMBLY

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INTRODUCTION

In 1988, the Ohio General Assembly enacted Amended House Bill 592 (H.B. 592)[1] to provide a comprehensive approach to solid waste management in Ohio.[2] Pursuant to H.B. 592, in 1989, the Ohio Environmental Protection Agency (Ohio EPA) developed the State Solid Waste Management Plan (State Plan), which recommends the implementation of certain recycling[3] programs and establishes specific solid waste reduction targets.[4] Although H.B. 592 was enacted less than four years ago, there are now eight bills pending before the 119th Session of the Ohio General Assembly that address various aspects of recycling. In addition to the hearings held on these bills by various committees of the Ohio General Assembly, in 1991, the Ohio House Energy and Environment Committee held hearings throughout the State to solicit testimony on the effectiveness of the process established by H.B. 592.[5] These actions reflect the importance which members of the Ohio General Assembly have attached to recycling and solid waste management.

This Article summarizes and analyzes the recycling bills before the 119th Session of the Ohio General Assembly.[6] Part I of this Article reviews

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[1] The designation "H.B." and "S.B." are used throughout the text to refer to "House Bill" and "Senate Bill," respectively.

[2] Am. H.B. 592, 1988 Ohio Laws 5-719, *codified at* OHIO REV. CODE ANN. § 3734.01 *et seq.* and various other scattered sections (Anderson 1992). In recent years, several other states also have adopted comprehensive legislation affecting the regulation of solid waste and recycling. *See, e.g.*, FLA. STAT. ANN. § 403.702 *et seq.* (West Supp. 1992). ME. REV. STAT. ANN. tit. 38, § 2121 *et seq.* (Supp. 1991); N.H. REV. STAT. ANN. § 149-M:1 *et seq.* (Supp. 1991); N.Y. ENVTL. CONSERV. LAW § 27-0101 *et seq.* (McKinney's Supp. 1991).

[3] As used in this Article, the term "recycling" refers to any operation associated with the source-separation of materials from the waste stream and the use of source-separated materials in the manufacture of new products.

[4] OHIO ENVIRONMENTAL PROTECTION AGENCY STATE SOLID WASTE MANAGEMENT PLAN, (1989) [hereinafter STATE PLAN].

[5] For a summary of the findings of the Ohio House Energy and Environment Committee from the hearings held on the implementation of H.B. 592, *see* Robert Yaekle, *Summary of the Findings of the House Energy and Environment Committee from Hearings Held on the Implementation of Am. Sub. H.B. 592 of the 117th General Assembly and of Suggested Changes to Address Identified Concerns* (Feb. 25, 1992). On March 25, 1992, Representative Joe Secrest, Chairman of the House Energy and Environment Commitee, introduced H.B. 723 to make technical changes to H.B. 592. The Ohio Department of Development is drafting a separate bill that will contain initiatives to promote the development of markets for recycled products and materials. *See* 4 OHIO SOLID WASTE REPORTER, No. 6, at 1 (Apr. 6, 1992) (discussing the Department of Development's plans to draft a separate bill).

[6] There also are several bills pending before Congress that would promote recycling, including the two bills that would reauthorize the Resource Conservation and Recovery Act of 1976 (RCRA) 42 U.S.C. § 6901 *et seq.* (1988). S. 976 and H.R. 3865. S. 976, the RCRA Amendment of 1991, was introduced by Senator Max Baucus and is currently before the Senate Committee on Environment and Public Works. S. 976 contains various provisions for promoting recycling and reducing the use of toxics. For a summary of S. 976, *see generally*, Resource Conservation and Recovery Act Amendments of 1991: Hearings on S. 976 Before the Subcomm. on Environmental Protection of the Senate Comm. on Environment and Public Works, S. Hrg. 102-240, 102d Cong., 1st. Sess., Pts. 1 & 2 (1991). H.R. 3865 was introduced by Representative Al Swift and is currently before the House Committee on Energy and Commerce.

the requirements and recommendations of H.B. 592 and the State Plan. Part II provides an overview of the recycling bills and identifies the three basic approaches to recycling represented by these bills. Parts III, IV, V, and VI summarize and evaluate the recycling bills.

This Article uses three criteria to evaluate the recycling bills: (1) consistency with H.B. 592 and the State Plan, (2) effectiveness in preventing the disposal of solid waste in landfills, and (3) efficiency in promoting recycling. There are two premises to these criteria. First, it is poor public policy for a legislative body to frequently overhaul a substantive area of the law. A stable and consistent statutory framework enables public and private entities to adjust their behavior to an established set of requirements. Second, given the limited nature of public and private funds, the statutory structure should promote the greatest amount of recycling while resulting in the expenditure of the least amount of public and private funds. On the basis of these criteria, this Article concludes that S.B. 97[7] and S.B. 152,[8] which would require most communities to establish curbside recycling programs and would provide for volume-based fees on non-recycled solid waste,[9] are the most desirable of the eight recycling bills pending before the Ohio General Assembly.

I. H.B. 592 AND THE STATE SOLID WASTE MANAGEMENT PLAN

The starting point for analyzing the recycling legislation pending in the General Assembly is H.B. 592 and the State Plan adopted pursuant to H.B. 592. H.B. 592 provides for the creation of county and joint solid waste management districts.[10] Pursuant to H.B. 592, forty-eight solid waste management districts have been established throughout the state. These districts are the government entities primarily responsible for addressing the solid waste problem in Ohio. Among other things, H.B. 592 requires these districts to establish a solid waste management plan for a ten-year period.[11] The solid waste management districts are in various stages of submitting these plans to Ohio EPA for approval.

The goal of the State Plan is to reduce, reuse, and recycle at least twenty-five percent of the solid waste generated in Ohio by June 24, 1994.[12] The State Plan requires the solid waste management district plans to demonstrate how the twenty-five percent reduction goal can be

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[7] S.B. 97, 119th Gen. Ass., Reg. Sess. (1991).

[8] S.B. 152, 119th Gen. Ass., Reg. Sess. (1991).

[9] *See* S.B. 97, at 81-84, (proposed for codification at OHIO REV. CODE ANN. §§ 3734.531-3734.532) (curbside recycling provisions); S.B. 97 at 87-88 (proposed for codification at OHIO REV. CODE. ANN. § 3734.532(I)) (volume-based fee provisions); S.B. 152, at 30-35 (proposed for codification at OHIO REV. CODE ANN. §§ 3734.531-3734.532) (curbisde recycling provisions); S.B. 152 at 38 (proposed for codification at OHIO REV. CODE ANN. § 3734.532(I)) (volume-based fee provisions).

[10] OHIO REV. CODE ANN. § 3734.52 (Anderson 1992).

[11] OHIO REV. CODE ANN. § 3734.53 (Anderson 1992).

[12] STATE PLAN, *supra* note 4, at 2-1.

achieved within each district.[13] The State Plan recommends that the State give technical assistance to the districts and provide funds for local recycling efforts.[14] The State Plan also recommends that programs be established within the Department of Development to promote markets for recycled goods.[15]

The State Plan recommends prohibiting the disposal of lead-acid batteries in landfills effective January 1, 1993.[16] To accomplish this, the State Plan recommends that legislation be enacted requiring retailers selling lead-acid batteries to accept used batteries.[17] The State Plan also recommends prohibiting the disposal of whole tires in landfills by January 1, 1993.[18] In addition, the State Plan advocates the adoption of legislation requiring retailers selling motor oil to accept used oil.[19]

II. Overview of the Pending Recycling Legislation

The eight recycling bills before the Ohio General Assembly represent three major approaches to recycling. The first approach is contained in S.B. 97 and S.B. 152, which would require most communities to establish curbside recycling programs and would provide for volume-based fees on solid waste that is not recycled.[20] The second approach is found in H.B. 2,[21] and its companion bill in the Ohio Senate, S.B. 71, which would create a state office to promote recycling and would increase funding for community recycling programs.[23] The third major recycling initiative is S.B. 5,[24] and its companion bill in the Ohio House, H.B. 170,[25] which contain the major provisions of H.B. 2 and S.B. 71, but also provide for deposits on beverage containers.[26]

In addition to the three major recycling initiatives, there are two other recycling bills in the Ohio House: H.B. 36[27] and H.B. 63.[28] H.B. 36 would place a predisposal fee on containers, packaging material, and newsprint, and would prohibit the sale of metal beverage containers connected with plastic rings that are not biodegradable or photodegradable.[29] H.B. 63

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[13] *Id.*

[14] *Id.* at 2-5.

[15] *Id.* at 8-1, 8-12.

[16] *Id.* at 3-2.

[17] *Id.* at 3-7.

[18] *Id.* at 3-2.

[19] *Id.* at 3-2, 3-6.

[20] *See infra* notes 24-73 and accompanying text (analyzing S.B. 97 and S.B. 152).

[21] H.B. 2, 119th Gen. Ass., Reg. Sess. (1991).

[22] S.B. 71, 119th Gen. Ass., Reg. Sess. (1991).

[23] H.B. 2, at 26 and S.B. 71, at 31 (proposed for codification at Ohio Rev. Code Ann. § 1502.03) (providing for an Office of Environmental Development and Recycling); H.B. 2, at 91-93 and S.B. 71, at 91-93 (proposed for codification at Ohio Rev. Code Ann. § 3734.573) (establishing a tipping fee of $1 per ton on the disposal of solid waste).

[24] S.B. 5, 119th Gen. Ass., Reg. Sess. (1991).

[25] H.B. 170, 119th Gen. Ass., Reg. Sess. (1991).

