

1356

2009-2010 Regular Sessions

I N S E N A T E

January 28, 2009

Introduced by Sens. KRUEGER, DUANE, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the state finance law, in relation to returnable beverage containers; and to repeal sections 27-1005 and 27-1007 and subdivision 2 of section 27-1011 of the environmental conservation law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 27-1001 of the environmental conservation law, as
2 added by chapter 200 of the laws of 1982, is amended to read as follows:
3 S 27-1001. Legislative findings.
4 The legislature hereby finds that litter composed of discarded [soft-
5 drink, beer and ale] bottles and cans, ESPECIALLY BEVERAGE CONTAINERS,
6 is a growing problem of state concern and a direct threat to the health
7 and safety of the citizens of this state. Discarded beverage bottles
8 and cans create a hazard to vehicular traffic, a source of physical
9 injury to pedestrians, farm animals and machinery and an unsightly accu-
10 mulation of litter which must be disposed of at increasing public
11 expense. Beverage bottles and cans also create an unnecessary addition
12 to the state's and municipalities' already overburdened solid waste and
13 refuse disposal systems. Unsegregated disposal of such bottles and cans
14 creates an impediment to the efficient operation of resource recovery
15 plants. Further, the legislature finds that the uninhibited discard of
16 beverage containers constitutes a waste of both mineral and energy
17 resources. The legislature hereby finds that requiring a deposit on all
18 beverage containers, along with certain other facilitating measures,
19 will provide a necessary incentive for the economically efficient and
20 environmentally benign collection and recycling of such containers.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD01180-01-9

1 S 2. Subdivision 1 of section 27-1003 of the environmental conserva-
2 tion law, as amended by chapter 778 of the laws of 1988, is amended to
3 read as follows:

4 1. "Beverage" means carbonated soft drinks, NON-CARBONATED FLAVORED
5 DRINKS, BOTTLED WATER CONSISTING OF mineral water, soda water OR ANY
6 OTHER FORM OF WATER, beer, other malt beverages and a wine product as
7 defined in subdivision thirty-six-a of section three of the alcoholic
8 beverage control law. "Malt beverages" means any beverage obtained by
9 the alcoholic fermentation or infusion or decoction of barley, malt,
10 hops, or other wholesome grain or cereal and water including, but not
11 limited to ale, stout or malt liquor. THE FOLLOWING SHALL BE DEEMED
12 EXCLUDED FROM THE DEFINITION OF A "BEVERAGE": FROZEN OR POWDERED CONCEN-
13 TRATES, FRESH MILK, MILK SUBSTITUTES, DRINKS WHICH CONTAIN SEVENTY PER
14 CENTUM OR MORE OF NATURAL FRUIT OR VEGETABLE JUICES, AND MEDICINES.

15 S 3. Section 27-1003 of the environmental conservation law is amended
16 by adding five new subdivisions 12, 13, 14, 15 and 16 to read as
17 follows:

18 12. "BEVERAGE MANUFACTURER" MEANS A PERSON WHO:

19 A. BOTTLES, CANS OR OTHERWISE PACKAGES BEVERAGES IN BEVERAGE CONTAIN-
20 ERS EXCEPT THAT IF SUCH PACKAGING IS FOR A DISTRIBUTOR HAVING THE RIGHT
21 TO BOTTLE, CAN OR OTHERWISE PACKAGE THE SAME BRAND OF BEVERAGE, THEN
22 SUCH DISTRIBUTOR SHALL BE THE BEVERAGE MANUFACTURER; OR

23 B. IMPORTS FILLED BEVERAGE CONTAINERS INTO THE UNITED STATES.

24 13. A "DEPOSIT INITIATOR" FOR EACH BEVERAGE CONTAINER FOR WHICH A
25 REFUND VALUE IS ESTABLISHED UNDER SECTION 27-1005 OF THIS TITLE SHALL
26 BE:

27 A. THE BEVERAGE MANUFACTURER WITH RESPECT TO SUCH CONTAINER IF SUCH
28 MANUFACTURER:

29 (I) MAINTAINS A PLACE OF BUSINESS IN THIS STATE; OR

30 (II) TRANSPORTS OR CAUSES TO BE TRANSPORTED, OTHER THAN BY COMMON
31 CARRIER, BEVERAGE CONTAINERS INTO THIS STATE; OR

32 (III) SOLICITS BUSINESS EITHER BY EMPLOYEES, INDEPENDENT CONTRACTORS,
33 AGENTS, OR OTHER REPRESENTATIVES IN THIS STATE; OR

34 (IV) PERFORMS ANY OTHER ACTIVITY THAT CREATES A NEXUS FOR PURPOSES OF
35 THE IMPOSITION OF THE REQUIREMENTS OF THIS TITLE UNDER THE CONSTITUTION
36 OF THE UNITED STATES AND APPLICABLE DECISIONAL LAW INTERPRETING THE
37 SAME.

38 B. A DISTRIBUTOR OF SUCH CONTAINER IF SUCH DISTRIBUTOR'S PURCHASE OF
39 SUCH CONTAINER WAS NOT, DIRECTLY OR INDIRECTLY, FROM A REGISTERED DEPOS-
40 IT INITIATOR, AND THE DISTRIBUTOR:

41 (I) MAINTAINS A PLACE OF BUSINESS IN THIS STATE; OR

42 (II) TRANSPORTS OR CAUSES TO BE TRANSPORTED, OTHER THAN BY COMMON
43 CARRIER, BEVERAGE CONTAINERS INTO THIS STATE; OR

44 (III) SOLICITS BUSINESS EITHER BY EMPLOYEES, INDEPENDENT CONTRACTORS,
45 AGENTS OR OTHER REPRESENTATIVES IN THIS STATE; OR

46 (IV) PERFORMS ANY OTHER ACTIVITY THAT CREATES A NEXUS FOR PURPOSES OF
47 THE IMPOSITION OF THE REQUIREMENTS OF THIS TITLE UNDER THE CONSTITUTION
48 OF THE UNITED STATES AND APPLICABLE DECISIONAL LAW INTERPRETING THE
49 SAME.

50 C. ANY BEVERAGE MANUFACTURER OR DISTRIBUTOR, PURSUANT TO AN ELECTION
51 FILED WITH THE COMMISSIONER OF TAXATION AND FINANCE, IF PERMITTED PURSU-
52 ANT TO REGULATIONS PROMULGATED BY SUCH COMMISSIONER.

53 D. A DEALER WITH RESPECT TO SUCH CONTAINER WHO SELLS SUCH CONTAINER IN
54 THIS STATE, WHOSE PURCHASE OF SUCH CONTAINER WAS NOT, DIRECTLY OR INDI-
55 RECTLY, FROM A REGISTERED DEPOSIT INITIATOR.

1 ANY BEVERAGE MANUFACTURER, DISTRIBUTOR OR DEALER MAY APPOINT A DESIG-
2 NEE TO PERFORM ITS OBLIGATIONS AS A DEPOSIT INITIATOR AS DESCRIBED IN
3 SECTION 27-1013 OF THIS TITLE, IN WHICH EVENT THE LIABILITY OF SUCH
4 BEVERAGE MANUFACTURER, DISTRIBUTOR, OR DEALER AND OF SUCH DESIGNEE THERE-
5 OF, UNDER SECTION 27-1013 OF THIS TITLE, SHALL BE JOINT AND SEVERAL.
6 THE DEPARTMENT AND THE DEPARTMENT OF TAXATION AND FINANCE SHALL BE
7 INFORMED OF ANY SUCH DESIGNATION IN A MANNER PRESCRIBED BY THE DEPART-
8 MENT.

9 14. "REFUND VALUE" MEANS THE DEPOSIT ON A BEVERAGE CONTAINER, AS
10 PROVIDED IN SECTION 27-1005 OF THIS TITLE, THE TITLE TO WHICH SHALL BE
11 HELD BY THE STATE OF NEW YORK UNTIL REDEEMED, OR AS HEREIN PROVIDED, FOR
12 UNREDEEMED BEVERAGE CONTAINERS.

13 15. "REVERSE VENDING MACHINE" MEANS A DEVICE WHICH AUTOMATICALLY
14 PROVIDES A RECEIPT FOR A REFUND VALUE OR A REFUND TO A REDEEMER OF A
15 BEVERAGE CONTAINER IN THE AMOUNT OF THE REFUND VALUE OF THE BEVERAGE
16 CONTAINER, UPON PLACEMENT OF THE BEVERAGE CONTAINER ON OR WITHIN THE
17 DEVICE FOR ELECTRONIC VALIDATION OF DEPOSIT REQUIREMENTS.

18 16. "THIRD PARTY AGENT" MEANS A PERSON WHO CONTRACTS WITH ONE OR MORE
19 MANUFACTURERS, DEALERS OR DISTRIBUTORS TO COLLECT, SORT OR OTHERWISE
20 HANDLE EMPTY BEVERAGE CONTAINERS FOR OR ON BEHALF OF SUCH MANUFACTURERS,
21 DEALERS OR DISTRIBUTORS.

