

Bottled Up In Albany:

An Analysis of Campaign Contributions and Lobbying Expenditures Made by Major Opponents to the "Bigger, Better Bottle Bill" in New York State

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Bottled Up In Albany

EXECUTIVE SUMMARY

The "Bigger, Better Bottle Bill" (A.3922B/S.1696B) was introduced in the New York State Legislature in 2002 by Assemblyman Thomas P. DiNapoli and Senator Kenneth LaValle. This proposal would expand New York's highly successful container deposit law (known as the "bottle bill") to include non-carbonated beverages, and would require the beverage industry to turn over unclaimed deposits to the state to fund recycling and other environmental programs.

Advocates for this proposal have come to Albany armed with facts, figures, and the knowledge that there is broad public support for it. Yet for three years, this legislation has been stalled in the State Legislature. **Why is a bill that benefits the environment, enjoys widespread public support, and could generate as much as \$180 million a year for state coffers -without raising taxes - "bottled up" in Albany?** The answer perhaps lies in the clout of the major industries that oppose this legislation.

This report examines lobbying expenditures and campaign contributions made to state lawmakers by the beer, soft drink and food retail industries who oppose the "Bigger, Better Bottle Bill" from 2002, when the bill was introduced, to early 2004.

Major Findings:

- 1) **Campaign contributions made by opponents of the Bigger, Better Bottle Bill in 2002 and 2003 dwarfed those made by supporters.**
 - Opponents contributed a total of \$1,230,250 to state legislators, state political parties, and statewide officeholders.
 - Public interest advocates contributed \$0.
 - Agricultural groups, who endorse the concept of the Bigger, Better Bottle Bill, contributed \$11,375, or less than 1% of the total.

- 2) **Beer companies made the most campaign contributions, and gave money at crucial times.**
 - Beer wholesalers and bottlers contributed \$659,730 to state political campaigns in 2002 and 2003, or 53% of the total.
 - In the week after A.3922A started to move in the Assembly, the N.Y.S. Beer Wholesaler's Association and their Political Action Committee (PAC) wrote out \$90,000 in checks to the Democratic Assembly Campaign Committee (DACC), the NYS Senate Republican Campaign Committee, and their respective housekeeping accounts.

3) Opponents of the "Bigger, Better Bottle Bill" lavished their campaign contributions on those with the most power.

- 63% of their contributions went to campaign funds controlled by Governor Pataki, Senate Majority Leader Joe Bruno, or Assembly Speaker Sheldon Silver.
- 90% of the contributions to the Senate went to the majority (Republican) party.
- 78% of contributions to the Assembly went to the majority (Democratic) party.
- Overall, 70% of the contributions were to Republicans and 30% to Democrats.

4) From 2002 through 2004, opponents of the "Bigger, Better Bottle Bill" are expected to spend more than \$2 million in lobbying New York State legislators.

- Five of the top ten lobbying firms in New York (as of 2003) have lobbied against the Bigger, Better Bottle Bill on behalf of their clients.
- Industry heavy-hitters topped the list of opponents to the "Bigger, Better Bottle Bill." The top five industry opponents, in order of their lobbying expenditures, are Anheuser-Busch, the Food Industry Alliance of N.Y.S., the Coca-Cola Bottling Company of N.Y., the N.Y.S. Beer Wholesalers Association, and the N.Y.S. Bottlers Association (representing soft drink bottlers).

While it is impossible to determine exactly how much money these industries are spending on opposing the "Bigger, Better Bottle Bill," since they are active on a wide range of bills pending before the State Legislature, this report shows that big money is in play on this issue. This report reveals that what advocates of the "Bigger, Better Bottle Bill" lack - but opponents have plenty of - is the cold cash to participate in Albany's "pay for play" system.

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1. INTRODUCTION

For decades, proposals to adopt and later improve New York's Returnable Container Act,¹ better known as the "bottle bill," have met with stiff opposition from the beer and soda industries and food retailers. It took more than ten years, and the concerted efforts of a broad coalition of environmental groups, students, farmers, civic groups, and municipalities, to get the original law passed in 1982, requiring a minimum 5-cent refundable deposit on all beer and soft drink containers sold in New York State.²

By all measures, the law has been extraordinarily successful in achieving its intended purpose to reduce litter and broken glass in New York's communities, increase recycling rates, and reduce the burden on municipal solid waste programs.³ It has also had other far-reaching social and economic impacts, by creating new jobs, spurring new businesses in the recycling industry, providing revenue for charities and a source of employment for low-income people.

But the bottle bill is long overdue for a tune-up. The state law-makers who created New York's container deposit law could not have foreseen the rapid growth of so-called "new age" beverages, such as bottled water, ready-to-drink teas, juices and sports drinks, sold primarily in single-serving bottles and cans. These non-carbonated beverages were virtually non-existent in 1982, and thus were not included in the law. Today, they comprise more than 20% of New York's beverage market, with an estimated 2.6 billion non-carbonated beverage containers sold annually in New York State.⁴

Nor did they predict how much money the beer distributors and soft drink bottlers would collect and retain each year from beverage containers that are not returned for their deposits. According to the N.Y.S. Department of Environmental Conservation (DEC), nearly 30% of the deposits initiated in 2001 on beer and soda containers were not redeemed.⁵ These unclaimed nickels add up. Estimates of the unclaimed deposits kept by beer and soda companies range from \$85 million a year,⁶ based on industry self-reporting, to over \$140 million a year, based on beverage marketing data.⁷

Massachusetts, Michigan and Maine have successfully updated their bottle laws - and fended off industry lawsuits - to require beverage companies to turn

¹ N.Y. Environmental Conservation Law, Article 27, Title 10.

² The law was expanded in 1986 to include wine coolers.

³ New York Public Interest Research Group (NYPIRG), "New York's Bottle Bill: 20 Years of Happy Returns," Dec. 2003.

⁴ Container Recycling Institute (CRI), "Estimated Unredeemed Deposits in New York State," Jan. 2004.

⁵ N.Y.S. Department of Environmental Conservation (NYSDEC), Bureau of Waste Reduction and Recycling, "Beverage Container Deposit and Redemption Statistics for the Period October 1, 2001-September 30, 2001," Feb. 2003.

⁶ *Id.*

⁷ CRI, *supra* note 4.

unclaimed deposits over to state coffers to fund environmental programs and other public needs. But in New York, efforts spearheaded by former Governor Mario M. Cuomo in the 1980s and 1990s to take back the unclaimed deposits were unsuccessful.

a. "Bigger, Better Bottle Bill" Introduced in 2002

A confluence of factors led environmental groups to launch the campaign for a “Bigger, Better Bottle Bill” in New York in 2002. As the state's bottle bill approached its 20th anniversary, the time was ripe to look at ways to update the law in order to keep up with changing beverage markets and consumer habits. At the same time, recycling in New York was showing signs of distress, most notably when New York City’s Mayor Michael R. Bloomberg proposed in February 2002 that the city suspend its curbside recycling program for metal, glass and plastic. Finally, funding for recycling and other environmental programs in New York was running dry, with the depletion of the 1996 Clean Air-Clean Water Bond Act monies and the siphoning of surplus funds from the State Environmental Protection Fund to fill holes in the state budget.