[26] *See infra* notes 140-54 and accompanying text (analyzing the beverage-container deposit system proposed by S.B. 5 and H.B. 170).

[27] H.B. 36, 119th Gen. Ass., Reg. Sess. (1991).

[28] H.B. 63, 119th Gen. Ass., Reg. Sess. (1991).

[29] *See infra* notes 158-70 and accompanying text (analyzing H.B. 36).

contains the plastic-ring prohibition of H.B. 36 and provides for deposits on beverage containers.[30] Unlike S.B. 5 and H.B. 170, the beverage-container component of H.B. 63 is not intended to subsidize other recycling activities.[31]

These bills rekindle the debate over deposits on beverage containers which ended in a stalemate during the last session of the Ohio General Assembly.[32] During the gubernatorial race, Governor George Voinovich indicated that he favored a deposit on beverage containers.[33] As Governor, he has reaffirmed his support for beverage-container deposit legislation.[34] Efforts to reach a compromise between supporters and opponents of deposits on beverage containers have failed. It is unclear which, if any, of these approaches to recycling will be adopted by the Ohio General Assembly.

III. S.B. 97 AND S.B. 152

S.B. 97 and S.B. 152 would require most communities to institute source separation programs and would provide for volume-based fees on solid

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[30] H.B. 63, at 2 (proposed for codification at OHIO REV. CODE ANN. § 1502.06(B)) providing for deposits on beverage containers).

[31] *See infra* notes 149-53 and accompanying text.

[32] During the 118th Session of the Ohio General Assembly, which concluded in 1990, the Senate Ways and Means reported Sub. S.B. 217 which would have provided for deposits on beverage containers and was a precursor to S.B. 5 of the 119th General Assembly. *See* Sub. S.B. 217 118th Gen. Ass., Reg. Sess. (1989-90). During consideration of Sub. S.B. 217, the sponsor of the bill, Senator Charles Horn, provided the following testimony:

> Several weeks ago, I stood here to introduce Senate Bill 217. This legislation establishes a statewide beverage container deposit system .... Since the introduction of this legislation, ... predictably, some elements of Ohio's beverage industry ... along with some of their suppliers and customers ... have voiced concern about this innovative recycling system .... While I have not been surprised by the opposition's arguments, I have been disappointed by them. Very frankly, most of their decade-old arguments have little basis in fact ....

Testimony of Senator Charles Horn Before the Ohio Senate Ways and Means Committee 118th Gen. Ass., Reg. Sess. (Jan. 9, 1990).

Also, during the 118th Session of the Ohio General Assembly, the Ohio House State Government Committee reported Sub. H.B. 661, which would have promoted recycling through a variety of different mechanisms, but would *not* have provided for deposits on beverage containers. *See* Sub. H.B. 661, 118th Gen. Ass., Reg. Sess. (1989-90). During consideration of Sub. H.B. 661 by the Ohio Senate Ways and Means Committee, the sponsor of that bill, Representative Barney Quilter, provided the following testimony:

> The deposit issue is an important issue but is it so important that we end up in a stalemate only to come back next year to start all over again[?] I don't think it is and I can tell you here and now that I will never be able to support the deposit bill and I don't believe my colleagues in the House will either.
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> I believe a deposit bill would hurt the recycling infrastructure that is already in place here in Ohio ....

Testimony of Representative Barney Quilter Before the Senate Ways and Means Committee, 118th Gen. Ass., Reg. Sess. (May 22, 1990).

[33] *See* Michael L. Mahoney, *Bottle Deposits Back on Legislative Agenda*, THE PLAIN DEALER, Feb. 4, 1991, at 2B.

[34] *See* Thomas Suddes, *Voinovich, Vowing to Back 'Bottle Bill,' Meets Its Foes*, THE PLAIN DEALER, April 23, 1991, at 3B.

waste that is not recycled.[35] These bills are viewed as alternatives to the "Bottle Bills" (S.B. 5 and H.B. 170) and the "Anti-Bottle Bills" (H.B. 2 and S.B. 71).[36] Nevertheless, S.B. 97 and S.B. 152 were introduced after the other recycling legislative initiatives and incorporated elements of these prior bills. Senator Eric Fingerhut introduced S.B. 97 in March 1991. With S.B. 97 as a model, Senator Anthony Sinagra introduced S.B. 152 in May 1991. While S.B. 97 and S.B. 152 are not identical, these bills are similar and represent the same philosophical approach to promoting recycling. The discussion below evaluates S.B. 97 and S.B. 152 and identifies the differences between these bills.

A. Mandatory Source Separation of Recyclables and Volume-Based Fees on Non-Recyclables

1. Summary

S.B. 97 and S.B. 152 would require solid waste management districts to establish curbside source separation programs for the following materials: clear and colored glass, aluminum, steel, metals, plastics, high-grade office paper, newsprint, and corrugated paper.[37] Exemptions would be provided for solid waste management districts that do not have a certain population density and for districts that establish alternative recycling programs that are at least as effective as curbside recycling programs.[38] S.B. 97 and S.B. 152 also would require the owners of any multi-family dwellings with four or more units to establish programs for the collection of materials that are source separated under curbside programs.[39] These bills would require solid waste management districts to provide for source separation programs in commercial establishments and at community activities occurring within the districts.[40]

S.B. 97 and S.B. 152 would enable solid waste management districts and municipalities to impose volume-based disposal fees on solid waste

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[35] *See infra* notes 37-41 and accompanying text.

[36] *See* Fingerhut Proposes Community Recycling Bill, Press Release of Sen. Fingerhut (March 7, 1991): "The problem with the "Bottle Bill" (S.B. 5-Horn) and the "Anti-Bottle Bill" (S.B. 71-Suhadolnik) is that neither one offers a truly comprehensive community program for dealing with the state's solid waste."

[37] S.B. 97, at 81-84, (proposed for codification at OHIO REV. CODE ANN. § 3734.531-3734-532); S.B. 152, 119th Ohio Gen. Ass., Reg. Sess., at 30-35 (proposed for codification at OHIO REV. CODE ANN. §§ 3734.531-3734.532).

[38] S.B. 97, at 81 (proposed for codification at OHIO REV. CODE ANN. § 3734.531(A)) (establishing a population-density requirement); S.B. 97 at 83-84, (proposed for codification at OHIO REV. CODE ANN. § 3734.531(B)) (waiver for programs that are at least as effective as curbside source separation programs); S.B. 152 at 30-31 (proposed for codifcation at OHIO REV. CODE ANN. § 3734.531(A)) (establishing a population-density requirement), S.B. 15 at 34-35 (proposed for codification at OHIO REV. CODE ANN. § 3734.531(A),(C)) (waiver for programs that are at least as effective as curbside source separation programs).

[39] S.B. 97, at 85 (proposed for codification at OHIO REV. CODE ANN. § 3734.532(B)); S.B. 152, at 35-36 (proposed for codification at OHIO REV. CODE ANN. § 3734.532(B)).

[40] S.B. 97, at 85-86 (proposed for codification at OHIO REV. CODE ANN. § 3734.532(C)-(D)); S.B. 152, at 36-37 (proposed for codification at OHIO REV. CODE ANN. § 3734.532(C)-(D)).

that has not been source separated for recycling.[41] Simply stated, the more non-recyclable solid waste generated by a person, the more that person would pay in disposal fees.

2. Evaluation

Through these requirements, S.B. 97 and S.B. 152 are promoting recycling within the framework of H.B. 592 and the State Plan. In particular, these bills use the solid waste management districts established by H.B. 592 as the government entities responsible for implementing the mandatory curbside source separation and volume-based fee provisions. By requiring the separation of recyclables in multi-family dwellings, these bills recognize that residential solid waste is generated in both single- and multi-family dwellings. Expanding the source-separation requirement to commercial establishments and community-sponsored events reflects a realization that any successful effort to promote recycling cannot be limited to residential curbside programs. The volume-based fee provisions of these bills provide an incentive for individuals and commercial institutions to participate in source-separation programs.[42]

B. Funding

1. Summary

S.B. 97 and S.B. 152 would use different approaches to raise funds to support recycling programs. S.B. 97 would raise funds by expanding an existing tax program;[43] S.B. 152 would impose new fees.[44] S.B. 97 would increase the Tier I corporate franchise tax that is imposed on all corporations.[45] Senator Fingerhut estimates that his bill would raise $20.4 million to be used for recycling programs.[46] S.B. 152 would impose a one-cent tax on all beverage containers sold in the State.[47] S.B. 152 defines

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[41] S.B. 97, at 87-88 (proposed for codification at OHIO REV. CODE ANN. § 3734.532(I)); S.B. 152, at 38 (proposed for codification at OHIO REV. CODE ANN. § 3734.532(I)).

[42] Volume-based fees have been found to be an effective means of encouraging participation in recycling programs. *See* Lisa A. Skumatz & Cabell Breckinridge, II VARIABLE RATES IN SOLID WASTE, Vol. II at 145-47, V42 (1990).

[43] *See infra* note 45 and accompanying text.

[44] *See infra* note 47 and accompanying text.

[45] S.B. 97, at 108-09 (proposed for codification at OHIO REV. CODE ANN. § 5733.066). The Ohio Department of Natural Resources grants for litter prevention and recycling programs are funded through the Tier I and Tier II corporate franchise taxes. The Tier I tax is imposed on all corporations. The Tier II corporate franchise tax is imposed on beverage and food containers, cigarettes and other tobacco products, candy and gum. S.B. 97 would increase the Tier I taxes, but eliminate the Tier II. The administrative costs associated with the Tier II tax are considered excessive in relationship to the less than $1 million the tax generates annually.