22 S 4. Sections 27-1005 and 27-1007 of the environmental conservation
23 law are REPEALED and two new sections 27-1005 and 27-1007 are added to
24 read as follows:

25 S 27-1005. REFUND VALUE.

26 NO PERSON SHALL SELL OR, IN THE CASE OF A PERSON OTHER THAN A DEPOSIT
27 INITIATOR, OFFER FOR SALE A BEVERAGE CONTAINER IN THIS STATE UNLESS THE
28 DEPOSIT THEREON IS OR HAS BEEN INITIATED BY A REGISTERED DEPOSIT INITI-
29 ATOR AND UNLESS SUCH CONTAINER HAS:

30 1. A REFUND VALUE OF NOT LESS THAN TEN CENTS;

31 2. THE REFUND VALUE CLEARLY INDICATED THEREON AS PROVIDED IN SECTION
32 27-1011 OF THIS TITLE.

33 S 27-1007. MANDATORY ACCEPTANCE.

34 EXCEPT AS PROVIDED IN SECTION 27-1009 OF THIS TITLE:

35 1. A DEALER SHALL ACCEPT AT HIS OR HER PLACE OF BUSINESS FROM A
36 REDEEMER ANY EMPTY BEVERAGE CONTAINERS OF THE DESIGN, SHAPE, SIZE,
37 COLOR, COMPOSITION AND BRAND SOLD BY THE DEALER, AND SHALL PAY TO THE
38 REDEEMER THE REFUND VALUE OF EACH SUCH BEVERAGE CONTAINER AS ESTABLISHED
39 BY SECTION 27-1005 OF THIS TITLE. REDEMPTIONS OF REFUND VALUE MUST BE IN
40 LEGAL TENDER. THE USE OR PRESENCE OF A REVERSE VENDING MACHINE SHALL
41 NOT RELIEVE A DEALER OF ANY OBLIGATIONS IMPOSED PURSUANT TO THIS
42 SECTION. ON ANY DAY THAT A DEALER IS OPEN FOR LESS THAN TWENTY-FOUR
43 HOURS, THE DEALER MAY RESTRICT OR REFUSE THE PAYMENT OF REFUND VALUES
44 DURING THE FIRST AND LAST HOUR THAT THE DEALER IS OPEN FOR BUSINESS.

45 2. A DEPOSIT INITIATOR OR AGENT ACTING ON BEHALF OF A DEPOSIT INITI-
46 ATOR SHALL ACCEPT FROM A DEALER OR OPERATOR OF A REDEMPTION CENTER ANY
47 EMPTY BEVERAGE CONTAINERS OF THE DESIGN, SHAPE, SIZE, COLOR, COMPOSITION
48 AND BRAND SOLD BY THE DISTRIBUTOR, AND SHALL PAY THE DEALER OR OPERATOR
49 OF A REDEMPTION CENTER THE REFUND VALUE OF EACH SUCH BEVERAGE CONTAINER
50 AS ESTABLISHED BY SECTION 27-1005 OF THIS TITLE.

51 3. IN ADDITION TO THE REFUND VALUE OF A BEVERAGE CONTAINER AS ESTAB-
52 LISHED BY SECTION 27-1005 OF THIS TITLE, A DEPOSIT INITIATOR SHALL PAY
53 TO ANY DEALER, OR OPERATOR OF A REDEMPTION CENTER, A HANDLING FEE OF
54 THREE CENTS FOR EACH BEVERAGE CONTAINER ACCEPTED BY THE DEPOSIT INITI-
55 ATOR FROM SUCH DEALER, OPERATOR OF A REDEMPTION CENTER, DISTRIBUTOR OR
56 THIRD PARTY AGENT. PAYMENT OF THE HANDLING FEE SHALL BE AS COMPENSATION

FOR COLLECTING, SORTING AND PACKAGING OF EMPTY BEVERAGE CONTAINERS FOR TRANSPORT BACK TO THE DEPOSIT INITIATOR OR ITS DESIGNEE. PAYMENT OF THE HANDLING FEE MAY NOT BE CONDITIONED ON THE PURCHASE OF ANY GOODS OR SERVICES. A DISTRIBUTOR WHO DOES NOT INITIATE DEPOSITS ON A TYPE OF BEVERAGE CONTAINER IS CONSIDERED A DEALER ONLY FOR THE PURPOSE OF RECEIVING A HANDLING FEE FROM A DEPOSIT INITIATOR.

3-A. ON OR AFTER, JANUARY FIRST, TWO THOUSAND TEN, IN A CITY WITH A POPULATION GREATER THAN ONE MILLION, A DEALER MAY LIMIT THE NUMBER OF EMPTY BEVERAGE CONTAINERS TO BE ACCEPTED FOR REDEMPTION AT THE DEALER'S PLACE OF BUSINESS TO NO LESS THAN SEVENTY-TWO CONTAINERS PER VISIT, PER REDEEMER, PER DAY, PROVIDED THAT:

A. A REDEMPTION CENTER, BE IT EITHER A LICENSED FIXED PHYSICAL LOCATION THAT IS LOCATED IN THE SAME COUNTY AND WITHIN ONE-HALF MILE OF THE DEALER'S PLACE OF BUSINESS, OR A MOBILE REDEMPTION CENTER OPERATED BY A LICENSED REDEMPTION CENTER THAT IS LOCATED WITHIN ONE-QUARTER MILE OF THE DEALER'S PLACE OF BUSINESS; AND THE REDEMPTION CENTER HAS A WRITTEN AGREEMENT WITH THE DEALER TO ACCEPT CONTAINERS ON BEHALF OF THE DEALER; AND THE REDEMPTION CENTER'S HOURS OF OPERATION COVER AT LEAST 9:00 A.M. THROUGH 7:00 P.M. DAILY OR IN THE CASE OF A MOBILE REDEMPTION CENTER, THE HOURS OF OPERATIONS COVER AT LEAST FOUR CONSECUTIVE HOURS BETWEEN 8:00 A.M. AND 8:00 P.M. DAILY; AND THE DEALER POSTS A CONSPICUOUS, PERMANENT SIGN OPEN TO PUBLIC VIEW, IDENTIFYING THE LOCATION AND HOURS OF OPERATION OF THE AFFILIATED REDEMPTION CENTER OR MOBILE REDEMPTION CENTER; OR

B. THE DEALER PROVIDES, AT A MINIMUM, A CONSECUTIVE TWO HOUR PERIOD BETWEEN 7:00 A.M. AND 7:00 P.M. DAILY WHEREBY THE DEALER WILL ACCEPT UP TO TWO HUNDRED FORTY CONTAINERS, PER REDEEMER, PER DAY, AND POSTS A CONSPICUOUS, PERMANENT SIGN, OPEN TO THE PUBLIC VIEW, IDENTIFYING THOSE HOURS. THE DEALER MAY NOT CHANGE THE HOURS OF REDEMPTION WITHOUT FIRST POSTING A THIRTY DAY NOTICE; OR

C. THE DEALER'S PRIMARY BUSINESS IS THE SALE OF FOOD OR BEVERAGES FOR CONSUMPTION OFF-PREMISES, AND THE DEALER'S PLACE OF BUSINESS IS LESS THAN EIGHT THOUSAND SQUARE FEET IN SIZE.

4. A DEPOSIT INITIATOR OR AGENT ACTING ON BEHALF OF A DEPOSIT INITIATOR ON A BRAND SHALL ACCEPT FROM A DISTRIBUTOR WHO DOES NOT INITIATE DEPOSITS ON THAT BRAND ANY EMPTY BEVERAGE CONTAINERS OF THAT BRAND AND SHALL PAY THE DISTRIBUTOR THE REFUND VALUE OF EACH SUCH BEVERAGE CONTAINER, AS ESTABLISHED BY SECTION 27-1005 OF THIS TITLE. IN ADDITION, THE DEPOSIT INITIATOR SHALL PAY TO SUCH DISTRIBUTOR FOR EACH SUCH BEVERAGE CONTAINER THE HANDLING FEE ESTABLISHED UNDER SUBDIVISION THREE OF THIS SECTION.

5. NO PERSON SHALL RETURN OR ASSIST ANOTHER TO RETURN AN EMPTY BEVERAGE CONTAINER FOR ITS REFUND VALUE IF SUCH CONTAINER HAD PREVIOUSLY BEEN ACCEPTED FOR REDEMPTION BY A DEPOSIT INITIATOR WHO INITIATES DEPOSITS ON BEVERAGE CONTAINERS OF THE SAME BRAND.