In the spring of 2002, Assemblyman Thomas P. DiNapoli, chair of the Assembly Environmental Conservation Committee, and Senator Kenneth LaValle, a leading environmentalist in the State Senate, introduced legislation to expand and update the state’s bottle law. This legislation, modified in 2003 and amended twice since then, is known as the “Bigger, Better, Bottle Bill” (A.3922B/S.1696B).

The “Bigger, Better Bottle Bill” would make two major reforms to the state's existing bottle law. First, it would expand the current deposit program to include non-carbonated beverages, such as bottled water, iced tea, juice and sports drinks. Secondly, it would require that all unclaimed deposits, which currently are retained by the beverage industry, be turned over to the State Environmental Protection Fund to support recycling and other environmental programs.

While there are other bottle bill reform proposals pending in the State Legislature that include changes such as increasing the deposit to ten cents or putting deposits on wine and liquor bottles, environmental groups have rallied behind the specific provisions in A.3922B/S.1696B, and it has been on the list of legislative priorities for the annual Earth Day Lobby Day in Albany for the past three years.

b. Where the Elected Officials Stand

When asked his position on the "Bigger, Better Bottle Bill" in 2003, Governor George E. Pataki told reporters, "I have never thought there was merit or justification for that."⁸ Some credit Governor Pataki’s upset victory over incumbent Governor Mario Cuomo in 1994 in part to the generous support he received from the beverage and food retail industries.⁹ According to a

⁸ Shirin Parsavand, "Pataki Won't Support Effort to Expand State's Bottle Bill," *The Daily Gazette* (March 5, 2003).

⁹ Michael Finnegan and Tom Robbins, "Big Biz Donors Toast New Gov," *New York Daily News* (Nov. 11, 1994), noting "Supermarket chains, beverage distributors, and manufacturers pumped more than \$200,000 into Pataki's race, records show." Kevin Sack, "How Albany Works, Lesson

contemporary newspaper account, the night Governor Pataki was elected, beverage industry lobbyists in his victory suite pumped their fists in the air and cheered, "No one's taking my nickels!"¹⁰

Senate Majority Leader Joseph L. Bruno has been outspoken in his opposition to the "Bigger, Better Bottle Bill." Senator Bruno told reporters last year, "We've been there, we've done that. It didn't happen, and I don't anticipate that happening now."¹¹ While Senator Bruno has not explained why he opposes the bill, his position is consistent: as a junior senator in 1982, he voted against the original bottle law.

Within the Senate, support is divided. Senator Carl Marcellino, chair of the Environmental Conservation Committee, reportedly told a group of supermarket representatives and beer wholesalers that, "We [the Senate Republican Majority] will hold the line against 'Bottle Law' expansion."¹² However, S.1696B has four majority sponsors and one minority sponsor. Among the Senate minority, there is almost unanimous support for a similar proposal introduced by Senator Liz Krueger, S.384.

Although Assembly Speaker Sheldon Silver has not publicly commented on the proposed legislation, only the Assembly has taken any action on the bill. Assemblyman DiNapoli held hearings on the proposed legislation in March 2003, and subsequently drafted amendments to address some of the concerns raised by affected businesses. A.3922A moved through two important Assembly committees in June 2003 before the legislative session drew to a close. As this report was going to press, the bill was amended, and has been put on the agenda for the Assembly Environmental Conservation Committee for June 2nd. A.3922B currently has 55 majority Assembly cosponsors, and one minority cosponsor - more than a third of the entire State Assembly.

The "Bigger, Better Bottle Bill" has also received the support of prominent state and local officials, most notably New York State Attorney General Eliot Spitzer, who was the first public official to throw his weight behind the idea, and New York City Comptroller William C. Thompson, Jr. Legislation to expand and update the bottle bill has been endorsed by the N.Y.S. Association of Counties, the N.Y.S. Association of Recycling, Reuse and Reduction, and more than fifty local governments and advisory boards from across the state.¹³

No. 1: Lobbying; The Beverage Industry Pushes Hard to Get Its Taxes Cut, and It Succeeds," *The New York Times*, B1 (June 12, 1995).

¹⁰ Finnegan and Robbins, *Id.*

¹¹ Karen DeWitt, "Bottle Law Expansion Considered," *New York State Public Radio*, (March 7, 2003).

¹² Food Industry Alliance of N.Y.S., *FoodScan*, (May 10, 2004), www.fiany.com/FoodScan/FS%201.htm.

¹³ NYPIRG, "Endorsers of the Bigger, Better Bottle Bill," March 31, 2004.

c. Benefits of the Bigger, Better Bottle Bill

According to the Container Recycling Institute, the "Bigger, Better Bottle Bill" could recover up to 2.6 billion more bottles and cans each year and generate nearly \$180 million a year for environmental programs in New York State.¹⁴ Expanding the law would substantially reduce litter¹⁵ and save municipalities millions of dollars in reduced solid waste collection and disposal costs.¹⁶ Surveys have found that non-deposit containers account for most of the bottles and cans piling up along New York's roadways, parks, and beaches,¹⁷ and that non-deposit containers are more likely to end up in the garbage than in curbside recycling bins.¹⁸

Moreover, the "Bigger, Better Bottle Bill" is enormously popular. A recent poll of registered voters in New York State found that 70% supported expanding the bottle law to include non-carbonated beverages, and a whopping 86% supported transferring the unclaimed deposits to the state to fund environmental programs.¹⁹ More than 350 groups, businesses, and local governments have endorsed a "Bigger, Better Bottle Bill" for New York. Dozens of newspaper editorials have been published in support of proposals to update the bottle bill, and *The New York Times* has featured the bill in its "Fixing Albany" editorial series.

Why is a bill that benefits the environment, enjoys widespread public support, and could generate a significant amount of money for state coffers without raising taxes, bottled up in Albany? The answer perhaps lies in the clout of the major industries that oppose this legislation. The purpose of this report is to examine lobbying expenditures and campaign contributions made to state lawmakers by the beer, soft drink and food retail industries who oppose the "Bigger, Better Bottle Bill."

d. Scope of Report

This report documents how much money opponents of the "Bigger, Better Bottle Bill" spent on campaign contributions and lobbying from 2002, the year the legislation was introduced, to the current year.²⁰ While it is impossible to determine exactly how much of these expenditures were related specifically to the bottle bill legislation, they provide insight into the clout of industry opponents.

¹⁴ CRI, *supra* note 4.

¹⁵ Andy Bicking and Evan Weissman, "Scenic Hudson's Great River Sweep 2002 Litter Survey - Preliminary Findings," May 17, 2002.

