S T A T E O F N E W Y O R K

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I N A S S E M B L Y

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Introduced by M. of A. BENJAMIN, PERALTA, EDDINGTON, ALFANO, KOLB, WALKER, FIELDS, BARRA -- Multi-Sponsored by -- M. of A. MAYERSOHN, MOLINARO, OAKS, WRIGHT -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the tax law and the environmental conservation law, in relation to enacting the recycling for communities act; to amend the state finance law, in relation to creating the recycling for communities act transition fund and the recycling for communities act fund; to amend the alcoholic beverage control law and the administrative code of the city of New York, in relation to making technical changes; to repeal title 10 of article 27 of the environmental conservation law, relating to litter and solid waste control; to repeal subchapter 10 of chapter 5 of title 20 of the administrative code of the city of New York relating to redemption of beverage containers; and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. Legislative findings. The legislature finds that a comprehensive and progressive program is necessary to reduce litter and to increase recycling in the state in a manner that will provide significant benefit to the environment.

An uncluttered landscape is among the most priceless heritages that New York can bequeath to posterity. It is the duty of government to promote and encourage a clean and safe environment. The accumulation of carelessly discarded litter may pose a threat to the public health and safety and is especially serious in a state as densely populated as New York. Unseemly litter can have devastating economic effects on the state by making the state look less attractive to tourists, new industries, and residents. Sadly, reliance on the beverage container deposit law has led to neglect of broader, more efficient means of litter control in our state.

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

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The legislature finds further that the recycling of waste materials decreases waste flow to municipal solid waste facilities and out-of-state disposal sites, recovers valuable resources, conserves energy in the manufacturing process, and offers a supply of domestic raw materials for the state's industries; that economically viable municipal recycling programs are necessary to achieve the maximum practicable recovery of reusable materials from solid waste in this state.

In seeking to reduce litter and to increase recycling, the legislature finds that the continuation or expansion of the current bottle deposit program would be costly, inconvenient, and inefficient especially in relation to more recent, comprehensive programs like curbside recycling. Mandatory source separation or curbside recycling has been the law in this state for decades. Having duplicate recycling programs raises costs to consumers and municipalities, complicates recycling efforts and deprives communities of valuable commodities that would offset ever increasing recycling program costs.

The legislature finds that increasing our investment in comprehensive recycling and litter control programs will address more consumer containers and packaging than just the minimal amount (less than 2.5% of the waste stream) targeted by the current bottle deposit law and its proposed expansion. Further, these new investments will provide significant benefits to the environment without burdening and confusing consumers and inflicting storage, economic and sanitation problems on grocery stores.

S 2. This act shall be known and may be cited as the "recycling for communities act".

S 3. The tax law is amended by adding a new article 28-C to read as follows:

ARTICLE 28-C
RECYCLING FOR COMMUNITIES ACT

SECTION 1180. DEFINITIONS.
1181. RECYCLING AND LITTER CONTROL FEE.
1182. USE OF FEES AND SURCHARGES.
1183. RULES AND REGULATIONS.

S 1180. DEFINITIONS. FOR PURPOSES OF THIS ARTICLE, THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEANINGS:

1. "LITTER" SHALL MEAN ANY USED OR UNCONSUMED SUBSTANCE OR WASTE MATERIAL WHICH HAS BEEN DISCARDED, WHETHER MADE OF ALUMINUM, GLASS, PLASTIC, RUBBER, PAPER, OR OTHER NATURAL OR SYNTHETIC MATERIAL, OR ANY COMBINATION THEREOF, INCLUDING, BUT NOT LIMITED TO, ANY BOTTLE, JAR OR CAN, OR ANY TOP, CAP OR DETACHABLE TAB OF ANY BOTTLE, JAR OR CAN, ANY UNLIT CIGARETTE, CIGAR, MATCH OR ANY FLAMING OR GLOWING MATERIAL OR ANY GARBAGE, TRASH, REFUSE, DEBRIS, RUBBISH, GRASS CLIPPINGS OR OTHER LAWN OR GARDEN WASTE, NEWSPAPERS, MAGAZINES, GLASS, METAL, PLASTIC OR PAPER CONTAINERS OR OTHER PACKAGING OR CONSTRUCTION MATERIAL, BUT DOES NOT INCLUDE THE WASTE OF THE PRIMARY PROCESSES OF MINING OR OTHER EXTRACTION PROCESSES, LOGGING, SAWMILLING, FARMING OR MANUFACTURING.