6. NOTWITHSTANDING THE PROVISIONS OF SECTION 27-1009 OF THIS TITLE, A DEPOSIT INITIATOR OR AGENT ACTING ON BEHALF OF A DEPOSIT INITIATOR SHALL ACCEPT BEVERAGE CONTAINERS AS PROVIDED IN THIS TITLE, IF THE DEALER, OR OPERATOR OF A REDEMPTION CENTER SHALL HAVE ACCEPTED AND PAID THE REFUND VALUE OF SUCH BEVERAGE CONTAINERS.

7. NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE TO THE CONTRARY, A DISTRIBUTOR, DEALER, OR OPERATOR OF A REDEMPTION CENTER SHALL ACCEPT ALL BEVERAGE CONTAINERS MARKED FOR DEPOSIT IN NEW YORK STATE AND SHALL PAY THE REFUND VALUE MARKED ON THE BEVERAGE CONTAINER.

S 5. Section 27-1009 of the environmental conservation law, as added by chapter 200 of the laws of 1982, is amended to read as follows:

1 S 27-1009. Refusal of acceptance.

2 1. A dealer or operator of a redemption center may refuse to accept
3 from a redeemer, and a [distributor] DEPOSIT INITIATOR'S AGENT ACTING ON
4 BEHALF OF A DEPOSIT INITIATOR OR THIRD PARTY AGENT may refuse to accept
5 from a dealer or operator of a redemption center any empty beverage
6 container which does not state thereon a refund value as established by
7 section 27-1005 and provided by section 27-1011 of this title.

8 2. A dealer or operator of a redemption center may also refuse to
9 accept any broken bottle, corroded or dismembered can, or any beverage
10 container which contains a significant amount of foreign material, as
11 determined in rules and regulations to be promulgated by the commission-
12 er. [Notwithstanding the provisions of this subdivision, a distributor
13 shall accept beverage containers as provided in subdivision two of
14 section 27-1007 of this title, if the dealer shall have accepted and
15 paid the refund value of such beverage containers.]

16 S 6. Subdivision 2 of section 27-1011 of the environmental conserva-
17 tion law is REPEALED and subdivisions 3 and 4 are renumbered subdivi-
18 sions 2 and 3.

19 S 7. Section 27-1013 of the environmental conservation law, as amended
20 by chapter 149 of the laws of 1983, is amended to read as follows:

21 S 27-1013. Redemption centers.

22 The commissioner is hereby empowered to promulgate rules and regu-
23 lations governing (1) the circumstances in which dealers and distribu-
24 tors, individually or collectively, are required to accept the return of
25 empty beverage containers, and make payment therefor; (2) the sorting of
26 the containers which a [distributor] DEPOSIT INITIATOR OR AGENT ACTING
27 ON BEHALF OF A DEPOSIT INITIATOR may require of dealers and redemption
28 centers; (3) the [pick up] COLLECTION of returned beverage containers by
29 [distributors] A DEPOSIT INITIATOR'S AGENT ACTING ON BEHALF OF DEPOSIT
30 INITIATORS, OR THIRD PARTY AGENTS including the party to whom such
31 expense is to be charged, the frequency of such pick ups and the payment
32 for refunds and handling fees thereon; (4) the right of dealers to
33 restrict or limit the number of containers redeemed, the rules for
34 redemption at the dealers' place of business, and the redemption of
35 containers from a beverage for which sales have been discontinued, and
36 to issue permits to persons, firms or corporations which establish
37 redemption centers, subject to applicable provisions of local and state
38 laws, at which redeemers and dealers may return empty beverage contain-
39 ers and receive payment of the refund value of such beverage containers.
40 No dealer or distributor, as defined in section 27-1003 OF THIS TITLE,
41 shall be required to obtain a permit to operate a redemption center at
42 the same location as the dealer's or distributor's place of business.
43 Operators of such redemption centers shall receive payment of the refund
44 value of each beverage container from the appropriate [manufacturer or
45 distributor] DEPOSIT INITIATOR as provided under [sections] SECTION
46 27-1007 [and 27-1009] of this title.

47 S 8. The environmental conservation law is amended by adding a new
48 section 27-1012 to read as follows:

49 S 27-1012. DEPOSIT AND DISPOSITION OF REFUND VALUES.

50 1. EACH DEPOSIT INITIATOR SHALL DEPOSIT IN A REFUND VALUE ACCOUNT AN
51 AMOUNT EQUAL TO THE REFUND VALUE REQUIRED TO BE INITIATED UNDER SECTION
52 27-1005 OF THIS TITLE WHICH IS RECEIVED WITH RESPECT TO EACH BEVERAGE
53 CONTAINER SOLD BY SUCH DEPOSIT INITIATOR. SUCH DEPOSIT INITIATOR SHALL
54 HOLD SUCH AMOUNTS IN TRUST FOR THE STATE. A REFUND VALUE ACCOUNT SHALL
55 BE AN INTEREST-BEARING ACCOUNT ESTABLISHED IN A BANKING INSTITUTION
56 APPROVED BY THE COMMISSIONER OF TAXATION AND FINANCE AND LOCATED IN THIS

1 STATE, THE DEPOSITS IN WHICH ARE INSURED BY AN AGENCY OF THE FEDERAL
2 GOVERNMENT. DEPOSITS OF SUCH AMOUNTS SHALL BE MADE NOT LESS FREQUENTLY
3 THAN EVERY FIVE BUSINESS DAYS. ALL INTEREST, DIVIDENDS AND RETURNS
4 EARNED ON THE ACCOUNT SHALL BE PAID DIRECTLY INTO SAID ACCOUNT. SUCH
5 MONEYS SHALL BE KEPT SEPARATE AND APART FROM ALL OTHER MONEYS IN THE
6 POSSESSION OF THE DEPOSIT INITIATOR. THE COMMISSIONER OF TAXATION AND
7 FINANCE MAY SPECIFY A SYSTEM OF ACCOUNTS AND RECORDS TO BE MAINTAINED
8 WITH RESPECT TO ACCOUNTS ESTABLISHED UNDER THIS SUBDIVISION.

9 2. PAYMENTS OF REFUND VALUES PURSUANT TO SECTION 27-1007 OF THIS TITLE
10 AND PAYMENTS MADE PURSUANT TO SECTION 27-1016 OF THIS TITLE SHALL BE
11 PAID FROM SUCH REFUND VALUE ACCOUNT. NO OTHER PAYMENT OR WITHDRAWAL FROM
12 SUCH ACCOUNT MAY BE MADE EXCEPT AS PRESCRIBED BY THIS TITLE.

13 3. EACH DEPOSIT INITIATOR SHALL FILE QUARTERLY REPORTS WITH THE
14 COMMISSIONER OF TAXATION AND FINANCE ON A FORM AND IN THE MANNER
15 PRESCRIBED BY SUCH COMMISSIONER. THE QUARTERLY REPORTS REQUIRED BY THIS
16 SUBDIVISION SHALL BE FILED FOR THE QUARTERLY PERIODS ENDING ON THE LAST
17 DAY OF MAY, AUGUST, NOVEMBER AND FEBRUARY OF EACH YEAR, AND EACH SUCH
18 REPORT SHALL BE FILED WITHIN TWENTY DAYS AFTER THE END OF THE QUARTERLY
19 PERIOD COVERED THEREBY. EACH SUCH REPORT SHALL INCLUDE, IN ADDITION TO
20 ANY OTHER INFORMATION SUCH COMMISSIONER SHALL DETERMINE APPROPRIATE, THE
21 FOLLOWING INFORMATION:

22 A. THE BALANCE IN THE REFUND VALUE ACCOUNT AT THE BEGINNING OF THE
23 QUARTER FOR WHICH THE REPORT IS PREPARED;

24 B. ALL SUCH DEPOSITS CREDITED TO SUCH ACCOUNT AND ALL INTEREST, DIVI-
25 DENDS OR RETURNS RECEIVED ON SUCH ACCOUNT, DURING SUCH QUARTER;

26 C. ALL WITHDRAWALS FROM SUCH ACCOUNT DURING SUCH QUARTER, INCLUDING
27 ALL REIMBURSEMENTS PAID PURSUANT TO SUBDIVISION TWO OF THIS SECTION, ALL
28 SERVICE CHARGES ON THE ACCOUNT, AND ALL PAYMENTS MADE PURSUANT TO SUBDI-
29 VISION FOUR OF THIS SECTION; AND

30 D. THE BALANCE IN SUCH ACCOUNT AT THE CLOSE OF SUCH QUARTER.

31 4. A. AN AMOUNT EQUAL TO THE BALANCE OUTSTANDING IN THE REFUND VALUE
32 ACCOUNT AT THE CLOSE OF EACH QUARTER SHALL BE PAID TO THE COMMISSIONER
33 OF TAXATION AND FINANCE AT THE TIME THE REPORT PROVIDED FOR IN SUBDIVI-
34 SION THREE OF THIS SECTION IS REQUIRED TO BE FILED. IF THE PROVISIONS OF
35 THIS SECTION WITH RESPECT TO SUCH ACCOUNT HAVE NOT BEEN FULLY COMPLIED
36 WITH, EACH DEPOSIT INITIATOR SHALL PAY TO SUCH COMMISSIONER AT SUCH
37 TIME, IN LIEU OF THE AMOUNT DESCRIBED IN THE PRECEDING SENTENCE, AN
38 AMOUNT EQUAL TO THE BALANCE WHICH WOULD HAVE BEEN OUTSTANDING ON SUCH
39 DATE HAD SUCH PROVISIONS BEEN FULLY COMPLIED WITH.