¹⁶ Mark Izeman, Virali Gokaldas, et al., "Recycling Returns: Ten Reforms for Making New York City's Recycling Program More Cost-Effective," April 2004.

¹⁷ Bicking, *supra* note 15; Barbara Toborg, American Littoral Society, "New York State Beach Cleanups Document Beverage Containers," 2002.

¹⁸ Andrew J. Radin, Onondaga County Resource Recovery Agency, "The Recycling Reality of Non-Returnable Containers; A Local Community Perspective," Testimony Before the Assembly Committee on Environmental Conservation, March 10, 2003.

¹⁹ Public Policy Associates, Inc. (PPA), "Survey of New York Registered Voters: Attitudes Toward New York's Bottle Bill and Proposed Reforms, Feb. 2004.

²⁰ Data only partial for 2004, based on most recent filings to the N.Y.S. Board of Elections (through January 15th, 2004) and the N.Y. Temporary State Commission on Lobbying (through April 30, 2004).

More than 60 different businesses and nonprofit entities have testified or reported lobbying on A.3922/S.1696 or similar legislation in the past three years. Not all of these specifically oppose or support this proposal. For the purposes of this report, we have divided them into "opponents," "supporters," and "interested parties," as defined below. Additionally, we have classified each into one of nine categories: "beer," "soft drink," "bottled water," "food retail," "public interest," "packaging," "wine and liquor," "agriculture," and "other."

Opponents: The major sectors opposing the "Bigger, Better Bottle Bill" in New York are the beer, soft drink, bottled water,²¹ and food retail industries. These groups' opposition to the "Bigger, Better Bottle Bill" is very clear from their testimony at hearings and in their public statements and position papers.

Note: On May 26th, 2004, as this report was going to press, new amendments to the bill were filed (A.3922B/S.1696B). Among the most significant changes was an increase in the handling fee paid to retailers and redemption centers from 2 cents per container to 3.5 cents (or 3 cents, if they use reverse vending machines). It is not known at this time whether these amendments will cause any of the food retailers to drop their opposition to the bill.

Supporters: The major supporters of the Bigger, Better Bottle Bill are public interest advocates (including numerous environmental groups, the League of Women Voters of N.Y.S., and Working Assets, which sent action alerts on the bill to its telephone subscribers) and the New York Farm Bureau, representing agricultural interests.²²

Interested Parties: Other industries with vested financial interests in the outcome have also weighed in on bottle bill reform legislation, but do not necessarily support or oppose A.3922B/S.1696B. These include the wine and liquor industry,²³ the packaging industry, and other entities, including vending machine companies and recycling businesses.

²¹ Because most of the soft drink companies also sell bottled water, and because we identified only one company that lobbies exclusively on bottled water issues, bottled water is generally grouped together with the "soft drink" category throughout this report.

²² The Farm Bureau supports the concept of the Bigger, Better Bottle Bill but did not specifically endorse A3922/S1696.

²³ A.3922/S.1696 has never extended the law to include wine and liquor, although some other bottle bill reform proposals do.

2. OTHER ISSUES OF CONCERN TO OPPONENTS OF THE BIGGER, BETTER BOTTLE BILL

Opponents of the "Bigger, Better Bottle Bill" are active on a number of issues before the State Legislature and the Governor. It is impossible to determine how much money these companies have spent on lobbying or campaign contributions specifically related to the bottle bill. Some of the other major issues facing the beverage and retail industries over the past few years include the following.

Beer Wholesalers and Distributors: The beer industry lobbies on a huge number of bills in Albany. Anheuser-Busch, for instance, reported lobbying on nearly 350 separate bills in January-February 2003 alone. Beer lobbyists aggressively campaigned against the Smokefree Workplaces bill (A.7136/S.3292) that was enacted in 2003. The beer industry also lobbied against a wide range of bills that would increase packaging warnings, reduce blood alcohol levels for various activities (such as hunting and driving), increase taxes on their product, and restrict the advertising or sale of alcoholic beverages.

Supermarkets and Convenience Stores: Like the beer industry, the food retailers lobby on a wide range of bills both in Albany and in local governments across the state. Both the Food Industry Alliance and the New York State Association of Convenience Stores have reached out to their members urging them to oppose the "Bigger, Better Bottle Bill."²⁴ Both groups have also rallied their members to support legislation to allow wine to be sold in supermarkets and food stores, and to push for sales tax collection on tobacco and gasoline sold to non-Native Americans on Indian reservations. These groups have considerable clout, as there are an estimated 17,700 food stores in New York State, including gas stations, convenience stores, drug stores and grocery stores, many of which lobby individually.²⁵ They overlap with other bottle bill opponents on a variety of issues; for instance, both the beer lobbyists and the convenience stores oppose efforts to limit or prohibit overnight sales of beer at stores that also sell gas.

Soft Drinks and Bottled Water: In contrast to the beer and food retail industries, soft drink and bottled water companies have a relatively short list of bills they are currently lobbying on. In addition to the various proposals to expand the bottle law, the soda industry appears most threatened by a bill that would prohibit the sale of soft drinks and junk food in vending machines at schools.²⁶ Nestle Waters, NA, which only lobbies on bottled water issues, is also lobbying to exempt bottled water from sales tax and to oppose labeling requirements for bottled water.

²⁴ See <http://www.fiany.com/Government%20Relations.htm>;
<http://www.nyacs.org/government/bev.htm>.

²⁵ It's Time for Wine Coalition, Press Release, "Credible Reports Show No Link Between Wine Sales and Underage Drinking," May 10, 2004.

²⁶ A.6563/S.4556.

3. CAMPAIGN CONTRIBUTIONS

Methodology

NYPIRG analyzed campaign contributions received by state legislators, state political parties, and statewide office holders filed with the New York State Board of Elections from Bigger, Better Bottle Bill opponents between January 15, 2002 and January 15, 2004.²⁷ We compiled a list of campaign contributors including the major industry Political Action Committees (PACs) and individual companies whose opposition to the Bigger, Better Bottle Bill is known from their public statements, including lobbying reports, testimony, and information in articles and industry publications. (See Appendix A for list). This list is not necessarily a complete list of all contributions made by Bigger, Better Bottle Bill opponents, but does capture the major contributors. We then examined the incoming schedules²⁸ of the recipient candidate and party committees for contributions from our above referenced list of Bigger, Better Bottle Bill opponents.

FINDING 1: Campaign contributions made by opponents of the Bigger, Better Bottle Bill in 2002 and 2003 dwarfed those made by supporters (see Table 1, Figure 1).

- Opponents contributed a total of \$1,230,250 to state legislators, state political parties, and statewide officeholders.
- Supporters, in contrast, contributed \$11,375 during the same time period, less than 1% of the total. **Public interest advocates contributed \$0.**

Table 1. Total Contributions By Opponents and Supporters of the Bigger, Better Bottle Bill, By Sector, Jan. 15, 2002 - Jan. 15, 2004

Sector	Percent	Amount
Beer	53.1%	\$659,730.27
Soft Drink	28.6%	\$354,997.59
Food Retail	17.4%	\$215,521.99
Agriculture (support)	0.9%	\$11,375.00
Public Interest (support)	0.0%	\$0.00
TOTAL		\$1,241,624.85

FINDING 2: The beer industry made the most campaign contributions (53% of the total), and gave money at crucial times.

