

10343

I N A S S E M B L Y

May 23, 2012

Introduced by M. of A. CAHILL -- read once and referred to the Committee
on Tourism, Parks, Arts and Sports Development

AN ACT to amend the parks, recreation and historic preservation law, in
relation to creating the "Pennies for Parks" program providing funds
for capital expenditures at state parks and historic sites; to amend
the tax law, in relation to imposing a fee on single use carryout
bags; and to amend the state finance law, in relation to establishing
the pennies for parks fund

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

1 Section 1. Legislative findings and intent. The legislature finds and
2 declares that state parks and historic sites enhance the character and
3 quality of life and enhance the economic vitality of local communities
4 and provide healthy and affordable recreational and educational opportu-
5 nities to New York state residents and visitors. If allowed to fall into
6 disrepair, state parks and historic sites may become inaccessible and
7 uninviting to the public. Once closed or sold, state parks and historic
8 sites are difficult, if not impossible, to recover or rehabilitate.
9 Accordingly, state parks and historic sites should be provided necessary
10 capital funding in a manner which is cognizant of their aforementioned
11 intrinsic values.

12 The legislature also finds and declares that the single use carryout
13 bags distributed by New York retailers have a negative impact on the
14 environment, littering our communities, parks and beaches; filling our
15 landfills; harming wildlife; and using millions of trees and gallons of
16 oil to produce. An additional economic incentive should be put in place
17 to encourage the use of reusable bags and reduce the stream of single
18 use carryout bags.

19 It is hereby declared to be the public policy and in the public inter-
20 est of this state to establish a comprehensive program to provide a
21 dedicated funding stream for our state parks and historic sites. Such a
22 dedicated funding stream should be devoted as supplemental to the exist-
23 ing budget of the office of parks, recreation, and historic preserva-
24 tion. The funding stream should be created by imposing a five cent fee

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

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1 on each single use carryout bag distributed by retailers in New York, to
2 be collected and used to fund capital projects in state parks. In order
3 to meet the aforementioned goals and uphold the cultural fabric and
4 integrity of the system of state parks and historic sites, the "Pennies
5 for Parks" program, a fee on single use carryout bags and pennies for
6 parks fund are established and codified in sections 13.32 of the parks,
7 recreation and historic preservation law, 1105-D of the tax law and 92-t
8 of the state finance law.

9 S 2. The parks, recreation and historic preservation law is amended by
10 adding a new section 13.32 to read as follows:

11 S 13.32 PENNIES FOR PARKS. THE COMMISSIONER IS AUTHORIZED TO UTILIZE
12 THE MONIES IN THE PENNIES FOR PARKS FUND, ESTABLISHED PURSUANT TO
13 SECTION NINETY-TWO-T OF THE STATE FINANCE LAW, FOR CAPITAL EXPENDITURES
14 AT STATE PARKS AND HISTORIC SITES, PROVIDED HOWEVER, THAT THE COMMIS-
15 SIONER MAY MAKE AVAILABLE UP TO TEN PERCENT OF THE MONIES IN THE FUND
16 FOR OPERATIONAL EXPENDITURES ANNUALLY.

17 S 3. The tax law is amended by adding a new section 1105-D to read as
18 follows:

19 S 1105-D. FEE ON SINGLE USE CARRYOUT BAGS. (A) IN ADDITION TO ANY
20 OTHER TAX OR FEE IMPOSED BY THIS ARTICLE OR ANY OTHER LAW, THERE IS
21 HEREBY IMPOSED AND THERE SHALL BE PAID A FIVE CENT FEE ON EACH SINGLE
22 USE CARRYOUT BAG PROVIDED TO A CUSTOMER BY A PERSON REQUIRED TO COLLECT
23 TAX.

24 (B) FOR PURPOSES OF THIS SECTION:

25 (1) "SINGLE USE CARRYOUT BAG" MEANS A BAG PROVIDED TO A CUSTOMER AT
26 THE POINT OF SALE BY A PERSON REQUIRED TO COLLECT TAX AND INTENDED FOR A
27 SINGLE USE FOR CARRYING TANGIBLE PERSONAL PROPERTY PURCHASED.

