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

5885--A

2011-2012 Regular Sessions

I N S E N A T E

September 9, 2011

Introduced by Sens. PERKINS, DILAN, OPPENHEIMER, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, the parks, recreation and historic preservation law, and the state finance law, in relation to enacting the "nickels for nature" act

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

Section 1. This act shall be known and may be cited as the "Nickels for Nature act".

S 2. Legislative findings and intent. The legislature finds and declares that state parks and historic sites provide an indispensable asset to our greater community, in terms of both the economical and educational benefits. Without appropriate maintenance the aforementioned parks and historical sites may fall into a state of disrepair rendering them inaccessible. Accordingly, state parks and historic sites should be provided with the necessary capital funding to allow for their continued and uninterrupted use.

The legislature also finds and declares that single use bags, both paper and plastic, distributed by New York retailers has a direct negative impact on the environment, littering our communities, filling our landfills, harming wildlife, and using an extreme amount of fossil fuels. Recognizing that urgency of this matter the legislature recommends that an economic incentive be put in place to encourage the use of reusable 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.

LBD13368-04-2

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 five cent fee on single use bags as well as a rebate program where funds will be collected and used to fund capital projects in state parks as well as necessary and appropriate maintenance. In order to preserve and improve the system of state parks and historic sites, the "Nickels for Nature" surcharge on single use carryout bags and the "Nickels for Nature" fund are hereby established.

S 3. Title 27 of article 27 of the environmental conservation law, as added by chapter 641 of the laws of 2008, is amended by adding a new section 27-2710 to read as follows:

S 27-2710. SURCHARGE ON SINGLE USE CARRYOUT BAGS.

1. NOTWITHSTANDING ANY OTHER TAX, FEE OR SURCHARGE IMPOSED BY THIS ARTICLE OR ANY OTHER LAW, THERE IS HEREBY IMPOSED AND THERE SHALL BE PAID A FIVE CENT SURCHARGE ON EACH SINGLE USE CARRYOUT BAG PROVIDED TO A CUSTOMER BY A RETAILER REQUIRED TO COLLECT TAX IN A STORE FRONT LOCATION. TWO CENTS OF EACH FIVE CENT SURCHARGE IMPOSED SHALL REMAIN, UNTAXED, WITH THE RETAILER AND THE STATE SHALL COLLECT THREE CENTS TO BE PLACED INTO THE NICKELS FOR NATURE FUND ESTABLISHED PURSUANT TO SECTION NINETY-NINE-U OF THE STATE FINANCE LAW; PROVIDED, HOWEVER, THAT THE RETAILER SHALL PROVIDE A REBATE OF FIVE CENTS TO THE CUSTOMER WHERE THE CUSTOMER PROVIDES HIS OR HER OWN BAGS TO CONTAIN HIS OR HER PURCHASES. THE REBATE SHALL BE LIMITED TO ONE FIVE CENT REBATE PER TRANSACTION, REGARDLESS OF THE NUMBER OF BAGS THE CUSTOMER PROVIDES.

2. FOR PURPOSES OF THIS SECTION:

(A) "SINGLE USE CARRYOUT BAG" SHALL MEAN A PAPER OR PLASTIC BAG PROVIDED TO A CUSTOMER AT THE POINT OF SALE BY A RETAILER REQUIRED TO COLLECT TAX IN A STORE FRONT LOCATION AND INTENDED FOR A SINGLE USE FOR CARRYING TANGIBLE PERSONAL PROPERTY PURCHASED. SINGLE USE CARRYOUT BAG SHALL NOT INCLUDE BAGS USED BY CUSTOMERS INSIDE STORES AS PRODUCT OR PRODUCE BAGS INCLUDING:

(I) BAGS THAT COME IN CONTACT DIRECTLY WITH THE PRODUCT;

(II) BAGS USED TO CONTAIN FOODS, SUCH AS MEAT, POULTRY, FISH, OR OTHER PRODUCTS, PRIMARILY TO PREVENT LEAKAGE OR CONTAMINATION OF OTHER PRODUCTS;

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

(IV) BAGS PROVIDED BY PHARMACISTS TO CONTAIN PRESCRIPTION DRUGS; OR

(V) NEWSPAPER BAGS, DOOR-HANGER BAGS, DRY CLEANING BAGS, OR BAGS SOLD IN PACKAGES CONTAINING MULTIPLE BAGS, SUCH AS THOSE INTENDED FOR USE AS GARBAGE, PET WASTE, OR YARD WASTE BAGS.