- Last June, in the week after A.3922A started to move in the Assembly, the N.Y.S. Beer Wholesaler's Association and their Political Action Committee (PAC) wrote out four checks, totaling \$90,000 to the Democratic Assembly Campaign Committee (DACC), the NYS Senate Republican Campaign Committee, and their respective housekeeping accounts (see Table 2).

²⁷ Data were obtained from the State Board of Elections, www.elections.state.ny.us.

²⁸ Schedules A, B, C, D, E, G, and P.

Figure 1: Campaign Contributions, By Sector

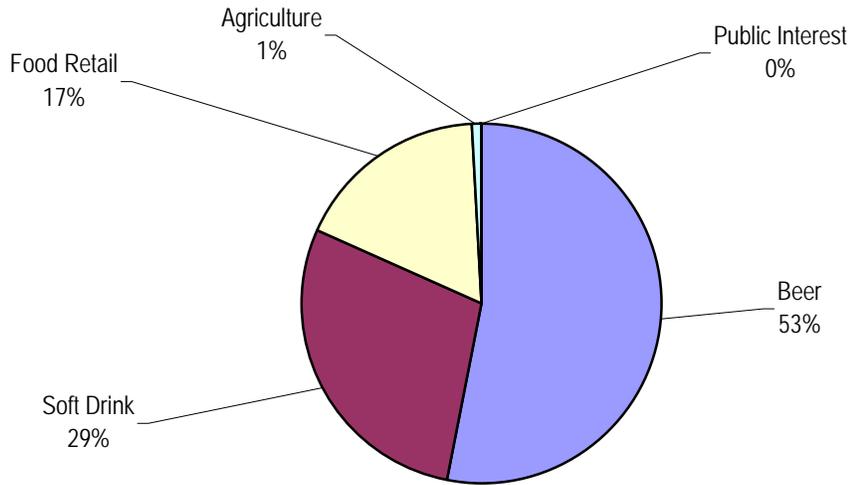


Table 2. "A Week in the Life of a Beer Lobbyist: June 2003"

Tuesday, June 10, 2003	A3922A on Assembly Environmental Conservation agenda (bill passes by vote of 18 to 9; referred to Assembly Codes Committee).
Tuesday, June 17 th	A.3922A on Codes Committee agenda (bill passes unanimously; referred to Ways & Means Committee).
Wednesday, June 18 th	Democratic Assembly Campaign Committee deposits \$25,000 from NYS Beer Wholesalers PAC and \$15,000 in "soft money" from NYS Beer Wholesalers, Inc.
Thursday, June 19 th	NYS Senate Republican Campaign Committee deposits \$30,000 from NYS Beer Wholesalers PAC and \$20,000 in "soft money" from NYS Beer Wholesalers, Inc.
Friday, June 20 th	Senate adjourns for the year early in the morning; Assembly adjourns that evening. A.3922A dies in Ways & Means. "And now, it's Miller time."

FINDING 3: Opponents concentrated their campaign contributions on the state's top three legislative leaders, the proverbial "three men in a room."

- 63% of opponents' campaign contributions went to campaign funds controlled by Governor Pataki, Majority Leader Bruno, and Assembly Speaker Silver (see Figure 2).

Figure 2. Who Controls The Money

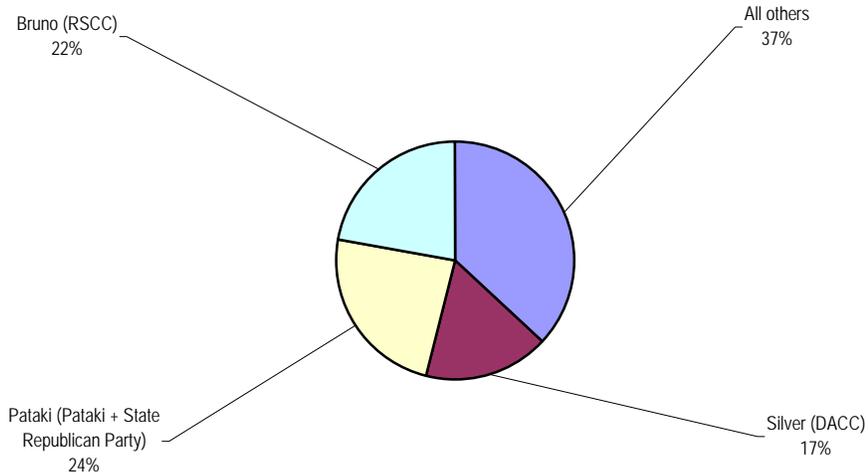


Table 3. Recipients of Campaign Contributions from Bigger, Better Bottle Bill Opponents, Jan. 15, 2002 - Jan. 15, 2004

Recipient	Percent	Amount ²⁹
Republican Senate Campaign Committees (RSCC) ³⁰	22.2%	\$273,717
Republican Senators ³¹	17.4%	\$213,805
Democratic Assembly Campaign Committees (DACC) ³²	17.0%	\$209,502
State Republican Party ³³	16.9%	\$207,600
Democratic Assemblymembers ³⁴	7.6%	\$93,225
Governor Pataki	6.9%	\$84,950
Republican Assembly Campaign Committees	4.6%	\$56,693
Democratic Senate Campaign Committees	2.9%	\$35,355
Republican Assemblymembers	2.2%	\$26,629
Democratic Senators	1.2%	\$14,875
State Comptroller Hevesi	0.6%	\$7,000
Attorney General Spitzer	0.4%	\$5,400
State Democratic Party	0.1%	\$1,500
Total		\$1,230,250

²⁹ Rounded to the nearest dollar figure.

³⁰ Disbursements under the control of Senator Bruno.

³¹ Contributions to individual State Senators, including Senator Bruno.

³² Disbursements under the control of Speaker Silver.

³³ Disbursements under the control of Governor Pataki.

³⁴ Contributions to individual Assemblymembers, including Speaker Silver.

FINDING 4. Within the State Legislature, Bigger, Better Bottle Bill opponents predominantly gave to the majority party.

Figure 3. In the Senate, Bigger, Better Bottle Bill opponents gave 90% of their contributions to Senate majority members (Republicans).