[46] Telephone conversation by author with Ms. Judy Barbao, legislative aide to Senator Eric Fingerhut (March 31, 1992).

[47] S.B. 152, at 51 (proposed for codification at OHIO REV. CODE ANN. § 3734.59).

"beverage container" as any container made of aluminum or any other metal, glass, or plastic with a capacity of one gallon or less that contains milk, fruit juice, water, mineral water, beer, intoxicating liquor, soft drink, or mixed wine drink.[48] S.B. 152 would require wholesaler distributors of beverage containers to submit monthly tax returns to Ohio EPA for the number of beverage containers delivered in the State.[49] Senator Sinagra estimates that his bill would raise $50 million for recycling purposes.[50] Unlike the other two major recycling legislative initiatives, these bills would not impose a tipping fee on solid waste disposed in landfills.[51]

2. Evaluation

The advantages of the funding mechanism proposed by S.B. 97 are that it builds on an existing tax system and does not target one sector of the economy for a tax increase. By using an existing tax, S.B. 97 avoids the necessity of creating a new bureaucracy to implement and administer the funding system. By contrast, S.B. 152 would require a new administrative bureaucracy within Ohio EPA to handle the tax returns of wholesale distributors of beverage containers. S.B. 97's increase in the Tier I corporate franchise tax also would not dramatically affect any one sector of the economy. By contrast, S.B. 152 is narrowly tailored to affect only the beverage-container industry. Beverage containers compose less than five percent of the solid waste stream.[52] Thus, there is a fairness problem with S.B. 152 in that it selects one sector of the economy that contributes minimally to the solid-waste stream to finance the State's recycling programs.

C. Distribution of Funds for Public and Private Recycling Initiatives

1. Summary

Both S.B. 97 and S.B. 152 would direct the monies raised under their funding mechanisms to be used for certain specific purposes. S.B. 97 would require 69.25% of the revenues it raises to go to the Ohio Department of Natural Resources (ODNR).[53] Of this amount, seventy percent would be

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[48] *Id.* at 50 (proposed for codification at OHIO REV. CODE ANN. § 3734.58(A)-(B)).

[49] *Id.* at 51 (proposed for codification at OHIO REV. CODE ANN. § 3734.59(A)(1)).

[50] Co-sponsorship Notice from Senator Sinagra to Other Members of the Ohio Senate (May 1, 1991).

[51] *See infra* notes 126-29 and accompanying text (discussing the funding mechanism of H.B. 2 and S.B. 71).

[52] *Solid Waste: Trade-offs Involved in Beverage Container Deposit Legislation*, General Accounting Office, at 34 (Nov. 1990) [hereinafter *GAO Report*].

[53] *Id.*

used for grants to solid waste management districts to fund curbside programs, twenty percent would be used to promote litter prevention in public places, and ten percent would be used for ODNR administrative costs.[54] S.B. 97 would require thirty percent of the Tier I tax revenues to be distributed to the Ohio Department of Development to promote recycling in the private sector.[55] The remaining .75% would be for the Solid Waste Advisory Council, which would assist both ODNR and the Department of Development in determining the recipients of grants for recycling projects.[56]

S.B. 152 follows a similar approach to the distribution of funds. S.B. 152 would distribute seventy percent of its revenues to Ohio EPA for distribution to the solid waste management districts on a per capita basis.[57] Another twenty percent of the revenues would be distributed to the Department of Development for developing markets for recycled products.[58] The remaining ten percent of the funds would be directed to ODNR.[59]

2. Evaluation

S.B. 97 and S.B. 152 take similar approaches to the distribution of funds. Both bills would distribute the majority of their funds to the solid waste management districts, with lesser amounts directed to the Department of Development and ODNR. These bills share the advantage of recognizing that, in order to be successful, recycling must be promoted throughout the State in both the public and private sectors. The other two major recycling initiatives would create a centralized and costly bureaucracy to promote recycling efforts.[60] Therefore, in comparison to the other recycling initiatives, S.B. 97 and S.B. 152 would provide a decentralized and cost-effective approach to promoting recycling.

D. Procurement Policies and Source Separation in State Agencies and Institutions of Higher Education

Both S.B. 97 and S.B. 152 would require State institutions to serve as role models for the private sector. S.B. 97 would require State agencies and state-supported institutions of higher education to give preference to products with a recycled content.[61] S.B. 97 would require State agencies

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[54] S.B. 97, at 47 (proposed for codification at OHIO REV. CODE ANN. § 1502.10).

[55] S.B. 97, at 111 (proposed for codification at OHIO REV. CODE ANN. § 5733.066(C)).

[56] *Id.*

[57] S.B. 152, at 52 (proposed for codification at OHIO REV. CODE ANN. § 3734.59(B)(1)).

[58] *Id.* (proposed for codification at OHIO REV. CODE ANN. § 3734.59(B)(2)).

[59] S.B. 152, at 52 (proposed for codification at OHIO REV. CODE ANN. § 3734.59(B)(3)).

[60] *See infra* notes 100-05 and accompanying text (analyzing H.B. 2 and S.B. 71, and S.B. 5 and H.B. 170).

[61] S.B. 97, at 8-9 (proposed for codification at OHIO REV. CODE ANN. § 125.082).

and educational institutions to purchase a product with a recycled content if its cost is not more than 110% of the cost of the product composed of virgin material.[62] The bill would require all bids for state contracts to be on recycled paper.[63] In addition, State agencies and educational institutions would be required to implement source-separation programs for recyclable materials, including aluminum, steel, glass, plastic, office paper, corrugated paper, and newspaper.[64] Under S.B. 97, State agencies responsible for maintaining public lands would be required to compost leaves and yard waste.[65]

S.B. 152 would require State agencies and institutes of higher education to "make purchasing selections to maximize the purchase of recycled materials."[66] For the purpose of calculating the lowest bid on State contracts, S.B. 152 would require the bid price to be reduced by one percent for every ten percent of recycled content that exceeds the minimum recycled content stipulated in the procurement specifications.[67] S.B. 152 would establish a schedule for requiring the use of recycled paper, such that by 1996 at least forty percent of paper purchased by the state would be recycled paper.[68] Much like S.B. 97, S.B. 152 would require State agencies and institutions of higher education to establish source-separation programs.[69] State agencies responsible for maintaining public lands would be required to compost yard waste to the maximum extent possible.[70]

2. Evaluation

These requirements of S.B. 97 and S.B. 152 force state institutions to serve as models for communities and the private sector. The preference in procurement policies for materials with a recycled content is a useful means of stimulating markets for these materials. A weakness of these bills is that they do not provide adequate guidance for determining the recycled content of materials. For example, S.B. 97 defines "recycling" as "the collection, sorting or processing and reuse of recovered materials in the manufacture of new products."[71] However, S.B. 97 does not define the

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[62] *Id.*

[63] S.B. 97, at 3 (proposed for codification at OHIO REV. CODE ANN. § 9.321(D)).

[64] S.B. 97, at 12 (proposed for codification at OHIO REV. CODE ANN. § 125.141(A)) (requiring state agencies and state-supported higher educational institutions to establish source separation programs). *See also* OHIO REV. CODE ANN. § 3734.501 (requiring Ohio EPA to promulgate guidelines for source separation in public and private schools and universities).

[65] S.B. 97, at 12 (proposed for codification at OHIO REV. CODE ANN. § 125.141(C)).

[66] S.B. 152, at 6 (proposed for codification at OHIO REV. CODE ANN. § 125.082(C)).

[67] S.B. 152, at 11-12 (proposed for codification at OHIO REV. CODE ANN. § 125.11(F)).

[68] S.B. 152, at 6 (proposed for codification at OHIO REV. CODE ANN. § 125.082(B)).

[69] S.B. 152, at 12 (proposed for codification at OHIO REV. CODE ANN. § 125.141(A)).

[70] S.B. 152, at 12 (proposed for codification at OHIO REV. CODE ANN. § 125.141(C)).

[71] S.B. 97, at 27 (proposed for codification at OHIO REV. CODE ANN. § 1502.01(B)).

terms "recycled" and "recycled content." S.B. 152 would require Ohio EPA to develop criteria for determining the recycled content of a product that has recycled content,[72] but the bill does not provide guidance to Ohio EPA in developing this criteria. The terms "recycled" and "recycled content" should be defined to promote source-separation programs and to provide meaningful guidance for vendors seeking state contracts. Senator Fingerhut is in the process of drafting legislation that would define these terms and other environmental marketing claims.[73]

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[72] S.B. 152, at 8 (proposed for codification at OHIO REV. CODE ANN. § 125.09(D)(1)).

[73] A draft of the Fingerhut environmental marketing claim legislation is available in the files of the author. Under the draft Fingerhut bill governing marketing claims, "recycled" would mean "a category of material or consumer good or its package or container contains the minimum content by weight of secondary material determined by Ohio EPA." Furthermore, a person representing that a consumer good or its package or container is "recycled" also would have to disclose the percentage by weight of post-consumer material in the good or package or container. The draft Fingerhut bill would define "post-consumer material" to mean "any material that has served its intended end use and has been recovered or diverted from the waste stream for the purposes of collection and recycling."

Under the draft Fingerhut bill, "recyclable" would mean a material that meets any one or more of the following:

Access to community recycling programs for the material is available to no less than 65% of the population of the United States;

The material has a statewide or national recycling rate, by weight, of 50% or more;

A manufacturer, distributor, or retailer has a statewide or national recycling rate, by weight, of 50% or more for the material sold within the state.