(B) "REUSABLE BAG" SHALL MEAN A BAG WITH HANDLES THAT IS SPECIFICALLY DESIGNED AND MANUFACTURED FOR MULTIPLE REUSE AND MEETS ALL OF THE FOLLOWING REQUIREMENTS:

(I) HAS A MINIMUM LIFETIME OF ONE HUNDRED TWENTY-FIVE USES, WHICH FOR THE PURPOSES OF THIS SECTION, MEANS THE CAPABILITY OF CARRYING A MINIMUM OF TWENTY-TWO POUNDS ONE HUNDRED TWENTY-FIVE TIMES OVER A DISTANCE OF AT LEAST ONE HUNDRED SEVENTY-FIVE FEET;

(II) IS MACHINE WASHABLE OR IS MADE FROM A MATERIAL THAT CAN BE CLEANED OR DISINFECTED;

(III) DOES NOT CONTAIN LEAD, CADMIUM, OR ANY OTHER HEAVY METAL IN TOXIC AMOUNTS, AS DEFINED BY APPLICABLE STATE AND FEDERAL STANDARDS AND REGULATIONS FOR PACKAGING OR REUSABLE BAGS;

(IV) HAS PRINTED ON THE BAG, OR ON A TAG THAT PERMANENTLY AFFIXED TO THE BAG, THE NAME OF THE MANUFACTURER, THE LOCATION WHERE THE BAG WAS

MANUFACTURED, A STATEMENT THAT THE BAG DOES NOT CONTAIN LEAD, CADMIUM, OR ANY OTHER HEAVY METAL IN TOXIC AMOUNTS; AND

(V) IS MADE OF PLASTIC THAT IS A MINIMUM OF AT LEAST 2.25 MILS THICK.

3. RETAILERS IN STORE FRONT LOCATIONS ARE HEREBY REQUIRED TO COLLECT A SURCHARGE OF FIVE CENTS FOR EACH SINGLE USE CARRYOUT BAG PROVIDED TO A CONSUMER BY THE RETAILER; PROVIDED, HOWEVER, THAT IF THE CONSUMER PROVIDES ANY BAG, WHETHER REUSABLE OR NOT THEY ARE ENTITLED TO ONE REBATE OF FIVE CENTS PER TRANSACTION, REGARDLESS OF THE NUMBER OF BAGS THE CONSUMER PROVIDES. THE RETAILER SHALL ALSO BE REQUIRED TO PROVIDE REUSABLE BAGS, AS DEFINED BY THIS SECTION, FOR PURCHASE AT A REASONABLE PRICE AND SHALL CLEARLY DISPLAY THE BAG SURCHARGE AND REBATE POLICY. THE SURCHARGES RETAINED BY THE RETAILER PURSUANT TO THIS SECTION SHALL NOT BE CLASSIFIED AS REVENUE AND SHALL BE TAX EXEMPT.

4. (A) EVERY RETAILER REQUIRED TO COLLECT THE FEE IMPOSED BY THIS SECTION SHALL COLLECT THE FEE FROM THE CUSTOMER AT THE TIME THE SINGLE USE CARRYOUT BAG IS PROVIDED. IF THE CUSTOMER IS GIVEN A SALES SLIP, INVOICE, RECEIPT, OR OTHER STATEMENT OR MEMORANDUM OF THE PRICE OR CHARGE OF THE PURCHASE, SUCH DOCUMENT SHALL STATE THE NUMBER OF SINGLE USE CARRYOUT BAGS PROVIDED TO THE CUSTOMER AND THE AMOUNT OF THE FEE IMPOSED BY THIS SECTION, ALONG WITH ANY REBATE FOR PROVIDING A BAG, AS SHOWN SEPARATELY FROM THE PURCHASE PRICE OR CHARGE AND SEPARATELY FROM ANY OTHER FEE OR TAX IMPOSED BY ANY OTHER LAW.

(B) EVERY RETAILER REQUIRED TO COLLECT THE FEE IMPOSED BY THIS SECTION SHALL COLLECT AND RETAIN FOR A PERIOD OF THREE YEARS INFORMATION RELATED TO THE SURCHARGES AND REBATES OF SINGLE USE CARRYOUT BAGS.

5. FAILURE TO COMPLY WITH THIS SECTION:

(A) FOR THE FIRST VIOLATION, A WRITTEN WARNING SHALL BE ISSUED TO THE RETAILER THAT A VIOLATION HAS OCCURRED. NO FINE SHALL BE ISSUED FOR THE FIRST VIOLATION.