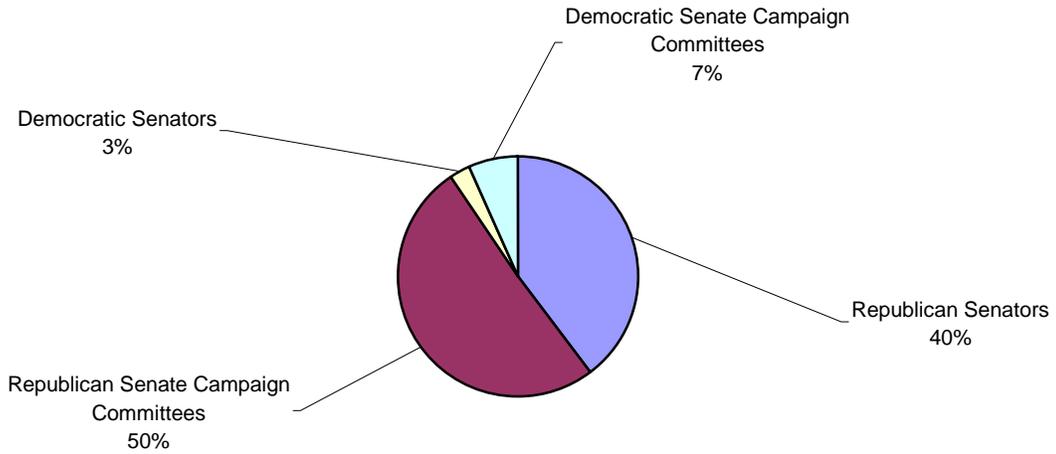


Figure 4. In the Assembly, Bigger, Better Bottle Bill opponents gave 78% of their contributions to Assembly majority members (Democrats).

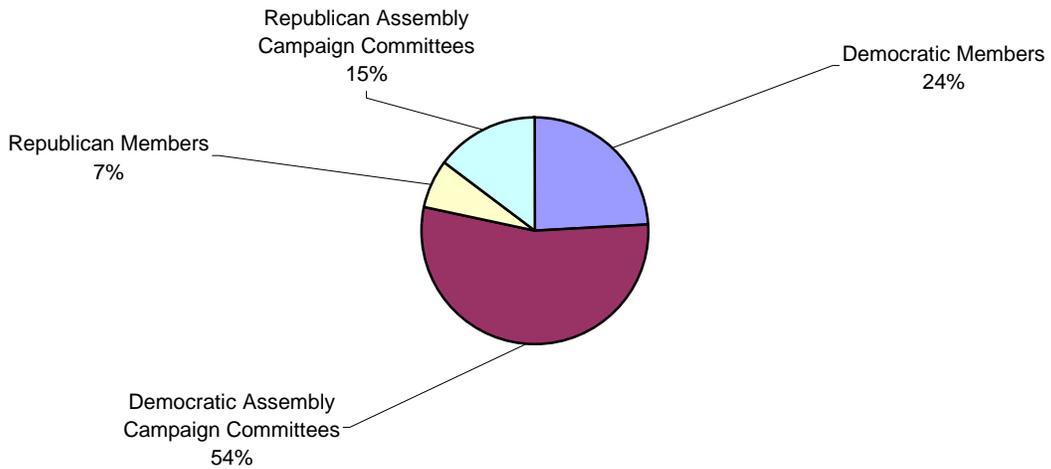
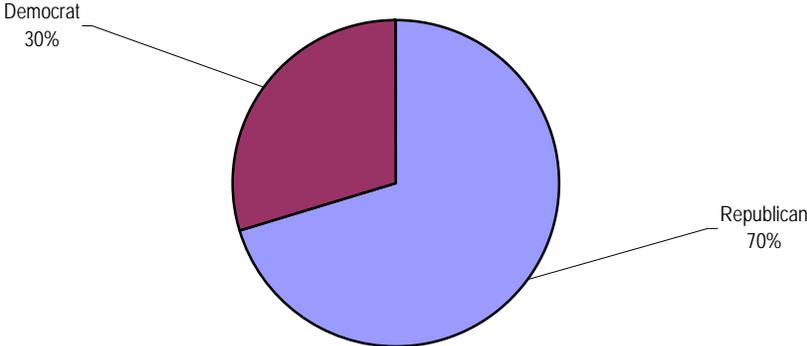


Figure 5. In total, 70% of the campaign contributions by Bigger, Better Bottle Bill opponents were given to Republicans (\$863,393) and 30% to Democrats (\$366,857).



4. LOBBY EXPENSES

Methodology

NYPIRG analyzed lobbying expenditures reported to the New York Temporary State Commission on Lobbying (referred to hereafter as the "Commission") from 2002 through April 2004. Using the Commission's searchable, on-line database (www.nylobby.state.ny.us), we searched for all lobbyists who included A.3922 or S.1696 on their lobbyist bi-monthly reports filed in 2003 or 2004. We supplemented this list by querying lobbyists on other bills that reform the bottle law.³⁵ We classified each lobbyist by industry sector (e.g. beer, soft drink, water, food retail, liquor, packaging, public interest, agriculture, and other), and submitted Freedom of Information Law (FOIL) requests to the Commission for the client semi-annual reports for the year 2002 for all beer, soft drink, water, and food retail clients that reported lobbying on the Bigger, Better Bottle Bill or related legislation in 2003 or 2004.

FINDING 1: From 2002 through 2004, opponents of the "Bigger, Better Bottle Bill" are expected to spend more than \$2 million in lobbying New York State legislators (see Table 4).

- In 2002, opponents of the Bigger, Better Bottle Bill spent more than \$400 million in lobbying elected officials in New York State. In 2003, the first year that action was taken on this legislation,³⁶ total lobbying expenditures nearly doubled, to more than \$800,000. As of April 2004, opponents were on track to spend at least as much on lobbying in 2004 as they did in 2003 (more than \$780,000, to date).

FINDING 2: Industry heavy-hitters topped the list of opponents to the Bigger, Better Bottle Bill, based on lobbying expenses (see Table 5).

- The top five opponents, based on lobbying expenditures, included two corporate giants, Anheuser-Busch and Coca-Cola, and New York's three major associations representing beer wholesalers, food retailers, and soft drink bottlers. Combined, their lobbying expenditures made up 62% of the total lobbying expenses of opponents.

³⁵ These include Senate bills 384, 613, 3171 and Assembly bills 643, 1089, 2004, 2234, 3077, 4317, 4322, 7152, 7314, and 7509.

³⁶ The Assembly held two hearings on A.3922 in March 2003. A.3922A was reported out of the Assembly Environmental Conservation Committee on June 10, 2003 and the Assembly Codes Committee on June 17th, 2003.