The draft Fingerhut bill also would define the terms "biodegradable" and "photodegradable." The draft bill would prohibit a person who manufacturers, sells or distributes a consumer good to represent that the good or its package or container is "biodegradable," "photodegradable," "recyclable," or "recycled" unless it meets the applicable definition. Under the draft bill, a person making an environmental marketing claim would be required to maintain documentation supporting the representation in accordance with professional and scientifically accepted methods. At the request of Ohio EPA or the Ohio Attorney General, the person making the representation would be required to have an independent third party provide this documentation at the expense of the person making the representation. A person making an environmental marketing claim would be required to provide supporting documentation to any person requesting such documentation.

Several other states have enacted legislation governing environmental marketing claims. *See, e.g.*, CAL. BUS. & PROF. CODE § 17508.5 (Supp. 1992); CONN. GEN. STAT. ANN. § 22a-255 (West Supp. 1991); IND. CODE ANN. § 24-5-17-1 *et seq.* (West 1991); N.H. REV. STAT. ANN. § 149-N:4 (Supp. 1991); ME. REV. STAT. ANN. tit. 38, § 2141 (Supp. 1991); N.Y. ENVTL. CONSERV. LAW § 27-0717 (McKinney Supp. 1991); R.I. GEN. LAWS § 2318.14-1 *et seq.* (Supp. 1991); WIS. STAT. ANN. § 100.295 (West Supp. 1991). The federal government is also considering regulating environmental marketing claims. On October 2, 1991, the U.S. Environmental Protection Agency (EPA) requested comments for the use of the term "recycled content" and "recyclable" and the use of the recycling emblem. *See* Guidance for the Use of the Terms "Recycled" and "Recyclable" and the Recyclinq Emblem, 56 Fed. Reg. 49,992 (EPA 1991) (request for comments). In addition, the Federal Trade Commission requested has public comment on whether it should issue

E. Requirements for Newspapers, Batteries, Tires, and Motor Oil

1. Summary

Both S.B. 97 and S.B. 152 would establish requirements for newspapers, lead-acid batteries, and tires. S.B. 97 would require forty percent of newsprint to consist of recycled paper by 1996.[74] By contrast, S.B. 152 would require newspapers to use ten percent recycled newsprint[75] by 1994 and "thereafter, each newspaper publisher shall increase substantially the percentage of recycled newsprint."[76] Both S.B. 97 and S.B. 152 would require retailers and wholesalers selling lead-acid batteries to accept used lead-acid batteries from purchasers.[77] These bills also would provide that lead-acid batteries could be discarded only at a secondary lead smelter or at a collection or recycling facility.[78]

S.B. 97 and S.B. 152 would require any person selling motor vehicle tires to accept used motor vehicle tires from any tire purchaser.[79] This requirement would not apply to tires that are included with the purchase of a motor vehicle.[80] S.B. 97 also would require the solid waste manage-

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guidelines for environmental marketing claims. *See* Petitions for Environmental Marketing and Advertising Guides, 56 Fed. Reg. 24,968 (FTC 1991) (request for comments). For a more detailed discussion of the possible regulation of environmental marketing claims by the federal government, *see* Christopher D. Knopf, *Federal and State Recyclir \evelopments: Reauthorization of the Resource Conservation and Recovery Ac. ., 1976 and Legislation Pending Before the Ohio General Assembly*, Conference on Ohio Environmental Regulation, Institute of Business Law, at 551-610 (March 24-25, 1992).

[74] S.B. 97, at 100-01 (proposed for codification at OHIO REV. CODE ANN. § 3734.66).

[75] The bill would require Ohio EPA to determine "what types of newsprint qualify as recycled newsprint." S.B. 152, at 53 (proposed for codification at OHIO REV. CODE ANN. § 3734.66(B)). As previously noted, the term "recycled" should be defined in terms of post-consumer content. *See supra* note 73.

[76] S.B. 152, at 53 (proposed for codification at OHIO REV. CODE ANN. § 3734.66(A)).

[77] S.B. 97, at 100-04 (proposed for codification at OHIO REV. CODE ANN. § 3734.67); S.B. 152, at 53-56 (proposed for codification at OHIO REV. CODE ANN. § 3734.67).

[78] S.B. 97, at 103 (proposed for codification at OHIO REV. CODE ANN. § 3734.67(F)).

[79] S.B. 97, at 104 (proposed for codification at OHIO REV. CODE ANN. § 3734.68); S.B. 152, at 56 (proposed for codification at OHIO REV. CODE ANN. § 3734.68). There also are two bills in the General Assembly that would provide for the regulation of scrap tires: Substitute H.B. 293, which was introduced by Representative Wayne Jones and passed the House on June 28, 1991, and S.B. 115, which is sponsored by Senator Roy Ray and is currently before the Senate Energy, Natural Resources and Environment Committee. Substitute H.B. 293 is also currently before the Senate Energy, Natural Resources and Environment Committee and is in the process of being amended. Neither bill would specifically require a retailer of motor vehicle tires to accept scrap motor vehicle tire from customers.

[80] *Id.*

ment districts to implement used oil collection and recycling programs.[81] The bill would give districts the authority to promulgate regulations to establish an oil recycling programs, but would not mandate that any particular strategy be utilized to achieve this goal.[82] S.B. 152 does provide for oil recycling.

2. Evaluation

The provisions of S.B. 97 and S.B. 152 that would establish requirements for newspapers, lead-acid batteries, used tires, and motor oil are consistent with the State Plan and should be adopted. The newspaper recycled-content provisions are valuable because they stimulate a demand for a product with recycled content. In this respect, the newspaper requirements are similar to procurement policies favoring recycled products. The State Plan recommends prohibiting the disposal of lead-acid batteries and whole tires in landfills by 1993.[83] The State Plan also recommends that legislation be introduced requiring retailers selling lead-acid batteries to accept used batteries.[84] Consequently, the lead-acid battery and used-tire provisions of S.B. 97 and S.B. 152 are logical products of H.B. 592.

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[81] S.B. 97, at 90 (proposed for codification at OHIO REV. CODE ANN. § 3734.534(A)). The regulation of used oil by the EPA has been a controversial subject. In 1985, EPA proposed to list all used oil as hazardous waste under RCRA. *Used Oil Management System and Listing as a Hazardous Waste*, 50 Fed. Reg. 49,258 (EPA 1985) (proposed rulemaking). Due to concerns that the stigmatic effects associated with hazardous waste listing might discourage the recycling of used oil and, thereby, result in an increase in the improper disposal of used oil, in 1986, EPA issued a decision not to list as hazardous waste used oil that is being recycled. *Identification and Listing of Used Oil as Hazardous Waste*, 51 Fed. Reg. 41,900, 41,901-02 (EPA 1986) (decision not to adopt proposed rule). In *Hazardous Waste Treatment Council v. Environmental Protection Agency*, 861 F.2d 270, 277 (D.C. Cir. 1988), the court held that the stigmatic effect is an illegitimate criterion for determining not to list used oil as a RCRA hazardous waste. The court ruled that EPA must use technical criteria for determining whether to list any used oil as a hazardous waste. *Id.* In response to the *Hazardous Waste Treatment Council* decision, on September 23, 1991, EPA proposed new regulations governing used oil. *Used Oil Management System and Listing as a Hazardous Waste*, 56 Fed. Reg. 48,000 (EPA 1991) (supplemental notice of proposed rulemaking). The September 23, 1991 proposed rulemaking considered listing used oil as a hazardous waste. 56 Fed. Reg. 48,019-20. However, on May 20, 1992, the EPA promulgated final rules in which it decided not to list used oil destined for disposal as hazardous waste. *Identification and Listing of Hazardous Waste*, 57 Fed. Reg. 21,524 (EPA 1992) (final rule).

[82] S.B. 97, at 91 (proposed for codification at OHIO REV. CODE ANN. § 3734.534(B)).

[83] STATE PLAN, *supra* note 4, at 3-2.

[84] *Id.*

The State Plan recommends the enactment of legislation requiring all retailers selling motor oil to accept used oil from individuals.[85] S.B. 97 would not place this burden on motor oil retailers; instead, it would require the solid waste management districts to provide an effective strategy for the collection and recycling of used motor oil. The approach of S.B. 97 has the benefit of giving each solid waste management district the flexibility to devise an oil recycling strategy that meets its particular needs. A weakness of this approach is that the districts may not implement oil recycling programs without a more forceful requirement. In addition, the approach of S.B. 97 may result in a multitude of differerent requirements governing the handling of used motor oil. This lack of uniformity would be confusing and cumbersome to the oil recycling industry. Consideration should be given to providing for uniform motor oil recycling requirements applicable throughout the State.

F. Prohibition on Nonbreakable Plastic Rings

1. Summary

Beginning in 1992, S.B. 97 would prohibit the sale of metal beverage containers connected by plastic rings that are not designed to break open when the container is removed from the ring.[86] The purpose of this provision is to prevent wildlife from becoming entangled in plastic rings from beverage containers. S.B. 152 does not contain an analogous provision.

2. Evaluation

This provision of S.B. 97 is tangential to the primary focus of the bill, which is on promoting recycling and reducing the amount of solid waste disposed in landfills. The possible detrimental effects of the prohibition should be assessed. For example, alternatives to plastic rings may prove to be bulkier and non-recyclable, which would exacerbate the solid waste disposal problem. Consequently, while the goal of the proposed plastic ring prohibition is laudable, care should be given to assessing the overall environmental impact of alternatives to plastic rings.