(B) FOR ANY SUBSEQUENT VIOLATION, WHERE THE RETAILER CONTINUES TO VIOLATE THE REQUIREMENTS OF THIS ACT SUBSEQUENT TO RECEIVING A WRITTEN WARNING, THE COMPTROLLER SHALL ISSUE A FINE TO THE RETAILER IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

(I) UP TO ONE HUNDRED DOLLARS FOR THE FIRST VIOLATION IN A CALENDAR YEAR;

(II) UP TO TWO HUNDRED DOLLARS FOR THE SECOND VIOLATION IN THE SAME CALENDAR YEAR; AND

(III) UP TO FIVE HUNDRED DOLLARS FOR EACH ADDITIONAL VIOLATION IN THE SAME CALENDAR YEAR.

(C) NO MORE THAN ONE FINE SHALL BE ISSUED TO A RETAIL ESTABLISHMENT WITHIN A SEVEN-DAY PERIOD.

(D) PAYMENT OF FINES SHALL BE RECEIVED BY THE COMPTROLLER NO LATER THAN FIFTEEN CALENDAR DAYS FROM RECEIVING THE PENALTY. IF PAYMENT OF ANY FINES DUE UNDER THIS SECTION IS NOT RECEIVED BY OR BEFORE THE DUE DATE, A PENALTY SHALL BE ADDED. INTEREST OF ONE-HALF OF ONE PERCENT WILL ACCRUE EVERY MONTH, COMPOUNDED MONTHLY, AFTER THE DUE DATE HAS PASSED.

(E) REVENUES COLLECTED FOR VIOLATION OF THIS ACT SHALL ONLY BE USED FOR ENFORCEMENT COSTS INCLUDING HIRING INSPECTORS AND OTHER STAFF, AND ADMINISTRATIVE COSTS ASSOCIATED WITH ENFORCEMENT OF THIS ACT.

S 4. The parks, recreation and historic preservation law is amended by adding a new section 13.33 to read as follows:

S 13.33 NICKELS FOR NATURE FUNDS. THE COMMISSIONER IS AUTHORIZED TO UTILIZE FUNDS DEPOSITED INTO THE NICKELS FOR NATURE FUND, AS ESTABLISHED PURSUANT TO SECTION NINETY-NINE-U OF THE STATE FINANCE LAW, FOR CAPITAL EXPENDITURES AT STATE PARKS AND HISTORIC SITES.

S 5. The state finance law is amended by adding a new section 99-u to read as follows:

S 99-U. NICKELS FOR NATURE FUND. 1. THERE IS HEREBY ESTABLISHED IN THE CUSTODY OF THE COMMISSIONER OF TAXATION AND FINANCE A SPECIAL ACCOUNT TO BE KNOWN AS THE "NICKELS FOR NATURE FUND".

2. ALL MONIES RECEIVED BY THE COMMISSIONER OF TAXATION AND FINANCE PURSUANT TO SECTION 27-2710 OF THE ENVIRONMENTAL CONSERVATION LAW AND ANY OTHER REVENUES COLLECTED FOR OR APPROPRIATED TO THE FUND PURSUANT TO ANY OTHER LAW SHALL BE DEPOSITED HEREIN TO THE EXCLUSIVE CREDIT OF SUCH FUND ACCOUNT. SAID MONEYS SHALL BE KEPT SEPARATE AND SHALL NOT BE COMMINGLED WITH ANY OTHER MONEYS IN THE CUSTODY OF THE COMMISSIONER OF TAXATION AND FINANCE. NO MONIES MAY BE TRANSFERRED FROM THIS ACCOUNT TO ANY OTHER ACCOUNT EXCEPT BY THE AUTHORITY OF THE COMMISSIONER OF THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION.

3. THE MONEYS IN SAID ACCOUNT SHALL BE RETAINED BY THE FUND AND SHALL BE RELEASED BY THE COMMISSIONER OF TAXATION AND FINANCE ONLY AS AUTHORIZED BY THE COMMISSIONER OF PARKS, RECREATION AND HISTORIC PRESERVATION, OR HIS OR HER DESIGNEE AND ONLY FOR THE PURPOSES SET FORTH IN SECTION 13.33 OF THE PARKS, RECREATION AND HISTORIC PRESERVATION LAW.

S 6. This act shall take effect immediately.