Table 4. Lobbying Expenses Reported by Opponents of the Bigger, Better Bottle Bill, By Sector, 2002-2004

Client	2002 ³⁷	2003	2004 ³⁸	Total 2002-2004
Beer				
Altria Corporate Services	\$0	\$53,252	\$2,000	\$55,252
Anheuser-Busch Companies	\$115,002	\$115,708	\$115,000	\$345,710
Coors Brewing Company	\$12,000	\$12,000	\$12,000	\$36,000
Diageo North America	\$0	\$0	\$60,000	\$60,000
Gambrinus Company	\$17,594	\$24,164	N/A	\$41,758
Matt Brewing Company	\$6,000	\$6,000	\$6,000	\$18,000
Miller Brewing Company	N/A	\$8,233	N/A	\$8,233
NYS Beer Wholesalers Association	\$70,456	\$74,214	\$73,233	\$217,903
Total Beer Lobbying				\$782,856
Food Retailers				
7-Eleven	\$0	\$18,350	\$18,000	\$36,350
Empire State Beer Distributors Assoc. ³⁹	\$0	\$60,000	\$60,000	\$120,000
Exxon Mobil Corp.	\$0	\$0	\$85,527	\$85,527
Food Industry Alliance of NYS	\$60,000	\$135,802	\$135,000	\$330,802
Grocery Manufacturers of America	\$21,060	\$26,152	N/A	\$47,212
NYS Association of Convenience Stores	N/A	\$66,660	\$35,000	\$101,660
Stop & Shop Supermarket Company	\$0	\$72,000	N/A	\$72,000
Total Food Retail Lobbying				\$793,551
Soft Drink/Bottled Water				
Coca-Cola Bottling Company of NY	\$78,500	\$75,000	\$75,000	\$228,500
NYS Bottlers Association	\$0	\$60,212	\$75,000	\$135,212
Nestle Waters North America Holdings	\$30,422	\$30,349	\$30,000	\$90,771
Total Soft Drink Lobbying				\$454,483
TOTAL LOBBYING EXPENSES	\$411,034	\$838,096	\$781,760	\$2,030,890

Table 5. Top Five Opponents of the Bigger, Better Bottle Bill, By Lobbying Expenditures from 2002-2004

Client	Sector	2002-2004 Lobbying Expenses
Anheuser-Busch	Beer	\$345,710
Food Industry Alliance of NYS	Food Retail	\$330,802
Coca-Cola Bottling Company of NY	Soft Drink	\$228,500
NYS Beer Wholesalers Association	Beer	\$217,903
NYS Bottlers Association	Soft Drink	\$135,212
TOTAL		\$1,258,127

³⁷ Lobbying expenses for 2002 and 2003 are based on annual compensation and reimbursement figures reported by lobbyists to the Commission New York Temporary State Commission on Lobbying, as listed in the Commission's 2002 and 2003 Annual Reports.

³⁸ For 2004, only companies that reported lobbying on bottle bill issues in their first two bi-monthly filings with the Commission (January-April, 2004) are included. We based the 2004 annual lobbying expenses on information in current lobbyist contracts filed with the Commission.

³⁹ Represents beverage retailers.

FINDING 3: Opponents of the Bigger, Better Bottle Bill have hired some of the most powerful lobbying firms in New York to represent them (see Table 6).

- Five of the top ten lobbying firms in New York have been retained by opponents of the Bigger, Better Bottle Bill. Additionally, three other lobbying firms on the top ten list have weighed in on bottle law reforms, on behalf of clients in other sectors.⁴⁰

Table 6. Number of Top Ten Lobbyists in 2003 Who Lobbied Against the Bigger, Better Bottle Bill, and Their Clients⁴¹

2003 State Rank	Lobbyist	Bottle Bill Client(s) ⁴²	Sectors
1	Wilson, Elser, Moskowitz, Edelman & Dicker, LLP	Gambrinus Company (2003)	Beer
4	Lynch, Patricia Associates, Inc.	Coca-Cola Bottling Company of NY (2003, 2004); Food Industry Alliance (2002)	Soft Drink; Food Retail
5	Featherstonhaugh, Wiley, Clyne & Cordo, LLP	NYS Bottlers Association (2003, 2004)	Soft Drink
6	Davidoff & Malito, LLP	Nestle Waters North America Holdings (2002-2004)	Water
10	Coppola Ryan McHugh	Exxon Mobil Corp (2003, 2004); NYS Association of Convenience Stores (2003)	Food Retail

FINDING 4: A large number of groups have stakes in the outcome of the Bigger, Better Bottle Bill.

- In 2003, more than 40 entities reported lobbying on the Bigger, Better Bottle Bill and other proposals to reform the state's bottle law. In total, these groups spent more than \$2.1 million dollars lobbying on the Bigger, Better Bottle Bill, among other issues (see Table 7).
- Of that total, opponents spent \$838,096, or more than 39%. Supporters spent 31%, and interested parties spent 29% (see Figure 6).

⁴⁰ These are: Hinman Straub, PC (#3), representing Charmer Industries (liquor); Malkin & Ross (#8), representing the Aseptic Packaging Council and two nonprofit organizations, Natural Resources Defense Council and the Nature Conservancy; and Couch White, LLP (#9), representing TOMRA, a recycling business.

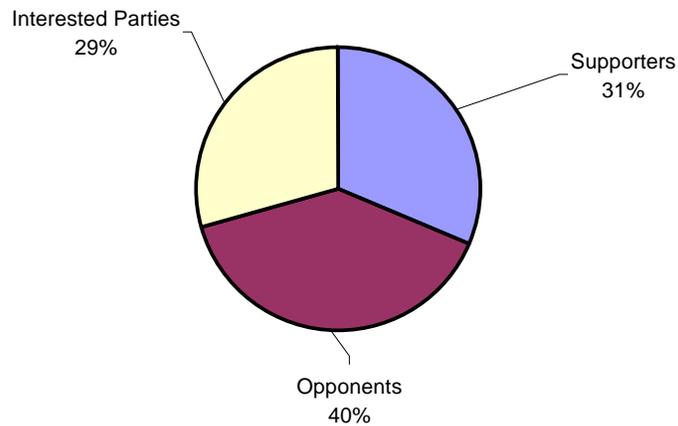
⁴¹ New York Temporary State Commission on Lobbying, 2003 Annual Report, Appendix A: "Lobbyists Ranked by Total Compensation and Reimbursed Expenses for 2003"

⁴² Clients that reported lobbying in either 2002, 2003 or 2004 on bottle bill legislation.

Table 7. 2003 Bottle Bill Lobbying, By Sector

Sector	2003 Total	Percentage of Total	Position
Public Interest	\$ 486,385	23%	Support
Food Retail	\$ 378,964	18%	Oppose
Beer	\$ 293,571	14%	Oppose
Other	\$ 219,872	10%	Interested
Wine & Liquor	\$ 228,647	11%	Interested
Packaging	\$ 179,958	8%	Interested
Soft Drink	\$ 135,212	6%	Oppose
Agriculture	\$ 185,352	9%	Support
Water	\$ 30,349	1%	Oppose
Total	\$ 2,138,310		

Figure 6. 2003 Bottle Bill Lobbying, By Position



5. PROFITS POURING IN

The companies that stand to lose the most if the Bigger, Better Bottle Bill is enacted are the beverage bottlers and distributors who initiate the container deposits (predominantly beer and soft drink companies). These companies would not only have to turn all the unclaimed deposits over to the state (at an estimated \$179 million a year, if the law is expanded) but, under A3922B/S1696B, would have to increase the per-container handling fee that they pay retailers and redemption centers from 2 cents to 3 or 3.5 cents.