40 B. ALL MONEYS COLLECTED OR RECEIVED BY SUCH COMMISSIONER PURSUANT TO
41 THIS SECTION SHALL BE DEPOSITED AND DISPOSED OF IN THE MANNER PROVIDED
42 BY SECTION ONE HUNDRED SEVENTY-ONE-A OF THE TAX LAW ("DEPOSIT AND DISPO-
43 SITION OF REVENUE"); PROVIDED, HOWEVER, THAT THE PAYMENT INTO THE STATE
44 TREASURY PROVIDED FOR IN SUCH SECTION ONE HUNDRED SEVENTY-ONE-A OF THE
45 TAX LAW SHALL BE TO THE CREDIT OF THE ENVIRONMENTAL PROTECTION FUND FOR
46 SUBSEQUENT TRANSFER TO THE UNCLAIMED BEVERAGE CONTAINER DEPOSITS STATE
47 ASSISTANCE TO MUNICIPALITIES ACCOUNT IN ACCORDANCE WITH THE PROVISIONS
48 OF SUBDIVISION TWO OF SECTION NINETY-TWO-S OF THE STATE FINANCE LAW AND
49 PROVIDED, FURTHER, THAT WHEREVER INCONSISTENT, THE PROVISIONS OF SECTION
50 NINETY-TWO-S OF THE STATE FINANCE LAW SHALL PREVAIL OVER THE PROVISIONS
51 OF SUCH SECTION ONE HUNDRED SEVENTY-ONE-A OF THE TAX LAW. THE AMOUNT TO
52 BE DEPOSITED INTO THE ENVIRONMENTAL PROTECTION FUND SHALL BE CERTIFIED
53 TO THE COMPTROLLER BY THE COMMISSIONER OF TAXATION AND FINANCE OR HIS OR
54 HER DELEGATE, WHO SHALL DETERMINE SUCH AMOUNT TO THE BEST OF HIS OR HER
55 ABILITY FROM ALL INFORMATION IN HIS OR HER POSSESSION BUT WHO SHALL NOT
56 BE HELD LIABLE FOR ANY INACCURACY IN SUCH CERTIFICATE. WHERE THE AMOUNT

1 SO DEPOSITED INTO THE ENVIRONMENTAL PROTECTION FUND IN ANY SUCH DISTRIB-
2 UTION IS MORE OR LESS THAN THE AMOUNT THEN DUE TO SUCH FUND, THE AMOUNT
3 OF THE OVERPAYMENT OR UNDERPAYMENT SHALL BE CERTIFIED TO THE COMPTROLLER
4 BY THE COMMISSIONER OF TAXATION AND FINANCE OR HIS OR HER DELEGATE, AS
5 AFORESAID, BUT HE OR SHE SHALL NOT BE HELD LIABLE FOR ANY INACCURACY IN
6 SUCH CERTIFICATE. THE AMOUNT OF THE OVERPAYMENT OR UNDERPAYMENT SHALL BE
7 SO CERTIFIED TO THE COMPTROLLER AS SOON AFTER THE DISCOVERY OF THE OVER-
8 PAYMENT OR UNDERPAYMENT AS REASONABLY POSSIBLE AND SUBSEQUENT PAYMENTS
9 AND DISTRIBUTIONS BY THE COMPTROLLER TO THE ENVIRONMENTAL PROTECTION
10 FUND SHALL BE ADJUSTED BY SUBTRACTING THE AMOUNT OF ANY SUCH OVERPAYMENT
11 FROM OR BY ADDING THE AMOUNT OF ANY SUCH UNDERPAYMENT TO SUCH NUMBER OF
12 SUBSEQUENT PAYMENTS AND DISTRIBUTIONS AS THE COMPTROLLER AND THE COMMIS-
13 SIONER OF TAXATION AND FINANCE SHALL CONSIDER REASONABLE IN VIEW OF THE
14 AMOUNT OF THE OVERPAYMENT OR UNDERPAYMENT AND ALL OTHER FACTS OR CIRCUM-
15 STANCES.

16 5. FROM THE MONEYS RECEIVED AND COLLECTED BY THE COMMISSIONER OF TAXA-
17 TION AND FINANCE PURSUANT TO SUBDIVISION FOUR OF THIS SECTION, WITHIN
18 THIRTY DAYS OF THE DATE THE SUM OF SUCH MONEYS FIRST EXCEEDS AN AMOUNT
19 EQUAL TO ONE HUNDRED MILLION DOLLARS, ONE HUNDRED MILLION DOLLARS SHALL
20 BE DEPOSITED BY THE COMPTROLLER TO THE ENVIRONMENTAL PROTECTION FUND
21 ESTABLISHED PURSUANT TO SECTION NINETY-TWO-S OF THE STATE FINANCE LAW
22 FOR DISPOSITION AS PROVIDED UNDER SUCH SECTION; AND ONE HUNDRED MILLION
23 DOLLARS SHALL BE REQUIRED TO BE DEPOSITED ANNUALLY THEREAFTER TO THE
24 ENVIRONMENTAL PROTECTION FUND IN THE FOLLOWING MANNER: ON OR BEFORE THE
25 TWELFTH DAY OF EACH MONTH AFTER SUCH FIRST DEPOSIT (EXCEPTING THE FIRST
26 AND SECOND MONTHS OF EACH FISCAL YEAR), THE COMPTROLLER SHALL DEPOSIT
27 INTO SUCH FUND FROM THE MONEYS RECEIVED AND COLLECTED PURSUANT TO SUCH
28 SUBDIVISION FOUR OF THIS SECTION WHICH HAVE BEEN DEPOSITED AND REMAIN TO
29 THE CREDIT OF THE STATE COMMISSIONER OF TAXATION AND FINANCE OR THE
30 STATE COMPTROLLER IN THE BANKS, BANKING HOUSES OR TRUST COMPANIES
31 REFERRED TO IN SECTION ONE HUNDRED SEVENTY-ONE-A OF THE TAX LAW AT THE
32 CLOSE OF BUSINESS ON THE LAST DAY OF THE PRECEDING MONTH, AN AMOUNT
33 EQUAL TO ONE-TENTH OF THE ANNUAL AMOUNT REQUIRED TO BE DEPOSITED IN SUCH
34 FUND PURSUANT TO THIS SUBDIVISION FOR THE FISCAL YEAR IN WHICH SUCH
35 DEPOSIT IS REQUIRED TO BE MADE. IN THE EVENT SUCH AMOUNT OF MONEYS SO
36 REMAINING TO THE CREDIT OF THE STATE COMMISSIONER OF TAXATION AND
37 FINANCE OR THE STATE COMPTROLLER IS LESS THAN THE AMOUNT REQUIRED TO BE
38 DEPOSITED IN SUCH FUND BY THE COMPTROLLER, AN AMOUNT EQUAL TO THE SHORT-
39 FALL SHALL BE DEPOSITED IN SUCH FUND BY THE COMPTROLLER WITH SUBSEQUENT
40 DEPOSITS, AS SOON AS THE REVENUE IS AVAILABLE. IF THE MONEYS RECEIVED
41 AND COLLECTED BY THE COMMISSIONER OF TAXATION AND FINANCE PURSUANT TO
42 SUBDIVISION FOUR OF THIS SECTION DURING ANY STATE FISCAL YEAR EXCEED THE
43 SUM OF ONE HUNDRED MILLION DOLLARS BY THE CLOSE OF SUCH FISCAL YEAR, THE
44 SURPLUS REMAINING AT THE CLOSE OF THE FISCAL YEAR, TOGETHER WITH THE
45 INTEREST EARNED THEREON, SHALL REMAIN AVAILABLE FOR FUTURE APPROPRIATION
46 TO THE ENVIRONMENTAL PROTECTION FUND IN SUBSEQUENT FISCAL YEARS, AND MAY
47 BE UTILIZED: TO MAKE UP ANY SHORTFALL IN RECEIPTS FROM BEVERAGE CONTAIN-
48 ER DEPOSITS IN SUCH SUBSEQUENT FISCAL YEARS; TO RECOMPENSE THE DEPART-
49 MENT OF TAXATION AND FINANCE FOR THE MONTHLY COST OF SERVICES AND
50 EXPENSES RELATED TO ADMINISTERING THE PROVISIONS OF THIS SECTION IN SUCH
51 SUBSEQUENT FISCAL YEARS; AND/OR FOR MUNICIPAL PROJECTS IN SUCH SUBSE-
52 QUENT FISCAL YEARS, IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (C)
53 OF SUBDIVISION FIVE OF SECTION NINETY-TWO-S OF THE STATE FINANCE LAW.