IV. H.B. 2 AND S.B. 71

A version of H.B. 2 overwhelmingly passed the Ohio House during the last session of the Ohio General Assembly, only to die in the Ohio Senate before reaching the floor.[87] H.B. 2 was introduced by Representative Wil-

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[85] *Id.*, at 7-3.

[86] S.B. 97 at 41-42 (proposed for codification at OHIO REV. CODE ANN. § 1502.06(B)).

[87] *See* H.B. 661, 118th Gen. Ass., Reg. Sess. (1989-90) sponsored by Representative Barney Quilter.

liam Healy and is now pending before the House State Government Committee, which is chaired by Representative Healy. S.B. 71, H.B. 2's companion bill in the Senate, was introduced by Senator Gary Suhadolnik, Chairman of the Ohio Senate Energy, Natural Resources and Environment Committee. S.B. 71 is currently before that Committee. The major provisions of H.B. 2 and S.B. 71 are summarized and evaluated below. While H.B. 2 and S.B. 71 have desirable components, these bills would result in the creation of a centralized state bureaucracy that would do little to facilitate local recycling efforts; consequently, this Article recommends against adoption of these bills.

A. Creation of an Office of Environmental Development and Recycling

1. Summary

H.B. 2 and S.B. 71 would create an Office of Environmental Development and Recycling (OEDR) within the Ohio Department of Development.[88] The OEDR would be responsible for promoting recycling and would include an Ohio Solid Waste Technology Center to conduct research into methods of recycling and solid waste reduction.[89] These bills would abolish the Division of Litter Prevention and Recycling in ODNR, which is currently authorized to make grants to political subdivisions for litter prevention and recycling purposes, and transfer its authority to the new OEDR.[90]

The OEDR would provide technical and training assistance to the solid waste management districts.[91] The OEDR would have authority to establish a program for brokering recycled materials.[92] The OEDR also would be responsible for promoting "resource recovery" from solid waste.[93]

2. Evaluation

a. Conceptual Problems

There are two conceptual problems with the proposed OEDR: (1) its authority would overlap with other existing offices within the Department

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[88] H.B. 2, at 26 and S.B. 71, at 31 (proposed for codification at OHIO REV. CODE ANN. § 1502.03).

[89] H.B. 2, at 31 and S.B. 71, at 31 (proposed for codification at OHIO REV. CODE ANN. § 1502.03(Z)).

[90] H.B. 2, at 26 and S.B. 71, at 26 (proposed for codification at OHIO REV. CODE ANN. § 1502.03).

[91] H.B. 2, at 29-30 and S.B. 71, at 29-30 (proposed for codification at OHIO REV. CODE ANN. § 1502.03(N)-(V)).

[92] H.B. 2, at 41-42 and S.B. 71, at 41-42 (proposed for codification at OHIO REV. CODE ANN. § 1502.08).

[93] H.B. 2, at 29-31 and S.B. 71, at 29-31 (proposed for codification at OHIO REV. CODE ANN. § 1502.03(N), (Z)).

of Development and (2) it would be too centralized and do little to actually promote public and private recycling and solid waste reduction efforts throughout the State. With respect to the first point, the Division of Technological Innovation within the Ohio Department of Development already has two programs which provide environmental assistance to the private sector: the Ohio Technology Transfer Organization (OTTO) and the Thomas Edison Program (Edison Program). OTTO is responsible for providing technical assistance to businesses, including product and process development and energy conservation.[94] In 1986, OTTO expanded its scope to provide environmental technical assistance to small- and medium-sized businesses.[95] OTTO has a small staff in Columbus, Ohio and a team of "agents" located throughout the State in public colleges and universities. These agents draw upon the professors at these educational institutions for technical advice. The agents visit businesses in response to specific requests for assistance, and also make unsolicited calls to businesses to offer their services to them.

The Edison Program is divided into three components: (1) the Edison Seed Development Fund, (2) the Edison Incubator Program, and (3) the Edison Technology Centers.[96] The Edison Seed Development Fund financially supports university-industry research and development projects, including a spent-solvent recovery system that is now marketed in the Cincinnati area.[97] To reduce overhead costs, the Edison Incubator Program provides office and research space for entrepreneurs.[98] The eight Edison Technology Centers focus on specific areas of applied research.[99]

OTTO and the Edison Program provide existing bureaucratic structures for accomplishing the purposes which are proposed for the OEDR. The OEDR would likely become embroiled in jurisdictional battles with these other bureaucracies and accomplish very little during its first years of operation. During this period of tight State budgets, it is especially poor public policy to create a bureaucracy that duplicates the functions of existing bureaucracies.

A second conceptual flaw in the structure of the proposed OEDR is bureaucratic centralization. H.B. 2 and S.B. 71 would not provide a mechanism for mobilizing personnel of the proposed OEDR into public and private entities to accomplish specific recycling and solid waste reduction efforts. The vague and directionless language of these proposed bills is illustrated by one section which would require the OEDR to periodically review all business development programs and to identify programs that may aid "specifically or generally" in "starting a recycling business."[100]

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[94] Information on file provided by the Ohio Technology Transfer Organization ("OTTO").

[95] Draft Environmental Issues White Paper, Ohio Technology Transfer Organization/Environmental Advisory Committee (December 11, 1990).

[96] Ohio Dep't of Development, OHIO'S THOMAS EDISON PROGRAM (1990).

[97] *Id.* at 17.

[98] *Id.* at 18.

[99] *Id.* at 6-10.

[100] H.B. 2, at 28-29 and S.B. 71, at 28-29 (proposed for codification at OHIO REV. CODE ANN. § 1502.03(L)).

The OEDR would also be required to disseminate pamphlets and other material identified by these periodic reviews.[101] With this broad and unclear mandate, a centralized OEDR would be of minimal assistance in promoting recycling.

An office paper recycling guide currently published by ODNR,[102] illustrates the problem with bureaucratic centralization that would exist in the OEDR proposed by H.B. 2 and S.B. 71. The ODNR guide offers general suggestions for creating an office paper recycling program, but provides no concrete assistance, such as a directory of paper recyclers.[103] This is to be contrasted with the office paper recycling guide published by the Cuyahoga County Planning Commission, which serves as the Cuyahoga County Solid Waste Management District.[104] The guide published by the Cuyahoga County Planning Commission offers substantive assistance, including a listing of paper recycling vendors.[105] The contrast between these two publications demonstrates the benefit of a decentralized approach to promoting recycling. Instead of creating an OEDR, it would be more effective to channel monies through existing Department of Development programs to the solid waste management districts to assist in local public and private recycling and solid waste reduction efforts.

b. Promoting Resource Recovery Technologies

The proposed OEDR also would be charged with promoting "resource recovery" programs, which would include incineration and other technologies which burn solid waste to recovery energy.[106] H.B. 592 requires Ohio EPA to examine alternative methods for the disposal of fly ash and bottom ash from municipal incinerators.[107] The State Plan examines disposal methods for incinerator ash, but does not explore the problems with incineration technologies in great detail.[108] With their potential air pollution problems and the difficulties associated with the disposal of incinerator ash,[109] it is not clear that incineration technologies are more environmentally sound than landfills. In addition, if a municipality or solid waste management district is required to provide a mininum tonnage of waste to an incinerator, the incentives to reduce or recycle the

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[101] *Id.*

[102] Ohio Dep't of Natural Resources, Papercycle: A Guide to Office Recycling (on file with author).

[103] *Id.*

[104] Cuyahoga County Planning Comm'n, Office Paper Recycling Manual (on file with author).

[105] *Id.*

[106] H.B. 2, at 25 and S.B. 71, at 25 (proposed for codification at OHIO REV. CODE ANN. § 1501.45).

[107] OHIO REV. CODE ANN. § 3734.50(E) (Anderson 1992).

[108] *Id.*

[109] *See* R. Denison, Approaches to Minimizing the Risks of MSW Incinerator Ash, Environmental Defense Fund, Presentation at the International Conference on Municipal Waste Combustion (April 12, 1989), at 5-10 (discussing the health hazardous associated with incinerator ash).

waste are compromised.[110] Until the feasibility of incineration technology is examined in appropriate detail, the State should not provide funding for the construction of resource recovery facilities.

B. Procurement Policies and Source Separation in State Agencies and Institutions of Higher Education

1. Summary

These bills would require State agencies and State-supported institutions of higher education to give preference to products with recycled content.[111] purposes of calculating the lowest bid, the agency or educational institution would be required to reduce the bid price by one percent for every ten percent of recycled content above the minimum recycled content required by procurement specifications.[112] In addition, the agencies and educational institutions would be required to implement a source-separation programs for aluminum, steel, glass, plastic, office paper, corrugated paper, and newspaper.[113]

2. Evaluation

As explained in the analysis of S.B. 97 and S.B. 152, requiring State agencies to provide models for local communities and the private sector to emulate is a logical step for promoting recycling.[114] The primary problem with the procurement component of H.B. 2 and S.B. 71 is that it poorly defines the terms "recyclable materials" and "recycled content." Under these bills, the term "recyclable materials" would mean "materials that have served their intended end use and may subsequently be collected, separated, or processed and reused as raw materials or finished products."[115] The term "recycled content" would mean "that portion of goods, supplies, equipment, printing, and other items that consists of materials that have been recycled."[116] These terms should be defined in comprehensive legislation regulating environmental marketing claims.[117]

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[110] *Id.*

[111] H.B. 2, at 14 and S.B. 71, at 13-14 (proposed for codification at OHIO REV. CODE ANN. § 125.141(A)).