2. A. "RECYCLABLE OR LITTER-GENERATING PRODUCTS" SHALL MEAN ANY GOODS THAT ARE:

(I) PRODUCED, MANUFACTURED, DISTRIBUTED, OR SOLD IN DISPOSABLE CONTAINERS, WRAPPERS, OR OTHER PACKAGING;

(II) NOT NORMALLY SOLD IN CONTAINERS, WRAPPERS, OR OTHER PACKAGING BUT ARE COMMONLY DISCARDED IN PUBLIC PLACES; OR

(III) OF AN UNSIGHTLY OR UNSANITARY NATURE AND ARE COMMONLY DISCARDED IN PUBLIC PLACES.

B. RECYCLABLE OR LITTER-GENERATING PRODUCTS INCLUDE THE FOLLOWING:

(I) ANY BEVERAGE PRODUCT, WHETHER CARBONATED OR NON-CARBONATED, AND WHETHER ALCOHOLIC OR NON-ALCOHOLIC, INCLUDING BOTTLED WATER AND DAIRY PRODUCTS;

(II) CIGARETTES AND OTHER TOBACCO PRODUCTS;

(III) CLEANING AGENTS AND TOILETRIES;

(IV) ANY FOOD PRODUCT EXCEPT FRESH PRODUCE, WHETHER INTENDED FOR HUMAN OR ANIMAL CONSUMPTION;

(V) GLASS CONTAINERS, SOLD AS SUCH;

(VI) GROCERIES;

(VII) METAL CONTAINERS, SOLD AS SUCH;

(VIII) NEWSPRINT AND MAGAZINE PAPER STOCK;

(IX) PAPER PRODUCTS AND HOUSEHOLD PAPER ITEMS, BUT NOT INCLUDING WOOD PULP OR ROLL STOCK PRODUCED BY PAPER PRODUCT MANUFACTURERS;

(X) PLASTIC OR FIBER CONTAINERS MADE OF SYNTHETIC MATERIAL, SOLD AS SUCH, BUT NOT INCLUDING ANY CONTAINER THAT IS ROUTINELY REUSED, HAS A USEFUL LIFE OF MORE THAN ONE YEAR, AND IS ORDINARILY SOLD EMPTY AT RETAIL.

C. RECYCLABLE OR LITTER-GENERATING PRODUCTS SHALL NOT INCLUDE THE FOLLOWING:

(I) ANY PRESCRIPTION OR NON-PRESCRIPTION DRUG;

(II) WOOD PULP OR ROLL STOCK PRODUCED BY A PAPER PRODUCT MANUFACTURER;

(III) CONTAINERS MADE FROM SYNTHETIC MATERIALS THAT ARE INTENDED TO BE REUSABLE, HAVE A USEFUL LIFE OF MORE THAN ONE YEAR, AND ARE ORDINARILY SOLD EMPTY.

3. "BEVERAGE PRODUCT" SHALL MEAN ANY PRODUCT THAT IS IN LIQUID FORM AND IS SUITABLE FOR DRINKING. BEVERAGE PRODUCT SHALL INCLUDE ALL CARBONATED PRODUCTS, NON-CARBONATED PRODUCTS, ALCOHOLIC PRODUCTS, NON-ALCOHOLIC PRODUCTS, DAIRY PRODUCTS, AND BOTTLED WATER.

4. "LITTER RECEPTACLE" SHALL MEAN A CONTAINER SUITABLE FOR THE DEPOSITING OF LITTER.

