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

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2011-2012 Regular Sessions

I N A S S E M B L Y

March 11, 2011

Introduced by M. of A. ENGLEBRIGHT -- 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 tax on single use carryout plastic 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 ASSEMBLY, DO ENACT AS FOLLOWS:

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

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

It is hereby declared to be the public policy and in the public interest of this state to establish a comprehensive program to provide a dedicated funding stream for our state parks and historic sites. Such a

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

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dedicated funding stream should be devoted as supplemental to the existing budget of the office of parks, recreation, and historic preservation. The funding stream should be created by imposing a one cent fee on each single use carryout plastic bag distributed by retailers in New York, to be collected and used to fund capital projects in state parks. In order to meet the aforementioned goals and uphold the cultural fabric and integrity of the system of state parks and historic sites, the "Pennies for Parks" program, tax on single use carryout plastic bags and pennies for parks fund are established and codified in sections 13.31 of the parks, recreation and historic preservation law, 1105-D of the tax law and 92-t of the state finance law.

S 2. The parks, recreation and historic preservation law is amended by adding a new section 13.31 to read as follows:

S 13.31 PENNIES FOR PARKS. THE COMMISSIONER IS AUTHORIZED TO UTILIZE THE MONIES IN THE PENNIES FOR PARKS FUND, ESTABLISHED PURSUANT TO SECTION NINETY-TWO-T OF THE STATE FINANCE LAW, FOR CAPITAL EXPENDITURES AT STATE PARKS AND HISTORIC SITES, PROVIDED HOWEVER, THAT THE COMMISSIONER MAY MAKE AVAILABLE UP TO TEN PERCENT OF THE MONIES IN THE FUND FOR OPERATIONAL EXPENDITURES ANNUALLY.

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

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

(B) FOR PURPOSES OF THIS SECTION:

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

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

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

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

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

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

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

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

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

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

(C) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE FEE IMPOSED BY THIS SECTION WILL BE IDENTICAL TO, AND ADMINISTERED AND COLLECTED IN A LIKE MANNER AS THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE. ALL THE PROVISIONS OF THIS ARTICLE, INCLUDING THE DEFINITION AND EXEMPTION PROVISIONS AND THE PROVISIONS RELATING OR APPLICABLE TO THE ADMINISTRATION, COLLECTION AND DISPOSITION OF THE TAXES IMPOSED BY THAT SECTION WILL APPLY TO THE FEE IMPOSED BY THIS SECTION SO FAR AS THOSE PROVISIONS CAN BE MADE APPLICABLE TO THE FEE IMPOSED BY THIS SECTION, WITH SUCH MODIFICATIONS AS MAY BE NECESSARY IN ORDER TO ADAPT THE LANGUAGE OF THOSE PROVISIONS TO THE FEE IMPOSED BY THIS SECTION. THOSE PROVISIONS WILL APPLY WITH THE SAME FORCE AND EFFECT AS

IF THE LANGUAGE OF THOSE PROVISIONS HAD BEEN SET FORTH IN FULL IN THIS SECTION, EXCEPT TO THE EXTENT THAT ANY OF THOSE PROVISIONS IS EITHER INCONSISTENT WITH A PROVISION OF THIS SECTION OR IS NOT RELEVANT TO THE FEE IMPOSED BY THIS SECTION. FOR PURPOSES OF THIS SECTION, ANY REFERENCE IN THIS CHAPTER TO A TAX OR THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE WILL BE DEEMED TO ALSO REFER TO THE FEE IMPOSED BY THIS SECTION UNLESS A DIFFERENT MEANING IS CLEARLY REQUIRED.

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

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

(E) IN ADDITION TO ANY OTHER REQUIREMENTS OF THIS CHAPTER OR ANY OTHER LAW, A VENDOR THAT SELLS SINGLE USE CARRYOUT PLASTIC BAGS TO A PERSON REQUIRED TO COLLECT TAX MUST COLLECT AND RETAIN FOR A PERIOD OF THREE YEARS INFORMATION RELATED TO SALES OF SINGLE USE CARRYOUT PLASTIC BAGS, INCLUDING THE NAMES AND ADDRESSES OF THE PERSONS REQUIRED TO COLLECT TAX TO WHOM THE SINGLE USE CARRYOUT PLASTIC BAGS ARE SOLD, AND THE NUMBER OF SINGLE USE CARRYOUT PLASTIC BAGS SOLD TO THOSE PERSONS. THE INFORMATION SHALL BE PROVIDED TO THE COMMISSIONER UPON REQUEST AND ACCORDING TO THE PROCEDURES THAT THE COMMISSIONER MAY PROVIDE.

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

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

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

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

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

3. MONIES OF THE FUND, FOLLOWING APPROPRIATION BY THE LEGISLATURE, SHALL BE UTILIZED BY THE COMMISSIONER OF THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION FOR CAPITAL EXPENDITURES AT STATE PARKS AND HISTORIC SITES PURSUANT TO THE PROVISIONS OF SECTION 13.31 OF THE PARKS, RECREATION AND HISTORIC PRESERVATION LAW. THE COMMISSIONER OF THE OFFICE

OF PARKS, RECREATION AND HISTORIC PRESERVATION MAY, AT HIS OR HER DISCRETION, MAKE AVAILABLE UP TO TEN PERCENT OF THE MONIES IN THE FUND FOR OPERATIONAL EXPENDITURES ANNUALLY.

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

S 5. This act shall take effect on the first day of a quarterly sales tax period, as set forth in subdivision (b) of section 1136 of the tax law, next succeeding the ninetieth day after it shall have become law, and shall apply in accordance with the applicable transitional provisions of section 1106 of the tax law. Provided, however, that the commissioner of parks, recreation and historic preservation, in conjunction with the commissioner of taxation and finance, shall take any action necessary for the timely implementation of this act on or before the date on which it shall have become a law.