While the beer and soft drink companies will claim that they are being treated unfairly, they in fact have done very well financially in New York State. Not only have they kept the unredeemed deposits from the bottle bill for the past twenty years, they have also benefited from a number of tax cuts put in place since 1995, the year Governor Pataki took office. Below are some examples of how beverage companies have profited under policies enacted by the Governor and the New York State Legislature in recent years.

a) Beer Taxes Slashed

During Governor Cuomo's administration, beer excise taxes were raised three times, from 4 4/9 cents per gallon to 21 cents per gallon. Since Governor Pataki took office, the excise tax on beer sold in New York State has been reduced four times. The current tax rate, at 11 cents per gallon, is now down to 1989 levels (see Table 8).

Table 8. History of Beer Excise Taxes in New York State⁴³

Year	Beer Excise Tax (cents per gallon)	Percent Change
1933	3 1/3 cents/gallon	1 st Year
1968	4 4/9 cents	+33%
1983	5.5 cents	+24%
1989	11 cents	+100%
1990	21 cents	+91%
1996	16 cents	-24%
1999	13.5 cents	-16%
2001	12.5 cents	-7%
2003	11 cents	-12%

The final tax cut was approved in 2000, but went into effect in 2003, despite the significant downturn of the state's financial situation during that time period.

Only nine states, plus the District of Columbia, have excise taxes lower than New York's current rate.⁴⁴ Even beer wholesalers in New York City, which charges an additional excise tax of 12 cents per gallon, enjoy lower excise taxes than 19 other states in the country.⁴⁵

⁴³ New York State Tax Sourcebook, "Significant Changes in New York State's Excise Taxes and Fees, 1929-2002" (Table 61), www.tax.state.ny.us.

⁴⁴ Federation of Tax Administrators, "State Tax Rates on Beer, as of Jan. 1, 2004 " (Feb. 2004).

⁴⁵ *Id.*

A news release from Governor Pataki announcing one of the excise tax cuts stated that, "This [the beer excise tax cut] will reduce the cost of the product to consumers, and make New York's brewing industry more competitive."⁴⁶ While there are no studies showing that these tax cuts resulted in a decrease in beer prices on supermarket shelves, they have certainly resulted in reduced tax revenue for New York State. From 1990 to 1999, New York State went from collecting \$102,974,000 in beer excise and license taxes a year to \$66,912,000, a difference of more than \$36 million a year.⁴⁷ This was by far the largest decline of any state in the country during that same time period.⁴⁸ The two subsequent beer excise tax cuts were estimated to result in an additional \$8 million a year in tax reductions.⁴⁹

It is worth noting that the beer industry has not been singled out by the Pataki Administration for special treatment. The 2004-05 executive budget states that, "Since taking office in 1995, Governor Pataki has worked to cut every major tax and New York State has become the tax cutting capital of the nation. Under the Governor's leadership, 19 different taxes have been cut 64 different times, returning more than \$120 billion to New Yorkers on a cumulative basis when fully implemented."⁵⁰

b) Exemptions for small brewers

In 1999, state lawmakers also increased the exemption from the beer excise tax for small brewers from the first 100,000 barrels of domestically brewed beer sold in New York State up to 200,000 barrels (6.2 million gallons). Any distributor who is also a brewer, and whose principal executive office is located in New York State, is eligible for the exemption from the New York State excise tax.⁵¹ The exemption also applies to the New York City beer excise tax.⁵²

In 2000, Governor Pataki proposed accelerating the small brewers' tax exemption, by moving the effective date up from March 1st, 2001 to January 1st, 2000.⁵³ The Legislature approved this measure in the final state budget, which was expected to save small brewers nearly a million dollars a year in state taxes.⁵⁴

⁴⁶ Press Release, "Governor, Legislative Leaders Announce Tax Cut Package," August 2, 1999.

⁴⁷ "History of State Excise and License Tax Collections in Thousands of Dollars for Calendar Years 1990-1999," (Table 30), www.beerservesamerica.org. Note that not all of the reduction in tax revenue can be explained by the excise tax cuts; there may be other factors affecting tax revenues, including small brewers' exemptions and trends in beer sales.

⁴⁸ *Id.*

⁴⁹ Press Release: "Governor Pataki Hails Final Tax Cut Package in State Budget," May 4, 2000; Press Release, "Governor, Legislative Leaders Announce Tax Cut Package," August 2, 1999. 50 NYS 2004-05 Executive Budget, "Sweeping Tax Cuts Under Pataki" <http://publications.budget.state.ny.us/fy0405littlebook/sweepingTax.html>.

⁵¹ N.Y.S. Department of Taxation and Finance, Office of Tax Policy Analysis, Technical Services Division, "Changes in the Alcoholic Beverage Tax Law Regarding Beer," June 15, 2000.

⁵² *Id.*

⁵³ Press Release, "Governor Pataki Unveils 21st Century Upstate Economic Agenda," January 4, 2000.

⁵⁴ Press Release: "Governor Pataki Hails Final Tax Cut Package in State Budget," May 4, 2000. Small brewers would also realize substantial savings in New York City excise taxes.

c) Rollback of the Beverage Container Tax

One of the taxes enacted during Governor Cuomo's administration that was most unpopular with the beverage industry in New York State was the 2-cent per container tax on non-refillable soda containers. This tax was enacted in 1990 to pay the debt service on a \$1.95 billion environmental quality bond act that was to appear on the ballot that November.⁵⁵

Although voters rejected the environmental bond act, the container tax stayed in place, as did the ten-cent increase in the beer excise tax, which was also intended to pay off the bond act debt.⁵⁶ In the wake of the bond act's defeat, environmental groups urged the Legislature to establish an environmental trust fund and use the container tax to finance it.⁵⁷ The Legislature eventually created the Environmental Protection Fund (EPF) in 1993, funded by other sources of revenue.

These taxes were among the first to be cut after Governor Pataki came into office. In 1995, the two-cent container tax was cut in half, saving the soda industry an estimated \$26 million a year, and the beer excise tax was reduced by five cents, saving the beer wholesalers an estimated \$16 million a year.⁵⁸ According to the *New York Times*, one beverage industry official estimated that the soda industry spent about \$2 million on its 4-year campaign lobbying for the tax cuts, while the beer industry probably spent less.⁵⁹ "That's a pretty good return on investment," he noted.⁶⁰

In 1997, the container tax was repealed altogether. The Governor's press release announced, "This repeal of the one-cent container tax, will save consumers \$26 million, and encourage additional investment in the State by soft drink bottlers and distributors."⁶¹ In total, the soda industry realized a \$52 million tax reduction within a few years of Governor Pataki's election -- and held on to the unclaimed beverage deposits that Governor Cuomo had fought for years to recover.

d) Unclaimed Deposits

For more than 20 years, the beer and soda companies that initiate the container deposits have retained all the deposits that went unclaimed. The law itself is silent on the issue of who gets to keep the unclaimed deposits. When the bill was debated in 1982, legislators indicated that the beverage industry could keep any unclaimed deposits, at least to cover the start-up costs of implementing the program. It is doubtful that anyone anticipated how much this money would add up to, however.