5. "SOLD WITHIN THE STATE" OR "SALES WITHIN THE STATE" SHALL MEAN ALL SALES OF RETAILERS ENGAGED IN BUSINESS WITHIN THE STATE AND, IN THE CASE OF MANUFACTURERS, WHOLESALERS AND DISTRIBUTORS, ALL SALES OF PRODUCTS FOR USE AND CONSUMPTION WITHIN THE STATE. IT SHALL BE PRESUMED THAT ALL SALES OF MANUFACTURERS, WHOLESALERS AND DISTRIBUTORS SOLD WITHIN THE STATE ARE FOR USE AND CONSUMPTION WITHIN THE STATE UNLESS IT IS DETERMINED BY THE DIRECTOR THAT THE PRODUCTS ARE SHIPPED OUT OF STATE FOR OUT-OF-STATE USE.

S 1181. RECYCLING AND LITTER CONTROL FEE. 1. A. A USER FEE OF THREE ONE-HUNDREDTHS OF ONE PERCENT IS IMPOSED UPON THE SALES OF BEVERAGE PRODUCTS IN THIS STATE BY ANY MANUFACTURER, WHOLESALER, OR DISTRIBUTOR.

B. IN ADDITION TO THE USER FEE IMPOSED BY PARAGRAPH A OF THIS SUBDIVISION, A USER FEE SURCHARGE OF THREE ONE-HUNDREDTHS OF ONE PERCENT IS IMPOSED UPON THE SALES OF BEVERAGE PRODUCTS IN THIS STATE BY ANY MANUFACTURER, WHOLESALER, OR DISTRIBUTOR.

2. A USER FEE OF THREE ONE-HUNDREDTHS OF ONE PERCENT IS IMPOSED UPON THE SALES OF RECYCLABLE OR LITTER-GENERATING PRODUCTS, OTHER THAN BEVERAGE PRODUCTS, IN THIS STATE BY ANY MANUFACTURER, WHOLESALER, OR DISTRIBUTOR.

3. A USER FEE OF TWO HUNDRED TWENTY-FIVE TEN-THOUSANDTHS OF ONE PERCENT IS IMPOSED UPON THE SALES OF RECYCLABLE OR LITTER-GENERATING PRODUCTS, INCLUDING BEVERAGE PRODUCTS, IN THIS STATE BY ANY RETAILER.

4. THE FOLLOWING ARE EXEMPT FROM THE FEES AND SURCHARGES IMPOSED BY THIS SECTION:

A. SALES OF RECYCLABLE OR LITTER-GENERATING PRODUCTS FROM ONE MANUFACTURER, WHOLESALER, OR DISTRIBUTOR TO ANOTHER MANUFACTURER, WHOLESALER, OR DISTRIBUTOR.

B. SALES OF RECYCLABLE OR LITTER-GENERATING PRODUCTS FROM ONE BUSINESS ENTITY TO ANOTHER BUSINESS ENTITY WHERE BOTH ENTITIES ARE WHOLLY OWNED BY THE SAME INDIVIDUAL, COMPANY, CORPORATION, OR PARTNERSHIP.

C. SALES OF RECYCLABLE OR LITTER-GENERATING PRODUCTS BY RETAILERS WHOSE RECEIPTS ARE LESS THAN FIVE HUNDRED THOUSAND DOLLARS ANNUALLY.

D. SALES OF RECYCLABLE OR LITTER-GENERATING PRODUCTS BY RESTAURANTS WHERE LESS THAN TEN PERCENT OF SUCH SALES ARE CONSUMED OFF-PREMISES.

S 1182. USE OF FEES AND SURCHARGES. 1. ALL FEES AND SURCHARGES COLLECTED PURSUANT TO THE PROVISIONS OF THIS ARTICLE THROUGH AND INCLUDING SEPTEMBER FIFTEENTH, TWO THOUSAND TEN SHALL BE DEPOSITED INTO THE RECYCLING FOR COMMUNITIES ACT TRANSITION FUND ESTABLISHED BY SECTION EIGHTY-SIX OF THE STATE FINANCE LAW.