28 (2) "SINGLE USE CARRYOUT BAG" DOES NOT INCLUDE:

29 (A) BAGS USED BY CUSTOMERS INSIDE STORES TO CONTAIN OR WRAP:

30 (I) BULK ITEMS SUCH AS FRUIT, VEGETABLES, NUTS, GRAINS, CANDY OR SMALL
31 HARDWARE ITEMS;

32 (II) FROZEN FOODS, MEAT, OR FISH, WHETHER PRE-PACKAGED OR NOT;

33 (III) FLOWERS, POTTED PLANTS OR OTHER ITEMS WHERE DAMPNESS MAY BE A
34 PROBLEM; OR

35 (IV) UNWRAPPED PREPARED FOODS, FOOD SLICED TO ORDER OR BAKERY GOODS;

36 (B) BAGS PROVIDED BY PHARMACISTS TO CONTAIN PRESCRIPTION DRUGS;

37 (C) NEWSPAPER BAGS, DOOR-HANGER BAGS, LAUNDRY DRY-CLEANING BAGS, OR
38 BAGS SOLD IN PACKAGES CONTAINING MULTIPLE BAGS INTENDED FOR USE AS
39 GARBAGE, PET WASTE OR YARD WASTE BAGS; OR

40 (D) REUSABLE BAGS AS DEFINED IN SECTION 27-2701 OF THE ENVIRONMENTAL
41 CONSERVATION LAW.

42 (C) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE FEE IMPOSED
43 BY THIS SECTION WILL BE SIMILAR TO, AND ADMINISTERED AND COLLECTED IN A
44 LIKE MANNER AS THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED FIVE OF THIS
45 ARTICLE. ALL THE PROVISIONS OF THIS ARTICLE, INCLUDING THE DEFINITION
46 AND EXEMPTION PROVISIONS AND THE PROVISIONS RELATING OR APPLICABLE TO
47 THE ADMINISTRATION, COLLECTION AND DISPOSITION OF THE TAXES IMPOSED BY
48 THAT SECTION WILL APPLY TO THE FEE IMPOSED BY THIS SECTION SO FAR AS
49 THOSE PROVISIONS CAN BE MADE APPLICABLE TO THE FEE IMPOSED BY THIS
50 SECTION, WITH SUCH MODIFICATIONS AS MAY BE NECESSARY IN ORDER TO ADAPT
51 THE LANGUAGE OF THOSE PROVISIONS TO THE FEE IMPOSED BY THIS SECTION.
52 THOSE PROVISIONS WILL APPLY WITH THE SAME FORCE AND EFFECT AS IF THE
53 LANGUAGE OF THOSE PROVISIONS HAD BEEN SET FORTH IN FULL IN THIS SECTION,
54 EXCEPT TO THE EXTENT THAT ANY OF THOSE PROVISIONS IS EITHER INCONSISTENT
55 WITH A PROVISION OF THIS SECTION OR IS NOT RELEVANT TO THE FEE IMPOSED
56 BY THIS SECTION. FOR PURPOSES OF THIS SECTION, ANY REFERENCE IN THIS

1 CHAPTER TO A TAX OR THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED FIVE OF
2 THIS ARTICLE WILL BE DEEMED TO ALSO REFER TO THE FEE IMPOSED BY THIS
3 SECTION UNLESS A DIFFERENT MEANING IS CLEARLY REQUIRED.

4 (2) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH ONE OF THIS SUBDIVI-
5 SION, THE EXEMPTIONS PROVIDED FOR IN SECTION ELEVEN HUNDRED SIXTEEN OF
6 THIS ARTICLE, OTHER THAN EXEMPTIONS IN PARAGRAPHS ONE, TWO AND THREE OF
7 SUBDIVISION (A) OF SUCH SECTION, SHALL NOT APPLY TO THE FEE IMPOSED BY
8 THIS SECTION.

9 (D) EVERY PERSON REQUIRED TO COLLECT THE FEE IMPOSED BY THIS SECTION
10 SHALL COLLECT THE FEE FROM THE CUSTOMER AT THE TIME THE SINGLE USE
11 CARRYOUT BAG IS PROVIDED. IF THE CUSTOMER IS GIVEN ANY SALES SLIP,
12 INVOICE, RECEIPT OR OTHER STATEMENT OR MEMORANDUM OF THE PRICE OR CHARGE
13 OF THE PURCHASE, IT SHALL STATE THE NUMBER OF SINGLE USE CARRYOUT BAGS
14 PROVIDED TO THE CUSTOMER AND THE AMOUNT OF THE FEE IMPOSED BY THIS
15 SECTION SHOWN SEPARATELY FROM THE PRICE OR CHARGE, AND SEPARATELY FROM
16 ANY OTHER FEE OR TAX IMPOSED BY THIS ARTICLE OR ANY OTHER LAW.