⁵⁵ Kevin Sack, "How Albany Works, Lesson No. 1: Lobbying; The Beverage Industry Pushes Hard to Get Its Taxes Cut, and It Succeeds," *The New York Times*, B1 (June 12, 1995).

⁵⁶ *Id.*

⁵⁷ Associated Press, "State Seeks Sources of Environmental Funding," *Post-Standard*, Nov. 26, 1990.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* Among their expenditures: Pepsi treated Joe Bruno and William Powers to a \$1,397 dinner at Lutece, and took Democratic legislators out for a \$2,354 meal at The Four Seasons restaurant.

⁶¹ Press Release, "Governor Pataki Announces Historic Job Creating Tax Cuts," July 29, 1997.

According to DEC estimates, the beverage industry has kept more than \$1.2 billion in unclaimed deposits over the past twenty years.⁶² These numbers are based on industry self-reporting, and even the DEC admits that they are a likely underestimate of the actual total.⁶³ The Container Recycling Institute (CRI) estimated that unclaimed deposits in 2000 were nearly 60% higher than the DEC's estimates for that year.⁶⁴

The beverage industry argues that the unclaimed deposits only partially offset the cost of handling fees and other expenses associated with implementing the law.⁶⁵ However, the industry profits from the bottle bill in two other ways: sale of scrap materials, including valuable aluminum, and interest collected on deposits prior to their being paid out (known as the "float"). CRI estimates that the beverage companies have grossed at least \$1.1 billion on the sale of scrap aluminum cans, and plastic and glass bottles redeemed through the New York State deposit system over the past twenty years.⁶⁶ It was also reported that the beer industry raised the consumer price of their products immediately following the passage of the original bottle law.⁶⁷

The truth about how much, or whether, the beverage industry has profited from New York's bottle bill may never be known, since the beer and soda companies refused to share their records with a special commission established by Governor Cuomo to assess their cost of compliance with the law.⁶⁸ The final report of the Moreland Act Commission concluded:

*Despite repeated promises to cooperate, both the soft drink and beer industries systematically failed to provide usable data... Since both the beer and soft drink distributors prevented the Commission from determining their costs of compliance, they likewise made it impossible for the Commission to conclude that the industries need any part of the unclaimed deposits to offset their costs.*⁶⁹

Regardless of how much industry bottom lines have been affected by the unclaimed deposits, there is a pressing need now for more funds to support environmental protection in New York. Last year, the state had to turn down

⁶² NYSDEC, Bureau of Waste Reduction and Recycling, "Deposit and Redemption Statistics for the Returnable Beverage Container Law," Feb. 20, 2003.

⁶³ NYSDEC, *supra* note 4.

⁶⁴ *Id.*; CRI, "Estimated Unredeemed Deposits in New York State," Nov. 2002.

⁶⁵ Testimony of Kevin Dietly, Northbridge Environmental Consultants, before the N.Y.S. Assembly Committee on Environmental Conservation, March 10th, 2003; Testimony of Michael Vacek, President, N.Y.S. Beer Wholesalers Association, Inc. before the N.Y.S. Assembly Committee on Environmental Conservation, March 10th, 2003.

⁶⁶ Testimony of Jennifer Gitlitz, Research Director, Container Recycling Institute, before the N.Y.S. Assembly Committee on Environmental Conservation, March 10th, 2003.

⁶⁷ Report of the Nelson A. Rockefeller Institute of Government to the Temporary State Commission on Returnable Beverage Containers, *The New York Returnable Beverage Container Law: The First Year*, March 1985.

⁶⁸ Report of the Moreland Act Commission, March 15, 1990.

⁶⁹ *Id.*, at 8.

more than \$400 million in requests for project funding from the Environmental Protection Fund because of lack of resources.⁷⁰ Funding from the 1996 Clean Water/Clean Air Bond Act is almost entirely exhausted.⁷¹ And money is exceptionally tight at the state and local levels. For the past two years, and into the near future, New York State has faced multi-billion dollar annual budget shortfalls, and many municipalities have had to increase local taxes in order to meet their basic mandates.

Several other states with bottle bills now take back some or all of the unclaimed deposits. Massachusetts, Michigan, and Maine all faced legal challenges from the beverage industry after they amended their laws to escheat the unclaimed deposits. In all three states, the courts upheld the states' position that unclaimed deposits are abandoned public property, and therefore can be claimed ("escheated") by the state to benefit the public.

There is exceptionally strong support from the public for taking the unclaimed nickels back. Most New Yorkers don't realize that the unclaimed deposits are kept by the beer and soda companies; in a recent poll, only 19% guessed this correctly. However, when asked whether the state should take this money to fund environmental programs, 86% - the highest response rate to any question in the survey - responded that they supported this proposal.⁷²

6. CONCLUSION

While it is impossible to determine exactly how much money the beer, soft drink and food retail industries are spending on opposing the "Bigger, Better Bottle Bill," this report shows that big money is in play on this issue. This report reveals that what advocates of the "Bigger, Better Bottle Bill" lack - but opponents have plenty of - is the cold cash to participate in Albany's "pay for play" system.

⁷⁰ Friends of New York's Environmental Protection Fund, Position Statement, January 2004.

⁷¹ *Id.*

⁷² PPA, *supra* note 19.

**Appendix A: List of Campaign Contributors,
Grouped by Keyword, by Sector⁷³**

Altria (Miller Brewing Co.)	Beer
Anheuser-Busch	Beer
Diageo	Beer
Gambrinus	Beer
Matt Brewing Company	Beer
NYS Beer Wholesalers Association	Beer
7-Eleven	Retail
Convenience PAC	Retail
D'Agostino Supermarkets	Retail
Empire State Beer Distributors	Retail
Exxon-Mobil	Retail
Food Industry Alliance	Retail
Grocery Manufacturers of America	Retail
Hannaford Bros. Co.	Retail
King Kullen	Retail
Krasdale Foods	Retail
National Association of Convenience Stores	Retail
Pathmark Stores	Retail
Price Chopper (Golub)	Retail
Coca-Cola	Soft Drink
NYS Bottlers Association	Soft Drink
NYS Soft Drink Association	Soft Drink
Pepsi Cola	Soft Drink
Soft Drink Brewery Workers PAC	Soft Drink

⁷³ Contributions from multiple corporate entities that are related were grouped under single keywords; for instance, there were numerous contributions from various arms of the Anheuser-Busch family of companies, all were grouped under "Anheuser-Busch." Some on the list contributed through PACs, some under their own names, and some did both.