2. ALL FEES AND SURCHARGES COLLECTED PURSUANT TO THE PROVISIONS OF THIS ARTICLE AFTER SEPTEMBER FIFTEENTH, TWO THOUSAND TEN SHALL BE DEPOSITED INTO THE RECYCLING FOR COMMUNITIES ACT FUND ESTABLISHED BY SECTION EIGHTY-SEVEN OF THE STATE FINANCE LAW.

S 1183. RULES AND REGULATIONS. THE COMMISSIONER SHALL PROMULGATE ALL RULES AND REGULATIONS NECESSARY FOR THE EFFECTIVE IMPLEMENTATION OF THE PROVISIONS OF THIS ARTICLE.

S 4. The state finance law is amended by adding two new sections 86 and 87 to read as follows:

S 86. RECYCLING FOR COMMUNITIES ACT TRANSITION FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION A FUND TO BE KNOWN AS THE "RECYCLING FOR COMMUNITIES ACT TRANSITION FUND".

2. THE FUND SHALL CONSIST OF ALL MONEYS RECEIVED PURSUANT TO ARTICLE TWENTY-EIGHT-C OF THE TAX LAW ON SALES OF RECYCLABLE OR LITTER-GENERATING PRODUCTS MADE ON OR PRIOR TO SEPTEMBER FIFTEENTH, TWO THOUSAND EIGHT. THE FUND SHALL ALSO INCLUDE ALL MONIES APPROPRIATED TO THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR ITS PURPOSE, AND ALL MONIES REQUIRED BY ANY OTHER PROVISION OF LAW TO BE PAID INTO OR CREDITED TO SUCH FUND.

3. MONEYS OF THE FUND SHALL BE EXPENDED TO PURCHASE EQUIPMENT, LITTER RECEPTACLES OR BINS, TO MODIFY EQUIPMENT, TO PROVIDE OUTREACH AND EDUCATIONAL SERVICES TO THE COMMUNITY, TO PROVIDE CONSULTING SERVICES TO AID IN MODIFYING PROGRAMS TO ACCOMMODATE FORMER DEPOSIT CONTAINERS, AND ANY OTHER RELATED EXPENSE APPROVED BY THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION. THE COMMISSIONER MAY BEGIN MAKING DISBURSEMENTS FROM THE FUND ON APRIL FIRST, TWO THOUSAND TEN AND SHALL ENSURE THAT ALL MONEYS OF THE FUND ARE APPROPRIATED ON OR BEFORE JUNE THIRTIETH, TWO THOUSAND ELEVEN.

4. MONEYS SHALL BE PAID OUT OF THE FUND ON THE AUDIT AND WARRANT OF THE STATE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION OR HIS OR HER DESIGNEE IN THE MANNER PRESCRIBED BY LAW.

S 87. RECYCLING FOR COMMUNITIES ACT FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION A FUND TO BE KNOWN AS THE "RECYCLING FOR COMMUNITIES ACT FUND".

2. THE FUND SHALL CONSIST OF ALL MONEYS RECEIVED PURSUANT TO ARTICLE TWENTY-EIGHT-C OF THE TAX LAW ON SALES OF RECYCLABLE OR LITTER-GENERAT-

ING PRODUCTS MADE AFTER SEPTEMBER FIFTEENTH, TWO THOUSAND TEN. THE FUND SHALL ALSO INCLUDE ALL MONIES APPROPRIATED TO THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR ITS PURPOSE, AND ALL MONIES REQUIRED BY ANY OTHER PROVISION OF LAW TO BE PAID INTO OR CREDITED TO SUCH FUND.