17 (E) EVERY PERSON REQUIRED TO COLLECT THE FEE IMPOSED BY THIS SECTION,
18 MAY RETAIN ONE CENT FROM EACH FIVE CENT FEE COLLECTED AS COMPENSATION
19 FOR THE ADMINISTRATION OF THIS PROGRAM, AND SHALL KEEP RECORDS TO
20 PROVIDE A FULL AND ACCURATE ACCOUNTING OF ALL SUCH FUNDS RETAINED PURSU-
21 ANT TO THIS SUBDIVISION IN THE FORM AND MANNER PRESCRIBED BY THE TAX
22 COMMISSION PURSUANT TO RULES AND REGULATIONS.

23 (F) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE FEES
24 IMPOSED BY THIS SECTION AND RECEIVED BY THE COMMISSIONER, AFTER DEDUCT-
25 ING THE AMOUNT WHICH THE COMMISSIONER SHALL DETERMINE TO BE NECESSARY
26 FOR REASONABLE COSTS TO ADMINISTER, COLLECT AND DISTRIBUTE SUCH FEES,
27 SHALL BE DEPOSITED BY THE COMMISSIONER INTO THE PENNIES FOR PARKS FUND
28 ESTABLISHED PURSUANT TO SECTION NINETY-TWO-T OF THE STATE FINANCE LAW
29 WITHIN THIRTY DAYS OF THE END OF EACH SALES TAX QUARTERLY PERIOD AS
30 DESCRIBED IN SUBDIVISION (B) OF SECTION ELEVEN HUNDRED THIRTY-SIX OF
31 THIS ARTICLE.

32 S 4. The state finance law is amended by adding a new section 92-t to
33 read as follows:

34 S 92-T. PENNIES FOR PARKS FUND. 1. THERE IS HEREBY ESTABLISHED IN THE
35 JOINT CUSTODY OF THE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND
36 FINANCE A SPECIAL FUND TO BE KNOWN AS THE "PENNIES FOR PARKS FUND".

37 2. (A) ALL MONIES RECEIVED BY THE COMPTROLLER OR THE COMMISSIONER OF
38 TAXATION AND FINANCE FOR THE PURPOSE OF THIS FUND SHALL BE DEPOSITED
39 HEREIN. NO MONIES MAY BE TRANSFERRED FROM THIS ACCOUNT TO ANY OTHER
40 ACCOUNT EXCEPT BY AUTHORITY OF THE COMMISSIONER OF THE OFFICE OF PARKS,
41 RECREATION AND HISTORIC PRESERVATION.

42 (B) SUCH FUND SHALL CONSIST OF THE REVENUE COLLECTED PURSUANT TO
43 SECTION ELEVEN HUNDRED FIVE-D OF THE TAX LAW AND ANY OTHER REVENUES
44 COLLECTED BY OR APPROPRIATED TO THE FUND PURSUANT TO ANY OTHER LAW.

45 3. MONIES OF THE FUND, FOLLOWING APPROPRIATION BY THE LEGISLATURE,
46 SHALL BE UTILIZED BY THE COMMISSIONER OF THE OFFICE OF PARKS, RECREATION
47 AND HISTORIC PRESERVATION FOR CAPITAL EXPENDITURES AT STATE PARKS AND
48 HISTORIC SITES PURSUANT TO THE PROVISIONS OF SECTION 13.32 OF THE PARKS,
49 RECREATION AND HISTORIC PRESERVATION LAW. THE COMMISSIONER OF THE OFFICE
50 OF PARKS, RECREATION AND HISTORIC PRESERVATION MAY, AT HIS OR HER
51 DISCRETION, MAKE AVAILABLE UP TO TEN PERCENT OF THE MONIES IN THE FUND
52 FOR OPERATIONAL EXPENDITURES ANNUALLY.

53 4. ALL PAYMENTS OF MONIES FROM THE FUND SHALL BE MADE ON THE AUDIT AND
54 WARRANT OF THE COMPTROLLER.

55 S 5. This act shall take effect on the first day of a quarterly sales
56 tax period, as set forth in subdivision (b) of section 1136 of the tax

1 law, next succeeding the ninetieth day after it shall have become law,
2 and shall apply in accordance with the applicable transitional
3 provisions of section 1106 of the tax law. Provided, however, that the
4 commissioner of parks, recreation and historic preservation, in conjunc-
5 tion with the commissioner of taxation and finance, shall take any
6 action necessary for the timely implementation of this act on or before
7 the date on which it shall have become a law.