54 6. IF AT ANY TIME THE MONEYS CONTAINED IN A DEPOSIT INITIATOR'S
55 REFUND VALUE ACCOUNT ARE INSUFFICIENT TO PERMIT A WITHDRAWAL AUTHORIZED
56 BY THIS SECTION AND IF, AS A RESULT OF SUCH INSUFFICIENCY, FUNDS OTHER

1 THAN THOSE CONTAINED IN SUCH ACCOUNT ARE USED TO MAKE PAYMENTS WHICH
2 OTHERWISE COULD HAVE BEEN MADE IN ACCORDANCE WITH THIS SECTION FROM
3 MONEYS CONTAINED IN SUCH ACCOUNT, SUCH DEPOSIT INITIATOR MAY, THEREAFT-
4 ER, UPON APPROVAL OF THE COMMISSIONER OF TAXATION AND FINANCE, WITHDRAW
5 FROM SUCH ACCOUNT AND RETAIN FOR HIMSELF OR HERSELF AN AMOUNT EQUAL TO
6 SUCH PAYMENTS. NOTHING HEREIN SHALL BE CONSTRUED TO RELIEVE SUCH DEPOSIT
7 INITIATOR FROM AN OBLIGATION TO PAY EITHER THE REFUND VALUE AND HANDLING
8 FEE FOR EACH REDEEMED BEVERAGE CONTAINER IN ACCORDANCE WITH THIS TITLE
9 OR ANY AMOUNT REQUIRED BY SUBDIVISION FOUR OF THIS SECTION AT THE TIME
10 PRESCRIBED IN SUCH SUBDIVISION.

11 7. THE COMMISSIONER AND THE COMMISSIONER OF TAXATION AND FINANCE MAY
12 PROMULGATE, AND SHALL CONSULT EACH OTHER IN PROMULGATING, SUCH RULES AND
13 REGULATIONS AS MAY BE NECESSARY OR DESIRABLE TO EFFECTUATE THE PURPOSES
14 OF THIS SECTION. THE COMMISSIONER SHALL PROVIDE ALL NECESSARY AID AND
15 ASSISTANCE TO THE COMMISSIONER OF TAXATION AND FINANCE IN CONNECTION
16 WITH THE ADMINISTRATION AND ENFORCEMENT OF THE PROVISIONS OF THIS
17 SECTION.

18 8. A. EACH DEPOSIT INITIATOR SHALL REGISTER WITH THE COMMISSIONER OF
19 TAXATION AND FINANCE AS A DEPOSIT INITIATOR UNDER THIS TITLE. SUCH
20 COMMISSIONER, UPON THE APPLICATION OF A DEPOSIT INITIATOR, SHALL, EXCEPT
21 AS OTHERWISE PROVIDED IN THIS SUBDIVISION, REGISTER SUCH DEPOSIT INITI-
22 ATOR. THE APPLICATION SHALL BE IN SUCH FORM AND CONTAIN SUCH INFORMA-
23 TION AND SHALL BE FILED AT SUCH TIME AND UNDER SUCH CONDITIONS, AS SUCH
24 COMMISSIONER MAY PRESCRIBE. NO DEPOSIT INITIATOR, UNLESS SO REGISTERED,
25 SHALL MAKE ANY SALE WITHIN THIS STATE OF BEVERAGE CONTAINERS, EXCEPT A
26 SALE, IF ANY, AS TO WHICH THIS STATE IS WITHOUT POWER TO IMPOSE SUCH
27 CONDITION.

28 B. WHERE A PERSON FILES AN APPLICATION FOR REGISTRATION AS A DEPOSIT
29 INITIATOR UNDER THIS SUBDIVISION, AND IN CONSIDERING SUCH APPLICATION
30 THE COMMISSIONER OF TAXATION AND FINANCE ASCERTAINS THAT (I) ANY TAX
31 IMPOSED UNDER THE TAX LAW OR ANY RELATED STATUTE, AS DEFINED IN SECTION
32 EIGHTEEN HUNDRED OF THE TAX LAW, HAS BEEN FINALLY DETERMINED TO BE DUE
33 FROM SUCH PERSON AND HAS NOT BEEN PAID IN FULL, OR (II) SUCH PERSON HAS
34 BEEN CONVICTED OF A CRIME PROVIDED FOR IN THE TAX LAW OR THIS TITLE
35 WITHIN ONE YEAR FROM THE DATE ON WHICH SUCH APPLICATION IS FILED, OR
36 (III) SUCH PERSON'S REGISTRATION PURSUANT TO THIS SUBDIVISION HAS BEEN
37 REVOKED OR SUSPENDED WITHIN ONE YEAR FROM THE DATE ON WHICH THE APPLICA-
38 TION IS FILED, SUCH COMMISSIONER MAY REFUSE TO REGISTER THE APPLICANT AS
39 A DEPOSIT INITIATOR.

40 C. WHERE A PERSON WHO IS REGISTERED UNDER THIS SUBDIVISION (I) WILL-
41 FULLY FAILS TO FILE A REPORT REQUIRED BY THIS TITLE, OR (II) WILLFULLY
42 FILES, CAUSES TO BE FILED, GIVES OR CAUSES TO BE GIVEN A REPORT OR OTHER
43 DOCUMENT REQUIRED UNDER THIS TITLE WHICH IS FALSE, OR (III) HAS BEEN
44 CONVICTED OF A CRIME PROVIDED FOR IN THE TAX LAW OR THIS TITLE, THE
45 COMMISSIONER OF TAXATION AND FINANCE MAY REVOKE OR SUSPEND SUCH REGIS-
46 TRATION. PROVIDED, HOWEVER, THAT SUCH COMMISSIONER MAY REVOKE OR
47 SUSPEND A REGISTRATION BASED ON THE GROUNDS SET FORTH IN SUBPARAGRAPH
48 (III) OF THIS PARAGRAPH ONLY WHERE THE CONVICTION REFERRED TO OCCURRED
49 NOT MORE THAN ONE YEAR PRIOR TO THE DATE OF DELIVERY OF THE NOTICE OF
50 PROPOSED REVOCATION OR SUSPENSION. SUCH NOTICE OF PROPOSED REVOCATION
51 OR SUSPENSION MUST BE GIVEN TO SUCH PERSON WITHIN THREE YEARS FROM THE
52 DATE OF THE ACT OR OMISSION DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARA-
53 GRAPH, EXCEPT THAT IN THE CASE OF ACTS INVOLVING FALSITY OR FRAUD UNDER
54 SUBPARAGRAPH (II) OF THIS PARAGRAPH NOTICE MAY BE ISSUED AT ANY TIME.

55 D. A NOTICE OF REFUSAL SHALL BE GIVEN TO A PERSON APPLYING FOR SUCH
56 REGISTRATION AND A NOTICE OF PROPOSED REVOCATION OR SUSPENSION SHALL BE

1 GIVEN TO A PERSON REGISTERED PURSUANT TO THIS SUBDIVISION IN THE MANNER
2 PRESCRIBED FOR ISSUANCE OF A NOTICE OF DETERMINATION OF TAX UNDER ARTI-
3 CLE TWENTY-EIGHT OF THE TAX LAW AND ALL THE PROVISIONS OF SUCH ARTICLE
4 APPLICABLE TO A NOTICE OF DETERMINATION UNDER SECTION ELEVEN HUNDRED
5 THIRTY-EIGHT OF THE TAX LAW SHALL APPLY TO A NOTICE ISSUED PURSUANT TO
6 THIS PARAGRAPH, INsofar AS SUCH PROVISIONS CAN BE MADE APPLICABLE TO THE
7 NOTICE AUTHORIZED BY THIS PARAGRAPH, WITH SUCH MODIFICATIONS AS MAY BE
8 NECESSARY IN ORDER TO ADAPT THE LANGUAGE OF SUCH PROVISIONS TO THE
9 NOTICE AUTHORIZED BY THIS PARAGRAPH. ALL SUCH NOTICES SHALL CONTAIN A
10 STATEMENT ADVISING THE PERSON TO WHOM IT IS ISSUED THAT THE NOTICE OF
11 REFUSAL OR THE NOTICE OF REVOCATION OR SUSPENSION MAY BE CHALLENGED
12 THROUGH A HEARING PROCESS AND THAT THE PETITION FOR SUCH CHALLENGE MUST
13 BE FILED WITH THE DIVISION OF TAX APPEALS WITHIN NINETY DAYS AFTER THE
14 ISSUANCE DATE OF SUCH NOTICE. IN THE CASE OF A PERSON APPLYING FOR
15 REGISTRATION, A NOTICE OF REFUSAL TO REGISTER SHALL BE ISSUED PROMPTLY
16 AFTER RECEIPT OF SUCH APPLICATION.