[112] *Id.*

[113] H.B. 2, at 14 and S.B. 71, at 13-14 (proposed for codification at OHIO REV. CODE ANN. § 125.141(A)).

[114] *See supra* notes 61-73 and accompanying text (analyzing the requirements of S.B. 97 and S.B. 152 applicable to State agencies and institutions of higher education).

[115] H.B. 2, at 6 and S.B. 71, at 5-6 (proposed for codification at OHIO REV. CODE ANN. § 125.02(F)).

[116] *Id.*

[117] *See supra* note 72 (discussing legislation being drafted by Senator Fingerhut that would regulate environmental marketing claims).

"Recyclable" should be defined in terms of the capacity of the product or package to be actually recycled.[118] The term "recycled content" should be defined in terms of the amount of post-consumer material contained in the product or package.[119] Thus, while it is good public policy to require state institutions to give a preference to products or packages that are "recyclable" or have a "recycled content," care should be taken to properly define these terms.

C. Requirements for Newspapers, Batteries, and Tires

The components of S.B. 97 and S.B. 152 relating to newspapers, batteries, and tires were based on analogous provisions of H.B. 2 and S.B. 71.[120] As previously discussed, these provisions are consistent with the goals of the State Plan and should be adopted by the Ohio General Assembly.[121] S.B. 97, which also would provide for the recycling of used oil, is broader than H.B. 2 and S.B. 71; consequently, it is a more ambitious legislative initiative than H.B. 2 and S.B. 71.[122]

D. Opportunity-to-Recycle Programs

1. Summary

H.B. 2 and S.B. 71 would enable solid waste management districts to require municipalities and townships to establish "opportunity-to-recycle" programs for single- and multi-family residences.[123] Under these provisions, solid waste management districts could require municipalities and townships to establish source-separation programs or otherwise provide that at least twenty-five percent of the solid waste is recycled.[124] Municipalities and townships that fail to comply with the requirements of the solid waste management district would be ineligible to receive funds from the OEDR.[125]

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[118] *Id.*; *see* N.Y. COMP. CODES R. & REGS. tit. 6, § 368.2(k) (1990) (defining "recyclable").

[119] *Id.*; *see* N.Y. COMP. CODES R. & REGS. tit. 6, § 368.2(k) (1990) (defining "recycled"), CAL. BUS. & PROF. CODE § 17508.5(e) (West Supp. 1992) (defining "recycled").

[120] *See supra* notes 74-85 and accompanying text (discussing the requirements for newspapers, batteries, tires, and motor oil in S.B. 97 and S.B. 152).

[121] *See* STATE PLAN, *supra* note 4 at 9-10.

[122] *See supra* notes 82 & 85 and accompanying text (analyzing the provisions of S.B. 97 relating to the recycling of used oil).

[123] H.B. 2, at 72-73 and S.B. 71, at 72-73 (proposed for codification at OHIO REV. CODE ANN. § 3734.53(C)(5)).

[124] *Id.*

[125] *Id.*

2. Evaluation

Providing solid waste management districts with the authority to require communities to implement residential recycling programs is a desirable means of bolstering the effectiveness of the districts. Some communities have not recognized the importance of reducing the amount of solid waste that is landfilled. By providing the districts with the authority to mandate residential recycling, the districts have an additional tool to combat these intransigent communities.

E. Funding

1. Summary

To provide funding for solid waste disposal and recycling programs, H.B. 2 and S. B. 71 would impose a fee of $1 per ton on the disposal of solid waste.[126] This "tipping fee" would be collected by the solid waste disposal facility from the disposer.[127] As with S.B. 97, H.B. 2 and S.B. 71 would increase the Tier I corporate franchise.[128]

2. Evaluation

As with the corporate franchise taxes, a tipping fee has the advantage of spreading the cost of solid waste disposal throughout the economy. This eliminates the fairness problem of forcing a limited segment of the economy to finance recycling programs which will benefit other sectors of the economy. Since municipalities and other local government subdivisions are frequently responsible for the collection and disposal of solid waste, these municipalities and other political subdivisions would be required to initially bear the costs of this tipping fee, which eventually would be passed onto the citizens of these communities in the form of increased taxes. Consequently, the tipping fee funding mechanism is likely to face strong opposition by mayors, city councilmen, and other local officials.[129] As a result, the tipping fee mechanism may not be a politically viable means of funding recycling programs.

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[126] H.B. 2, at 91-93, and S.B. 71, at 91-93 (proposed for codification at OHIO REV. CODE ANN. § 3734.573).

[127] *Id.*

[128] H.B. 2, at 98-103 and S.B. 71, at 98-103 (proposed for codification at OHIO REV. CODE ANN. § 5733.064-.066).

[129] *See* Tom Breckenridge, *County Recycling to Carry Hefty Tag*, THE PLAIN DEALER, July 21, 1990, at 1B (discussing the opposition of local communities to a tipping fee proposed by the Cuyahoga County Solid Waste Management District).

F. Studies

1. Summary

H.B. 2 and S.B. 71 would require the OEDR to study several issues, including the feasibility of composting yard waste and the effect of tax incentives to promote solid waste reduction.[130] The bills would also establish a task force within the OEDR to investigate methods of reducing product packaging.[131]

2. Evaluation

It is unlikely that additional studies on recycling and solid waste reduction will provide any near-term tangible benefits for the State's recycling and solid waste reduction efforts. It is clear, however, that these studies will expand the state bureaucracy. Given existing budgetary constraints, recycling legislation should avoid requiring additional studies. Nevertheless, if the Ohio General Assembly is to commission a solid waste study, the study should examine the feasibility and effectiveness of incineration technology. Incineration is controversial, yet little understood by public policymakers.[132] The State Plan does not provide an in-depth examination of incineration technologies.[133] A study of incineration technologies would provide local communities with a basis for knowledgeably evaluating proposals to construct incineration facilities.

V. S.B. 5 AND H.B. 170

S.B. 5 and its companion bill, H.B. 170, contain all the major provisions of H.B. 2 and S.B. 71, but also would provide for deposits on beverage containers.[134] S.B. 5 was introduced by Senator Charles Horn; H.B. 170 was introduced by Representative Robert Corbin. Between 1972 and 1983, nine states adopted deposit laws.[135] These laws were enacted to reduce

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[130] H.B. 2, at 105-06 and S.B. 71, at 105-06.

[131] H.B. 2, at 106 and S.B. 71, at 106.

[132] *See* Denison, supra note 109, at 2 ("Incineration, while increasingly adopted or proposed as the method of choice for dealing with [municipal solid waste], is widely perceived as risky and remains highly controversial. Despite this, the major focus of the risk debate has failed to encompass all, or even the major, types of risks which this technology can pose.").

[133] STATE PLAN, at 2-14 through 2-15.

[134] *See* S.B. 5, at 47-58 and H.B. 170, at 46-57, (proposed for codification at OHIO REV. CODE ANN. §§ 1502.20-1502.37) (beverage-container deposit provisions).

[135] *See* Conn. Gen. Stat. Ann. § 22a-243 *et seq.* (West 1985 & Supp. 1992); Del Code Ann. tit. 7, § 6051 *et seq.* (1991); Iowa Code Ann § 455C.1 *et seq.* (1988 & Supp. 1991). Mass. Ann. Laws ch. 94, § 321 *et seq.* (West 1990 & Supp. 1992); Me. Rev. Stat. Ann. tit. 32, § 1861 *et seq.* (Law. Co-op. 1985 & Supp. 1992); Mich.

litter and conserve energy.[136] In more recent years, deposit laws have been viewed as a means of responding to reduced landfill capacity. In 1987 and 1988, the states of California and Florida adopted versions of beverage-container deposit legislation.[137] S.B. 5 and H.B. 170 are modified versions of S.B. 217,[138] which was introduced during the previous session by Senator Horn.[139] The mechanics of this beverage-container deposit program are described and analyzed below.

A. Beverage-Container Deposit Program

S.B. 5 and H.B. 170 would require retailers to charge deposits on beverage containers sold in Ohio and would permit consumers to redeem the deposit by returning empty containers to redemption centers or to retailers who have gross sales of $1 million or more.[140] The bills define "redemption center" as a building, mobile unit, reverse vending machine, or other system at which beverage containers are redeemed.[141] A "reverse vending machine" is a mechanical device that accepts empty beverage containers and issues payments for them.[142] The deposits would be re-

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Stat. Ann. § 18.1206(1) *et seq.* (Callaghan 1986 & Supp. 1991); N.Y. Envtl. Conserv. Law § 27-001 *et seq.* (McKinney 1984 & Supp. 1992); Or. Rev. Stat. § 459A.700 *et seq.* (1992); Vt. Stat. Ann. tit. 10, § 1521 *et seq.* (1984 & Supp. 1991).

[136] See GAO Report, *supra* note 52, at 2 (discussing the background for the adoption of deposit legislation).

[137] *See* Cal. Pub. Res. Code § 14500 *et seq.* (West Supp. 1992); Fla. Stat. Ann. § 403.7198 *et seq.* (West Supp. 1992). For a discussion of Florida's beverage-container deposit program, see William D. Preston & Thomas M. DeRose, 1988 Solid Waste Management Act — facing up to the "garbage" component of Florida's burgeoning growth, 16 Fla. St. U.L. Rev. 597, 618-19 (1988). The Florida program does not actually establish a "bottle bill." Rather, the Florida statutes require the imposition of an advanced disposal fee on certain containers if a recycling rate of 50% is not achieved for these containers by October 1, 1992. *Id.*

[138] S.B. 217, 118th Gen. Ass., Reg. Sess. (1989-90).