3. MONEYS OF THE FUND SHALL BE EXPENDED AS FOLLOWS:

A. SIXTY-FIVE PERCENT OF THE MONEYS OF THE FUND SHALL BE USED FOR THE SUPPORT AND MAINTENANCE OF MUNICIPAL RECYCLING PROJECTS UNDER TITLE SEVEN OF ARTICLE FIFTY-FOUR OF THE ENVIRONMENTAL CONSERVATION LAW. OF THESE MONEYS, FIFTY PERCENT SHALL BE DISTRIBUTED TO COMMUNITIES IN PROPORTION WITH THE POPULATION OF THE COMMUNITIES AND THE OTHER FIFTY PERCENT SHALL BE DISTRIBUTED IN PROPORTION TO THE TONS OF MUNICIPAL WASTE BEING RECYCLED BY EACH COMMUNITY RESPECTIVELY.

B. FIVE PERCENT OF THE MONEYS OF THE FUND SHALL BE USED FOR RECYCLING MARKET DEVELOPMENT, AS PROVIDED IN TITLE FOUR OF ARTICLE TWENTY-SEVEN OF THE ENVIRONMENTAL CONSERVATION LAW.

C. THIRTY PERCENT OF THE MONEYS OF THE FUND SHALL BE USED FOR LITTER PREVENTION AND CONTROL PROGRAMS. OF THESE MONEYS, ONE-SIXTH SHALL BE USED TOWARD STATEWIDE PROGRAMS FOR PUBLIC OUTREACH AND EDUCATION AND FIVE-SIXTHS SHALL BE USED TOWARD COMMUNITY BASED PROGRAMS. OF THE MONEYS USED TOWARD COMMUNITY PROGRAMS, ONE-THIRD SHALL BE DISTRIBUTED IN PROPORTION TO THE POPULATION OF COMMUNITIES, ONE-THIRD SHALL BE DISTRIBUTED IN PROPORTION TO THE TOTAL LINEAL ROAD AND BEACH MILEAGE OF EACH COMMUNITY, AND ONE-THIRD SHALL BE DISTRIBUTED IN PROPORTION TO THE AMOUNT OF LITTER COLLECTED BY EACH COMMUNITY.

4. MONEYS SHALL BE PAID OUT OF THE FUND ON THE AUDIT AND WARRANT OF THE STATE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION OR HIS OR HER DESIGNEE IN THE MANNER PRESCRIBED BY LAW.

S 5. Title 10 of article 27 of the environmental conservation law is REPEALED.

S 6. The environmental conservation law is amended by adding a new section 27-0111 to read as follows:

S 27-0111. BEVERAGE CONTAINER REQUIREMENTS.

1. NO DISTRIBUTOR OR DEALER SHALL SELL OR OFFER FOR SALE, AT WHOLESALE OR RETAIL IN THIS STATE, ANY METAL BEVERAGE CONTAINER DESIGNED AND CONSTRUCTED WITH A PART OF THE CONTAINER WHICH IS DETACHABLE IN OPENING THE CONTAINER UNLESS SUCH DETACHABLE PART WILL DECOMPOSE BY PHOTODEGRADATION OR BIODEGRADATION.

2. NO DISTRIBUTOR OR DEALER SHALL SELL OR OFFER FOR SALE IN THIS STATE BEVERAGE CONTAINERS CONNECTED TO EACH OTHER BY A SEPARATE HOLDING DEVICE CONSTRUCTED OF PLASTIC WHICH DOES NOT DECOMPOSE BY PHOTODEGRADATION OR BIODEGRADATION.

S 7. Subdivision 2-a of section 100 of the alcoholic beverage control law, as amended by chapter 249 of the laws of 2002, is amended to read as follows:

2-a. No retailer shall employ, or permit to be employed, or shall suffer to work, on any premises licensed for retail sale hereunder, any person under the age of eighteen years, as a hostess, waitress, waiter, or in any other capacity where the duties of such person require or permit such person to sell, dispense or handle alcoholic beverages; except that: (1) any person under the age of eighteen years and employed by any person holding a grocery or drug store beer license shall be permitted to handle and deliver beer and wine products for such licensee, (2) any person under the age of eighteen employed as a cashier by a person holding a grocery or drug store beer license shall be permitted to record and receive payment for beer and wine product sales when in

the presence of and under the direct supervision of a person eighteen years of age or over, [(2-a) any person under the age of eighteen years and employed by a person holding a grocery store or drug store beer license as either a cashier or in any other position to which handling of containers which may have held alcoholic beverages is necessary, shall be permitted to handle the containers if such have been presented for redemption in accordance with the provisions of title ten of article twenty-seven of the environmental conservation law,] and (3) any person under the age of eighteen years employed as a dishwasher, busboy, or other such position as to which handling of containers which may have held alcoholic beverages is necessary shall be permitted to do so under the direct supervision of a person of legal age to purchase alcoholic beverages in the state.

S 8. Subdivision b of section 16-505 of the administrative code of the city of New York, as added by local law number 42 of the city of New York for the year 1996, is amended to read as follows:

b. It shall be unlawful for any person to remove, collect or dispose of trade waste that is generated in the course of operation of such person's business, or to operate as a trade waste broker, without first having registered with the commission. Nothing in this subdivision shall be construed to require registration with the commission of (i) a commercial establishment required to provide for the removal of waste pursuant to section 16-116 of this code in order for such establishment to remove recyclable materials generated in the course of its own business to a location owned or leased by such establishment for the purpose of collecting or storing such materials for sale or further distribution; OR (ii) an owner or managing agent of a building in order to remove recyclable materials generated by commercial tenants within such building to a central location within such building for the purpose of collecting or storing such materials for sale or further distribution[; or (iii) an owner of an establishment required to provide for the removal of waste pursuant to section 16-116 of this code in order to transport beverage containers, as such term is defined in section 27-1003 of the environmental conservation law, or any other recyclable material generated in the course of operation of its own business, to a redemption center, as such term is defined in section 27-1003 of such law, or to any other place where payment will be received by the commercial establishment for such materials]. Notwithstanding any other provision of this subdivision, a business granted an exemption from the requirement for a license pursuant to subdivision a of this section shall be thereupon issued a registration pursuant to this subdivision.

S 9. Subchapter 10 of chapter 5 of title 20 of the administrative code of the city of New York is REPEALED.

S 10. This act shall take effect immediately, provided, however that:

a. subdivision 1 of section 1181 of the tax law, as added by section three of this act, shall take effect immediately and shall apply to sales of beverage products made by a manufacturer, wholesaler, or distributor on or after January 1, 2009; the payment of any fees and surcharges incurred on or prior to June 30, 2009 shall be paid by September 15, 2009; the payment of any fees and surcharges incurred after June 30, 2009 but prior to January 1, 2010 shall be paid by March 15, 2010; the payment of any fees and surcharges incurred on or after January 1, 2010 but prior to June 30, 2010 shall be paid by September 15, 2010; the payment of any fees and surcharges incurred on or after June 30, 2010 but prior to January 1, 2011 shall be paid by March 15,

2010; the payment of any fees incurred on or after January 1, 2011 shall be paid annually on March 15 of the following year;

b. subdivisions 2 and 3 of section 1181 of the tax law, as added by section three of this act, shall take effect January 1, 2010; the payment of any fees incurred on or prior to June 30, 2010 shall be paid by September 15, 2010; the payment of any fees incurred after June 30, 2010 but prior to January 1, 2011 shall be paid by March 15, 2011; the payment of any fees incurred on or after January 1, 2011 shall be paid annually on March 15 of the following year;

c. paragraph b of subdivision 1 of section 1181 of the tax law, as added by section three of this act, shall expire December 31, 2010 when upon such date the provisions of such paragraph shall be deemed repealed; and

d. section five of this act shall take effect January 1, 2011, except that containers otherwise returnable under title 10 of article 27 of the environmental conservation law shall be accepted by any dealer or redemption center from a redeemer and accepted by any distributor from a dealer or redemption center for up to 60 days after such effective date. All redemptions during the 60 day period are subject to the same terms and conditions described for redemption in title 10 of article 27 of the environmental conservation law.