17 E. UPON TIMELY APPLICATION THEREFOR, A HEARING SHALL BE SCHEDULED,
18 AND WITHIN THREE MONTHS FROM SUCH APPLICATION FOR HEARING IN THE DIVI-
19 SION OF TAX APPEALS (DETERMINED WITH REGARD TO ANY POSTPONEMENTS OF ANY
20 SCHEDULED HEARING OR CONFERENCE MADE AT THE REQUEST OF THE APPLICANT)
21 THE ADMINISTRATIVE LAW JUDGE SHALL RENDER A DETERMINATION EITHER UPHOLD-
22 ING THE REVOCATION OR SUSPENSION OR REFUSAL TO REGISTER DECISION OF THE
23 COMMISSIONER OF TAXATION AND FINANCE OR ORDERING SUCH COMMISSIONER TO
24 REINSTATE OR REGISTER THE APPLICANT. WITHIN FIFTEEN DAYS AFTER THE
25 GIVING OF NOTICE OF THE ADMINISTRATIVE LAW JUDGE'S DETERMINATION, THE
26 APPLICANT OR SUCH COMMISSIONER MAY TAKE EXCEPTION TO THE DETERMINATION.
27 IF AN EXCEPTION IS TAKEN, THE TAX APPEALS TRIBUNAL, WITHIN SEVENTY-FIVE
28 DAYS FROM THE DATE OF NOTICE TO THE TRIBUNAL THAT EXCEPTION IS BEING
29 TAKEN TO AN ADMINISTRATIVE LAW JUDGE'S DETERMINATION, SHALL ISSUE A
30 DECISION EITHER AFFIRMING OR REVERSING SUCH DETERMINATION. IF THE
31 ADMINISTRATIVE LAW JUDGE RENDERS A DETERMINATION ORDERING SUCH COMMIS-
32 SIONER TO REINSTATE OR REGISTER THE APPLICANT AND SUCH COMMISSIONER
33 TAKES EXCEPTION TO SUCH DETERMINATION, SUCH COMMISSIONER SHALL NOT BE
34 REQUIRED TO REINSTATE OR REGISTER THE APPLICANT UNLESS AND UNTIL THE TAX
35 APPEALS TRIBUNAL ISSUES A DECISION AFFIRMING SUCH DETERMINATION.

36 F. AFTER THE COMMISSIONER OF TAXATION AND FINANCE HAS REFUSED TO
37 REGISTER AN APPLICANT BY A NOTICE OF REFUSAL OR HAS SUSPENDED OR REVOKED
38 A PERSON'S REGISTRATION BY A NOTICE OF SUSPENSION OR REVOCATION ISSUED
39 TO SUCH PERSON AND SUCH DECISION HAS BECOME FINAL AS PROVIDED FOR IN
40 THIS SUBDIVISION, SUCH PERSON IS PROHIBITED FROM ENGAGING IN ANY BUSI-
41 NESS IN THIS STATE FOR WHICH SUCH REGISTRATION IS REQUIRED. IF DESPITE
42 SUCH PROHIBITION SUCH PERSON ENGAGES OR CONTINUES TO BE SO ENGAGED IN
43 SUCH BUSINESS, SUCH COMMISSIONER MAY BRING AN ACTION IN A COURT OF
44 COMPETENT JURISDICTION TO ENJOIN SUCH PERSON FROM SO ENGAGING IN SUCH
45 BUSINESS.

46 9. THE COMMISSIONER OF TAXATION AND FINANCE MAY REQUIRE THE MAINTEN-
47 NANCE OF SUCH ACCOUNTS, RECORDS OR DOCUMENTS RELATING TO THE SALE OF
48 BEVERAGE CONTAINERS, BY ANY BEVERAGE MANUFACTURER, DISTRIBUTOR, DEALER,
49 OR REDEMPTION CENTER AS SUCH COMMISSIONER MAY DEEM APPROPRIATE FOR THE
50 ADMINISTRATION OF THIS SECTION. THE COMMISSIONER OF TAXATION AND FINANCE
51 MAY MAKE EXAMINATIONS, INCLUDING THE CONDUCT OF FACILITY INSPECTIONS
52 DURING REGULAR BUSINESS HOURS, WITH RESPECT TO THE ACCOUNTS, RECORDS OR
53 DOCUMENTS REQUIRED TO BE MAINTAINED UNDER THIS SUBDIVISION. SUCH
54 ACCOUNTS, RECORDS AND DOCUMENTS SHALL BE PRESERVED FOR A PERIOD OF THREE
55 YEARS, EXCEPT THAT SUCH COMMISSIONER MAY CONSENT TO THEIR DESTRUCTION
56 WITHIN THAT PERIOD OR MAY REQUIRE THAT THEY BE KEPT LONGER. SUCH

1 ACCOUNTS, RECORDS AND DOCUMENTS MAY BE KEPT WITHIN THE MEANING OF THIS
2 SUBDIVISION WHEN REPRODUCED BY ANY PHOTOGRAPHIC, PHOTOSTATIC, MICROFILM,
3 MICRO-CARD, MINIATURE PHOTOGRAPHIC OR OTHER PROCESS WHICH ACTUALLY
4 REPRODUCES THE ORIGINAL ACCOUNTS, RECORDS OR DOCUMENTS.

5 10. A. THE PROVISIONS OF SECTIONS ELEVEN HUNDRED THIRTY-EIGHT THROUGH
6 ELEVEN HUNDRED FORTY-THREE AND ELEVEN HUNDRED FORTY-FIVE THROUGH ELEVEN
7 HUNDRED FORTY-SEVEN OF THE TAX LAW, EXCEPT FOR SUBPARAGRAPH (I) OF PARA-
8 GRAPH THREE OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FORTY-FIVE OF
9 THE TAX LAW, SHALL APPLY TO THE PROVISIONS OF THIS TITLE IN THE SAME
10 MANNER AND WITH THE SAME FORCE AND EFFECT AS IF THE LANGUAGE OF SUCH
11 PROVISIONS HAD BEEN INCORPORATED IN FULL INTO THIS TITLE AND HAD
12 EXPRESSLY REFERRED TO THE AMOUNT REQUIRED TO BE PAID TO THE COMMISSIONER
13 OF TAXATION AND FINANCE UNDER THIS TITLE, EXCEPT TO THE EXTENT THAT ANY
14 OF SUCH PROVISIONS IS EITHER INCONSISTENT WITH A PROVISION CONTAINED IN
15 THIS TITLE OR IS NOT RELEVANT TO THIS TITLE. PROVIDED, HOWEVER, THAT THE
16 COMMISSIONER OF TAXATION AND FINANCE MAY DETERMINE THE EXISTENCE OF A
17 DEFICIENCY ON THE BASIS OF EXTERNAL INDICES, INCLUDING, IN ADDITION TO
18 THOSE SET FORTH IN PARAGRAPH ONE OF SUBDIVISION (A) OF SECTION ELEVEN
19 HUNDRED THIRTY-EIGHT OF THE TAX LAW, SALES TERRITORY, RECORDS OF SALES,
20 RECORDS OR REPORTS OF REFUND VALUES PAID OR BEVERAGE CONTAINERS REDEEMED
21 PURSUANT TO THE PROVISIONS OF THIS TITLE, STOCK OF BEVERAGE CONTAINERS,
22 TYPES OF BEVERAGE CONTAINERS OR OTHER FACTORS. PROVIDED FURTHER, HOWEV-
23 ER, THAT NOTWITHSTANDING THE PROVISIONS OF SECTION ELEVEN HUNDRED
24 FORTY-SIX OF THE TAX LAW, THE COMMISSIONER OF TAXATION AND FINANCE OR
25 HIS OR HER DESIGNEE, OR ANY OFFICER OR EMPLOYEE OF THE DEPARTMENT OF
26 TAXATION AND FINANCE, SHALL NOT BE SUBJECT TO SUCH PROVISIONS WITH
27 RESPECT TO COMMUNICATION BY SUCH COMMISSIONER, DESIGNEE, OFFICER OR
28 EMPLOYEE WITH THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION, WITH HIS
29 OR HER DESIGNEE, OR WITH ANY OFFICER OR EMPLOYEE OF THE DEPARTMENT OF
30 ENVIRONMENTAL CONSERVATION, WITH RESPECT TO THE ADMINISTRATION AND
31 ENFORCEMENT OF THIS SECTION.