[139] Lobbying in favor of beverage-container deposit legislation is Environmental Products Co. (Envipco), an Arlington, Virginia-based manufacturer of reverse vending machines. *See* Michael L. Mahoney, Recycling Proposals Drawing Early Fire, The Plain Dealer, March 12, 1990, at 1-B, 9-B (discussing lobbying efforts regarding the recycling legislation before the 118th General Assembly). A "reverse vending machine" is a mechanical device that accepts empty beverage containers and isues payments for them. *See* S.B. 5, at 47 and H.B. 170, at 47 (proposed for codification at OHIO REV. CODE ANN. § 1502.20(I)).

[140] S.B. 5, at 49 and H.B. 170, at 48-49 (proposed for codification at OHIO REV. CODE ANN. §§ 1502.23) (requiring retailers to charge a deposit on beverage containers) and OHIO REV. CODE ANN. § 1502.24 (requiring retailers to redeem beverage containers)).

[141] S.B. 5, at 47 and H.B. 170, at 47 (proposed for codification at OHIO REV. CODE ANN. § 1502.20(G)).

[142] S.B. 5, at 47 and H.B. 170, at 47 (proposed for codification at OHIO REV. CODE ANN. § 1502.20(I)).

quired on bottles, cans, jars, or other receptacles with a capacity of one gallon or less which contain soft drink, beer, intoxicating liquor, milk, fruit juice, water, mineral water, or mixed wine drink.[143] The redemption value of beverage containers with a capacity of less than thirty-two fluid ounces would be five cents, while the redemption value of containers holding between thirty-two fluid ounces and one gallon would be ten cents.[144]

B. Collection of Deposits

S.B. 5 and H.B. 170 would require retailers to pay wholesale distributors the total redemption value of the beverage containers purchased from the wholesalers. In turn, wholesalers would pay the sums collected from the retailers to the OEDR, except that wholesalers could retain one-half of one percent of the amount due as a handling fee.[145] The OEDR would establish a Beverage Container Recycling Fund.[146] From this Fund, the OEDR would reimburse retailers and redemption centers for the redemption value of the containers collected, plus a handling fee of one cent per beverage container collected. The Fund also would be used to provide monies to the solid waste management districts to promote recycling and solid waste reduction.[147]

C. Evaluation of the Deposit Program

There are two principal problems with the beverage-container deposit program proposed in S.B. 5 and H.B. 170: (1) incompatibility with curbside recycling programs and (2) the existence of a built-in financial disincentive for the State to promote the redemption of beverage containers.[148]

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[143] S.B. 5, at 46-47 and H.B. 170, at 46-47 (proposed for codification at OHIO REV. CODE ANN. §§ 1502.20(A)) (defining "beverage") and OHIO REV. CODE ANN. § 1502.20(B) (defining "beverage container")).

[144] S.B. 5, at 48 and H.B. 170, at 48 (proposed for codification at OHIO REV. CODE ANN. § 1502.22).

[145] S.B. 5, at 51 and H.B. 170, at 51 (proposed for codification at OHIO REV. CODE ANN. § 1502.27).

[146] S.B. 5, at 53-54 and H.B. 170, at 53-54 (proposed for codification at OHIO REV. CODE ANN. § 1502.31).

[147] *Id.*

[148] Another difficulty with the deposit legislation is that it addresses only a limited segment of the solid waste stream. A response to this problem would be to expand the types of containers that are redeemable under the bottle-bill deposit program. In 1976, the voters of Maine passed a referendum requiring deposits on beer and soft-drink containers sold within the state. *See* George K. Criner, et al., *An Economic and Waste Management Analysis of Maine's Bottle Deposit Legislation* 7 (Maine Agricultural Experiment Station 1991) (reviewing the history of Maine's bottle deposit law) [hereinafter Analysis of Maine's Bottle Bill]. In 1989, Maine's bottle deposit program was expanded to include all nondairy and non-farm cider beverages of a gallon or less, packaged in containers other than a paper carton. *See* Me. Rev. Stat. Ann tit. 32, § 1862 (West Supp. 1991) (defining "beverage" and "beverage container"). Maine's expanded bottle bill has created

With respect to the first problem, scrap from beverage containers, aluminum in particular, can provide up to half the scrap revenue of curbside recycling programs.[149] A deposit law would reduce the amount of beverage container scrap material in curbside recycling programs, thereby forcing these programs to obtain other sources of funding or discontinue operations.[150] Supporters of S.B. 5 and H.B. 170 promote the bill as a mechanism for raising funds to finance recycling programs.[151] On the other hand, S.B. 5 supporters also contend that the deposit program will be the most effective tool for diverting beverage containers from the solid waste stream.[152] However, these goals of S.B. 5 conflict with one another: as more beverage containers are redeemed by consumers, the less money is available to the State to fund recycling programs.[153]

The internal inconsistency of proposed deposit program exists because the State revenues generated by the program are derived from the difference between the redemption value of the beverage containers sold by retailers and the redemption value of beverage containers returned by consumers. As more consumers return containers for redemption, the smaller this difference becomes. To illustrate this point, assume that ten beverage containers are sold with a redemption value of ten cents each, thereby creating potential State revenue of one dollar. If consumers re-

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problems for manufacturers and distributors of beverages that were not previously covered by the bottle bill. *See* analysis of Maine's Bottle Bill, at 26-27. These problems include increased security costs and decreased efficiency in the distribution of products. *Id.* Thus, an expanded bottle bill is not an adequate solution to the problem of deposit legislation focusing on a narrow portion of the solid waste stream.

[149] *GAO Report*, at 36.

[150] *See* Testimony of William R. Uffelman, National Solid Waste Management Association, Ohio Senate Ways and Means Committee (March 19, 1991) ("[m]andatory deposits on beverage containers should not be included in comprehensive solid waste disposal, recycling, and waste reduction legislation because it reduces the options available to communities . . . by removing the most valuable recyclables from the waste stream").

[151] *See* Testimony of Charles Horn Before the Ohio Senate Ways and Means Committee (February 11, 1991), at 2 ("this deposit system will generate an estimated $149 MILLION over a period of five years to help local solid waste management districts get their programs up and running — without raising taxes") (emphasis in original).

[152] *Id.* at 3 ("The experience of other states' deposit laws confirms that beverage container deposit programs work. They are far more effective than anything we have ever tried here in Ohio.").

[153] *See* Testimony of Jane Haynes, 119th Gen. Ass., Reg. Sess. League of Women Voters of Ohio, Ohio Senate Ways and Means Committee (March 12, 1991), at 2 (while supporting beverage-deposit legislation, noting that the deposit program proposed in S.B. 5 could run a deficit rather than generating funds to support recycling programs); Testimony of Joel S. Bergen, A. Edelstein and Son, Inc., Ohio Senate Ways and Means Committee 119th Gen. Ass., Reg. Sess. (March 12, 1991), at 2-3 ("One of the selling points of this proposal [S.B. 5] is that unredeemed deposits will be used to help local government recycling programs. It is unclear how much money will be left after administration costs and redemption subsidies are paid. As the redemption rate increases, fewer and fewer dollars are available to pay for the cost of running a mandatory deposit system. Eventually, the system may not be able to pay for itself.").

deem six of these ten containers, the State would pay sixty cents to these consumers and retain the remaining forty cents to fund recycling programs (ignoring handling fees for wholesalers and retailers). However, if consumers redeem eight of the ten bottles, the State would return eighty cents to the consumers and retain only twenty cents. Thus, the State has a financial incentive to discourage the redemption of beverage containers.[154]

VI. OTHER RECYCLING LEGISLATION

A. H.B. 36

H.B. 36, which was introduced by Representative David Hartley, is more narrowly focused than the three major recycling initiatives before the Ohio General Assembly. H.B. 36 is similar to H.B. 714,[155] which Representative Hartley introduced during the previous session of the General Assembly. There are two components of H.B. 36: (1) a predisposal fee on containers, packaging, and newsprint[156] and (2) a prohibition on the sale of metal beverage containers connected with plastic rings that are not biodegradable or photodegradable.[157]

1. Predisposal Fee

a. Summary

The predisposal tax provided by H.B. 36 would decrease as the container or package becomes feasibly recyclable or, in the case of newspapers, as the content of recycled newsprint increases.[158] The bill defines "feasibly recyclable" to mean that the material composing the container or pack-

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[154] When the redemption rate reaches a certain point, the beverage-container deposit program of S.B. 5 and H.B. 170 will *lose* money for the State instead of generating funds to promote recycling. This loss will result because the overhead costs incurred by the State to implement the program will remain constant while revenues available to the State decrease as redemption rate increases. Revenues from the beverage-container deposit program adopted in California, which is similar to the program proposed by S.B. 5, are projected to be less than expenses when the redemption rate exceeds 65%. *See A Report to the California Legislature*, California Department of Conservation, at 17 (June 1991). The deposit program instituted in California differs from the program contained in S.B. 5 in that, under the California bottle bill, the redemption payment for beverage containers (2 cents per container) is less than the refund value (2.5 cents per container). *Id.* This disparity exacerbates the depletion of the recycling fund established under the California bottle-bill program. *Id.* Nevertheless, the problem of depletion of the recycling fund also would be present under the S.B. 5 and H.B. 170 program, albeit at a higher redemption rate.

[155] H.B. 714, 118th Gen. Ass., Reg. Sess. (1989-90).

[156] H.B. 36, at 12-13 (proposed for codification at Ohio Rev. Code Ann. § 5745.02).

[157] H.B. 36, at 2 (proposed for codification at Ohio Rev. Code Ann. § 1502.06(B)).

[158] H.B. 36 at 12-13 (proposed for codification at OHIO REV. CODE ANN. § 5745.02).

aging is technically capable of being recycled and that the cost of disposing of the material exceeds the net cost of processing the material into a recyclable.[159] The bill would create a Resource Preservation Board, which would determine whether a container or package is "feasibly recyclable."[160] The predisposal tax would be paid by persons manufacturing containers or packaging material in Ohio, by the persons importing containers or packaging material into Ohio, or by printers using newsprint.[161] Funds raised by the predisposal tax would be used to promote recycling.[162]

b. Evaluation

A predisposal tax on certain products and packages is attractive because it prevents the manufacturers from externalizing the life cycle cost of these items onto the rest of society. By imposing a predisposal tax, the disposal cost of the product or package is passed onto the party who should bear the cost — the consumer. This tax would direct consumers to products and packages which contribute less to the solid waste stream and will encourage manufacturers to ensure that their product is recyclable.[163]

The primary weakness with this component of H.B. 36 is in the cumbersome definition of "feasibly recyclable."[164] Under H.B. 36, application of the tax involves a complicated comparison of the disposal costs and the costs of source separating the product or package.[165] Instead of making the tax a function of whether a product or package is feasibly recyclable, the tax should be dependent upon whether the product is "actually recyclable." For example, under an alternative approach, "recyclable" could mean that a certain percentage of communities in Ohio provide for the source separation of the products or packages which are subject to the tax.[166] Constructing the tax in this way would simplify the tax and provide an incentive to manufacturers to encourage communities to recycle the products and packages generated by their residents.

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[159] H.B. 36, at 10-11 (proposed for codification at OHIO REV. CODE ANN. § 5745.01(B)).

[160] H.B. 36, at 16 (proposed for codification at OHIO REV. CODE ANN. § 5745.08).

[161] H.B. 36, at 14-15 (proposed for codification at OHIO REV. CODE ANN. § 5745.05).

[162] H.B. 36, at 15 (proposed for codification at OHIO REV. CODE ANN. § 5745.06).

[163] *Id.*

[164] H.B. 36, at 16 (proposed for codification at OHIO REV. CODE ANN. § 5745.08).

[165] *Id.*

[166] For example, the regulations of the State of New York provide that "recyclable" means a material for which any of the following standards are met:

(1) access to community recyclable recovery programs for that material is available to no less than 75% of the population of the State: or

(2) a statewide recycling rate of 50% has been achieved within the material category; or

(3) a manufacturer, distributor, or retailer achieves a statewide recycling rate of 50% for the product or package sold within the State; or

(4) a product or package may be recyclable within the jurisdiction of a municipality where an ongoing source separation and recycling program provides the opportunity for recycling of the product or package.

N.Y. COMP. CODES R. & REGS. tit. 6, § 368.2(k) (1990).

2. Prohibition on Plastic Rings

a. Summary

H.B. 36 would prohibit the sale of metal beverage containers which are connected by plastic rings that are not photodegradable or biodegradable.[167] The bill does not define the terms "photodegradable" and "biodegradable."[168]

b. Evaluation

The rationale for requiring plastic rings to be photodegradable or biodegradable is to eliminate the hazards these rings pose to wildlife. However, this requirement is premised on the belief that degradable plastics are environmentally safer than nondegradable plastics. This premise may be inaccurate. In the report *Breaking Down the Degradable Plastics Scam* (*Greenpeace Report*), Greenpeace evaluated the potential toxicity problem of degradable plastics.[169] The *Greenpeace Report* concludes that insufficient toxicity testing has been conducted to determine whether degradable plastics are environmentally safe.[170] Until there is compelling evidence demonstrating that plastics can photodegrade or biodegrade and that degradable plastics do no release harmful toxics into the environment, the State should not legislatively mandate that container rings consist of degradable plastic.

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[167] H.B. 36, at 2 (proposed for codification at OHIO REV. CODE ANN. § 1502.06(B)).

[168] Despite the undesirability of requiring beverage-container plastic rings to be composed of "degradable" plastic, other states impose such requirements. *See, e.g.*, the North Carolina statutory requirements for plastic rings:

> No person may sell or distribute for sale . . . any container connected to another by a yoke or ring type holding device constructed of plastic that is neither degradable nor recyclable . . . . The manufacturer of a degradable yoke or ring type holding device shall emboss or mark the devices with a nationally recognized symbol indicating that the device is degradable. The manufacturer of a recyclable yoke or ring type holding device shall emboss or mark the device with a symbol indicating the plastic resin used to produce the device and that the device is recyclable.

N.C. GEN. STAT. § 14-399.2(b) (Supp. 1991). In connection with these requirements, the North Carolina statutes provide the following definitions:

> "Degradable" means that within one year after being discarded, the yoke or ring type holding device is capable of becoming embrittled or decomposing by photodegradation, biodegradation or chemo-degradation under average seasonal conditions into components other than heavy metals or other toxic substances.
>
> "Recyclable" means that the yoke or ring type holding device is capable of being collected and processed for reuse as a product or raw material.

N.C. GEN. STAT. § 14-399.2(a) (Supp. 1991).

[169] GREENPEACE BREAKING DOWN THE DEGRADABLE PLASTICS SCAM, 72, 91-92 (1990).

[170] *Id.*

B. H.B. 63

1. Summary.

H.B. 63, which also was introduced by Representative Hartley, contains a similar prohibition on the sale of metal beverage containers that are connected by non-photodegradable or non-biodegradable plastic rings, and also provides for deposits on beverage containers.[171] Under H.B. 63, a retailer would have to redeem empty containers irrespective of the level of its gross sales, unless the retailer belonged to a regional redemption center located within one mile of the retail premises.[172] H.B. 63 would establish two refund values: (1) the refund value would be five cents for containers that are certified by the State as being refillable and readily accepted by more than one manufacturer and (2) the refund value would be ten cents for all redeemable containers that are not certified by the State.[173] The bill would require beverage-container manufacturers and wholesaler distributors to accept beverage containers from retailers and redemption centers and to pay retailers and redemption centers the refund value, plus a handling fee of two cents per container.[174]

2. Evaluation

There are two problems with the deposit program contained in H.B. 63: (1) incompatibility with curbside recycling programs and (2) an increase in government bureaucracy without improving protection of the environment. The problem of incompatibility between deposit legislation and curbside recycling has been discussed previously during the analysis of S.B. 5 and H.B. 170.[175] With respect to the second problem, H.B. 63 would require a bureaucracy to certify that a beverage container is refillable by and acceptable to more than one manufacturer.[176] This certification is only useful in determining the redemption value of the beverage container (either five or ten cents), and is not directly related to ensuring that more beverage containers will be diverted from disposal in landfills. Given the weak nexus between container certification and reduction in the solid waste stream, this deposit program does not provide an efficient mechanism for achieving the objectives of H.B. 592 and the State Plan.

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[171] H.B. 63, at 2 (proposed for codification at OHIO REV. CODE ANN. § 1502.06(B)).
[172] H.B. 63, at 5-6 (proposed for codification at OHIO REV. CODE ANN. § 3734.38).
[173] H.B. 63, at 3-4 (proposed for codification at OHIO REV. CODE ANN. § 3734.35(I) (defining "refund value").
[174] H.B. 63, at 6 (proposed for codification at OHIO REV. CODE ANN. § 3734.38(E)).
[175] *See supra* notes 149-50 and accompanying text.
[176] H.B. 63, at 3-4 (proposed for codification at OHIO REV. CODE ANN. § 3734.35(I)).

VII. CONCLUSION

Until the introduction of S.B. 97 and S.B. 152, the Ohio General Assembly was prepared to move quickly to enact some form of recycling legislation. However, the introduction of these alternatives to deposits on beverage containers has resulted in greater consideration being given to the merits of the recycling bills now pending before the General Assembly. The Senate leadership has attempted to overhaul S.B. 5 so that the new bill would embrace most of the major elements of S.B. 97 and S.B. 152, while providing for deposits on beverage containers if certain recycling goals are not achieved.[177] The Senate leadership has not introduced this legislation.

While the Ohio General Assembly remains stymied over the proper legislative solution to promoting recycling, more communities continue to implement curbside recycling programs and voluntary source-separation programs are expanding throughout the private sector. Consequently, despite the lack of legislative leadership provided by the General Assembly since enactment of H.B. 592 in 1988, recycling is becoming a more widely used solid waste management option.

It remains within the capacity of the General Assembly to adopt recycling legislation that is cost-effective and consistent with the process initiated by H.B. 592. S.B. 97 and S.B. 152 provide the basis for such legislation. These bills recognize that curbside recycling programs are the most effective means of promoting the source separation of recyclables from the residential household solid waste stream. The volume-based fee components of these bills complements their mandatory curbside recycling provisions. These bills also require state agencies to serve as a model for private recycling initiatives without establishing a costly government bureaucracy.

It is time for the leadership of the General Assembly to break the legislative deadlock and adopt sensible recycling legislation.

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[177] The draft of Sub. S.B. 5 has not been publicly released by the Ohio Senate leadership. A copy of this draft is retained in the files of the author. *See* Vindu P. Goel, *Sen. Finan Presents New Recycling Measure*, THE PLAIN DEALER, Sept. 11, 1991, at C1 (discussing draft Sub. S.B. 5).