32 B. ANY PERSON REQUIRED TO BE REGISTERED UNDER THIS SECTION WHO, WITH-
33 OUT BEING SO REGISTERED, MAKES SALES OF BEVERAGE CONTAINERS IN THIS
34 STATE, IN ADDITION TO ANY OTHER PENALTY IMPOSED BY THIS TITLE, SHALL BE
35 SUBJECT TO A PENALTY IN AN AMOUNT NOT EXCEEDING FIVE HUNDRED DOLLARS FOR
36 THE FIRST DAY ON WHICH SUCH SALES ARE MADE, PLUS AN AMOUNT NOT EXCEEDING
37 TWO HUNDRED DOLLARS FOR EACH SUBSEQUENT DAY ON WHICH SUCH SALES ARE
38 MADE, NOT TO EXCEED TEN THOUSAND DOLLARS IN THE AGGREGATE.

39 C. ANY DEPOSIT INITIATOR WHO FAILS TO MAINTAIN ACCOUNTS OR RECORDS
40 PURSUANT TO THIS SECTION, UNLESS IT IS SHOWN THAT SUCH FAILURE WAS DUE
41 TO REASONABLE CAUSE AND NOT DUE TO NEGLIGENCE OR WILLFUL NEGLECT, SHALL
42 BE SUBJECT TO A PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR EACH
43 QUARTER DURING WHICH SUCH FAILURE OCCURRED OR CONTINUES.

44 D. THE PENALTIES PRESCRIBED IN PARAGRAPHS B AND C OF THIS SUBDIVISION
45 SHALL BE SUBJECT TO THE ADMINISTRATIVE PROVISIONS APPLICABLE TO PENAL-
46 TIES PRESCRIBED IN SECTION ELEVEN HUNDRED FORTY-FIVE OF THE TAX LAW.

47 S 9. Section 92-s of the state finance law, as added by chapter 610 of
48 the laws of 1993, subdivision 3 as amended by chapter 145 of the laws of
49 2004, subdivision 6 as amended by chapter 432 of the laws of 1997, para-
50 graph (d) of subdivision 6 as amended by section 13 of part E of chapter
51 61 of the laws of 2000, subdivision 7 as amended by chapter 611 of the
52 laws of 1993 and subdivision 9 as amended by section 1 of part B of
53 chapter 59 of the laws of 2008, is amended to read as follows:

54 S 92-s. Environmental protection fund. 1. There is hereby established
55 in the joint custody of the comptroller and the commissioner of taxation

1 and finance a special fund to be known as the "environmental protection
2 fund".

3 2. [a.] (A) The comptroller shall establish the following separate and
4 distinct accounts within the environmental protection fund:

5 (i) solid waste account;

6 (ii) UNCLAIMED BEVERAGE CONTAINER DEPOSITS STATE ASSISTANCE TO MUNICI-
7 PALITIES ACCOUNT;

8 (III) parks, recreation and historic preservation account;

9 [(iii)] (IV) open space account; and

10 [(iv)] (V) environmental protection transfer account.

11 [b.] (B) All [monies] MONEYS received by the comptroller for deposit
12 in the environmental protection fund shall be deposited first to the
13 credit of the environmental protection transfer account. No [monies]
14 MONEYS shall be expended from any such account for any project except
15 pursuant to appropriation by the legislature.

16 3. Such fund shall consist of the amount of revenue collected within
17 the state from the amount of revenue, interest and penalties deposited
18 pursuant to section fourteen hundred twenty-one of the tax law, the
19 amount of fees and penalties received from easements or leases pursuant
20 to subdivision fourteen of section seventy-five of the public lands law
21 and the money received as annual service charges pursuant to section
22 four hundred four-1 of the vehicle and traffic law, all moneys required
23 to be deposited therein from the contingency reserve fund pursuant to
24 section two hundred ninety-four of chapter fifty-seven of the laws of
25 nineteen hundred ninety-three, all moneys required to be deposited
26 pursuant to section thirteen of chapter six hundred ten of the laws of
27 nineteen hundred ninety-three, repayments of loans made pursuant to
28 section 54-0511 of the environmental conservation law, all moneys to be
29 deposited from the Northville settlement pursuant to section one hundred
30 twenty-four of chapter three hundred nine of the laws of nineteen
31 hundred ninety-six, provided however, that such moneys shall only be
32 used for the cost of the purchase of private lands in the core area of
33 the central Suffolk pine barrens pursuant to a consent order with the
34 Northville industries signed on October thirteenth, nineteen hundred
35 ninety-four and the related resource restoration and replacement plan,
36 the amount of penalties required to be deposited therein by section
37 71-2724 of the environmental conservation law, ALL MONEYS REQUIRED TO BE
38 DEPOSITED PURSUANT TO SECTION 27-1012 OF THE ENVIRONMENTAL CONSERVATION
39 LAW, and all other moneys credited or transferred thereto from any other
40 fund or source pursuant to law. All such revenue shall be initially
41 deposited into the environmental protection fund, for application as
42 provided in subdivision [five] FOUR of this section.

43 [5] 4. Revenues in the environmental protection fund shall be kept
44 separate and shall not be commingled with any other moneys in the custo-
45 dy of the comptroller. All deposits of such revenues shall, if required
46 by the comptroller, be secured by obligations of the United States or of
47 the state having a market value equal at all times to the amount of such
48 deposits and all banks and trust companies are authorized to give secu-
49 rity for such deposits. Any such revenues in such fund may, upon the
50 discretion of the comptroller, be invested in obligations in which the
51 comptroller is authorized to invest pursuant to section ninety-eight-a
52 of this article.

53 [6] 5. (a) All moneys heretofore and hereafter deposited in the envi-
54 ronmental protection transfer account shall be transferred by the comp-
55 troller to the solid waste account, THE UNCLAIMED BEVERAGE CONTAINER
56 DEPOSITS STATE ASSISTANCE TO MUNICIPALITIES ACCOUNT, the parks, recre-

1 ation and historic preservation account or the open space account upon
2 the request of the director of the budget.

3 (b) Moneys from the solid waste account shall be available, pursuant
4 to appropriation and upon certificate of approval of availability by the
5 director of the budget, for any non-hazardous municipal landfill closure
6 project; municipal waste reduction or recycling project, as defined in
7 article fifty-four of the environmental conservation law; for the
8 purposes of section two hundred sixty-one and section two hundred
9 sixty-four of the economic development law; any project for the develop-
10 ment, updating or revision of local solid waste management plans pursu-
11 ant to sections 27-0107 and 27-0109 of the environmental conservation
12 law; and for the development of the pesticide sales and use data base in
13 conjunction with Cornell University pursuant to title twelve of article
14 thirty-three of the environmental conservation law.

15 (c) AFTER RECOMPENSING THE DEPARTMENT OF TAXATION AND FINANCE EACH
16 MONTH FOR THE COST OF SERVICES AND EXPENSES RELATED TO ADMINISTERING THE
17 PROVISIONS OF SECTION 27-1012 OF THE ENVIRONMENTAL CONSERVATION LAW FOR
18 THE IMMEDIATE PRIOR MONTH, MONEYS REMAINING FROM THE UNCLAIMED BEVERAGE
19 CONTAINER DEPOSITS STATE ASSISTANCE TO MUNICIPALITIES ACCOUNT SHALL BE
20 AVAILABLE, PURSUANT TO APPROPRIATION AND UPON CERTIFICATE OF APPROVAL OF
21 AVAILABILITY BY THE STATE DIRECTOR OF THE BUDGET, FOR ANY NON-HAZARDOUS
22 MUNICIPAL LANDFILL CLOSURE PROJECT; FOR ANY MUNICIPAL WASTE REDUCTION OR
23 RECYCLING PROJECT; FOR ANY MUNICIPAL PARK PROJECT; FOR ANY HISTORIC
24 PRESERVATION PROJECT; FOR ANY HERITAGE AREA PROJECT; OR FOR ANY LOCAL
25 WATERFRONT REVITALIZATION PROJECT, AS DEFINED IN ARTICLE FIFTY-FOUR OF
26 THE ENVIRONMENTAL CONSERVATION LAW; OR FOR ANY COMBINATION OF THE FORE-
27 GOING PROJECTS. PROVIDED, HOWEVER, THAT THE TOTAL OF MONEYS APPROPRI-
28 ATED FROM THIS ACCOUNT IN ANY STATE FISCAL YEAR SHALL BE ALLOCATED BY
29 STATE ENVIRONMENTAL CONSERVATION DEPARTMENT REGION BASED UPON NONREDEMP-
30 TION RATES IN EACH REGION, AS DETERMINED BY SUCH DEPARTMENT FROM INFOR-
31 MATION IT HAS RECEIVED PURSUANT TO SECTION 27-1018 OF THE ENVIRONMENTAL
32 CONSERVATION LAW. SUCH APPROPRIATION FOR THE FISCAL YEAR THAT BEGINS
33 NEXT FOLLOWING THE EFFECTIVE DATE OF THE AMENDMENT TO THIS SECTION, BY
34 THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE, WHICH ADDED THIS SENTENCE
35 SHALL BE BASED ON THE MOST RECENT REPORT OF THE STATE ENVIRONMENTAL
36 CONSERVATION DEPARTMENT ON "BEVERAGE CONTAINER DEPOSIT AND REDEMPTION
37 STATISTICS" COMPLETED PRIOR TO THE DATE SUCH APPROPRIATION SHALL HAVE
38 BECOME A LAW AND WHICH WAS PREPARED PURSUANT TO 6 NYCRR S 367.11 (OR A
39 COGNATE PROVISION OF A SUCCESSOR REGULATION). PROVIDED FURTHER, HOWEV-
40 ER, THAT THE AMOUNT OF ANY APPROPRIATION MADE FROM THIS ACCOUNT SHALL BE
41 DISREGARDED FOR THE PURPOSE OF DETERMINING THE AMOUNT OF ANY OTHER
42 APPROPRIATION FROM ANY OTHER ACCOUNT WHETHER OR NOT SUCH OTHER APPROPRI-
43 ATION IS OR WILL BE MADE, OR REQUIRED TO BE MADE, FOR THE SAME PROJECT
44 OR PURPOSE, FOR GENERAL MUNICIPAL PURPOSES OR FOR LOCAL ASSISTANCE.
45 ACCORDINGLY, THE AMOUNT OF STATE AID TO MUNICIPALITIES OTHERWISE TO BE
46 PROVIDED SHALL NOT BE REDUCED ON ACCOUNT OF THE ADDITIONAL FUNDING
47 PROVIDED BY THIS ACCOUNT, AND FUNDING FROM THIS ACCOUNT SHALL BE SUPPLE-
48 MENTARY TO ANY SUCH OTHER LOCAL ASSISTANCE PROVIDED FROM ANY SOURCE
49 OTHER THAN THIS ACCOUNT.

50 (D) Moneys from the parks, recreation and historic preservation
51 account shall be available, pursuant to appropriation, for any municipal
52 park project, historic preservation project, urban cultural park
53 project, waterfront revitalization program, coastal rehabilitation
54 project.

55 [(d)] (E) Moneys from the open space account shall be available,
56 pursuant to appropriation, for any open space land conservation project,

1 bio-diversity stewardship and research pursuant to chapter five hundred
2 fifty-four of the laws of nineteen hundred ninety-three, for the
3 purposes of agricultural and farmland protection activities as author-
4 ized by article twenty-five-AAA of the agriculture and markets law,
5 non-point source abatement and control projects pursuant to section
6 17-1409 of the environmental conservation law and section eleven-b of
7 the soil and water conservation districts law, for Long Island Central
8 Pine Barrens area planning or Long Island south shore estuary reserve
9 planning pursuant to title thirteen of article fifty-four of the envi-
10 ronmental conservation law, and for operation and management of the
11 Albany Pine Bush preserve commission pursuant to subdivision two of
12 section 54-0303 of the environmental conservation law.

13 [(e)] (F) The governor shall include a specific line appropriation in
14 the capital projects budget describing individual open space land
15 conservation projects proposed to be undertaken by the department of
16 environmental conservation and/or the office of parks, recreation and
17 historic preservation pursuant to title three of article fifty-four of
18 the environmental conservation law and listed in the state open space
19 land acquisition plan prepared pursuant to title two of article forty-
20 nine of the environmental conservation law.

21 [7] 6. Notwithstanding any other provision of law, no state assistance
22 payment authorized under this section or article fifty-four of the envi-
23 ronmental conservation law may be applied, with respect to any project
24 located within the area of New York county bounded by (a) the northern
25 boundary of Fifty-ninth street and Fifty-ninth street extended; (b) the
26 United States pierhead line; (c) the northern boundary of the area known
27 as Battery Park City; and (d) eight hundred feet inland easterly from
28 the United States bulkhead line:

29 (i) for, other than for recreational use or access inland of the
30 existing bulkhead line, any roads, bridges, ramps or parking facilities
31 or sewers or water mains;

32 (ii) for any site improvement, including sewers or water mains, to
33 support residential, industrial or commercial development;

34 (iii) to excavate, place fill or plantings in, or place any piling,
35 platform or structure, including a floating structure, in the Hudson
36 river;

37 (iv) to plan, evaluate or study any project involving such excavation
38 or placement as described in subparagraph (iii) of this paragraph; or

39 (v) for any purpose or project except where the commissioner of envi-
40 ronmental conservation, with the approval of the director of the budget,
41 enters into a contract with the city of New York or a state agency, but
42 not with any public benefit corporation or public authority or any other
43 person or entity, for the undertaking of the purpose or project. No part
44 of the purpose or project may be subcontracted to any public benefit
45 corporation, public authority, not-for-profit corporation, or munici-
46 pality other than the city of New York, nor shall any such state assist-
47 ance payment be paid to, on behalf of, or pursuant to any agreement with
48 any such entity.

49 [8] 7. All payments of moneys from the fund shall be made on the audit
50 and warrant of the comptroller.

51 [9.] 8. Notwithstanding any other law to the contrary and in accord-
52 ance with section four of this chapter, the comptroller is hereby
53 authorized at the direction of the director of the division of the budg-
54 et to transfer moneys from the general fund to the environmental
55 protection fund for the purpose of maintaining the solvency of the envi-
56 ronmental protection fund. If, in any fiscal year, moneys in the envi-

1 environmental protection fund are deemed insufficient by the director of the
2 division of the budget to meet actual and anticipated disbursements from
3 enacted appropriations or reappropriations made pursuant to this
4 section, the comptroller shall at the direction of the director of the
5 division of the budget, transfer from the general fund to the environ-
6 mental protection fund moneys sufficient to meet such disbursements.
7 Such transfers shall be made only upon certification of need by the
8 director of the division of the budget, with copies of such certifi-
9 cation filed with the chairperson of the senate finance committee, the
10 chairperson of the assembly ways and means committee and the state comp-
11 troller. The aggregate amount of all transfers shall not exceed four
12 hundred forty-seven million one hundred seventy-one thousand dollars.

13 S 10. The environmental conservation law is amended by adding a new
14 section 27-1016 to read as follows:

15 S 27-1016. UNCLAIMED DEPOSIT.

16 1. FOR EACH UNCLAIMED BEVERAGE CONTAINER FOR WHICH A DEPOSIT INITIATOR
17 ESTABLISHED A REFUND VALUE, THE DEPOSIT INITIATOR SHALL BE ENTITLED TO
18 RETAIN FOR ITSELF FIVE CENTS PER BEVERAGE CONTAINER TO HELP COVER THE
19 COST OF THE HANDLING FEE ON RETURNED BEVERAGE CONTAINERS ESTABLISHED BY
20 SUBDIVISION THREE OF SECTION 27-1007 OF THIS TITLE.

21 2. THE HANDLING FEES OF THE DEALER, DISTRIBUTOR, REDEMPTION CENTER OR
22 THIRD PARTY AGENT ON BEVERAGES ACCEPTED ACCORDING TO SECTION 27-1007 OF
23 THIS TITLE SHALL BE PAID FROM THE MONEY RETAINED BY THE DEPOSIT INITI-
24 ATORS ON UNCLAIMED BEVERAGE CONTAINERS.

25 S 11. Section 27-1019 of the environmental conservation law is renum-
26 bered section 27-1020 and two new sections 27-1018 and 27-1019 are added
27 to read as follows:

28 S 27-1018. RECORD KEEPING REQUIREMENTS.

29 EACH DISTRIBUTOR WHO INITIATES A DEPOSIT ON A TYPE OF BEVERAGE
30 CONTAINER SOLD IN THIS STATE SHALL MAINTAIN A RECORD OF ALL DEPOSITS
31 INITIATED, ALL DEPOSITS REDEEMED, ALL HANDLING FEES PAID OUT AND ALL
32 UNCLAIMED DEPOSITS RETAINED. EACH SUCH DISTRIBUTOR SHALL MAINTAIN THIS
33 INFORMATION ACCORDING TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AND
34 SHALL REPORT THIS INFORMATION TO THE COMMISSIONER UPON SUCH REASONABLE
35 FREQUENCY AS THE COMMISSIONER DEEMS NECESSARY.

36 S 27-1019. BEVERAGE CONTAINER DEPOSIT AND REDEMPTION REPORT.

37 ON OR BEFORE OCTOBER FIRST OF EACH YEAR, THE DEPARTMENT SHALL REPORT
38 TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER
39 OF THE ASSEMBLY BEVERAGE CONTAINER DEPOSIT AND REDEMPTION STATISTICS
40 BASED UPON THE INFORMATION PROVIDED PURSUANT TO SECTION 27-1018 OF THIS
41 TITLE.

42 S 12. This act shall take effect on the first of January next
43 succeeding the date on which it shall have become a law.