

1670

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. GRISANTI, MAZIARZ -- 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, 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.

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

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1 It is hereby declared to be the public policy and in the public inter-
2 est of this state to establish a comprehensive program to provide a
3 dedicated funding stream for our state parks and historic sites. Such a
4 dedicated funding stream should be devoted as supplemental to the exist-
5 ing budget of the department of environmental conservation. The funding
6 stream should be created by imposing a five cent fee on each single use
7 carryout bag distributed by retailers in New York, to be collected and
8 used to fund capital projects in state parks. In order to meet the
9 aforementioned goals and uphold the cultural fabric and integrity of the
10 system of state parks and historic sites, the "Pennies for Parks"
11 program, a fee on single use carryout bags and pennies for parks fund
12 are established and codified in sections 3-0319 of the environmental
13 conservation law, 1105-D of the tax law and 92-t of the state finance
14 law.

15 S 2. The environmental conservation law is amended by adding a new
16 section 3-0319 to read as follows:

17 S 3-0319. PENNIES FOR PARKS.

18 THE COMMISSIONER IS AUTHORIZED TO UTILIZE THE MONIES IN THE PENNIES
19 FOR PARKS FUND, ESTABLISHED PURSUANT TO SECTION NINETY-TWO-T OF THE
20 STATE FINANCE LAW, FOR CAPITAL EXPENDITURES AT STATE PARKS AND HISTORIC
21 SITES, PROVIDED HOWEVER, THAT THE COMMISSIONER MAY MAKE AVAILABLE UP TO
22 TEN PERCENT OF THE MONIES IN THE FUND FOR OPERATIONAL EXPENDITURES ANNU-
23 ALLY.

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

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

31 (B) FOR PURPOSES OF THIS SECTION:

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

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

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

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

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

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

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

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

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

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

49 (C) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE FEE IMPOSED
50 BY THIS SECTION WILL BE SIMILAR TO, AND ADMINISTERED AND COLLECTED IN A
51 LIKE MANNER AS THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED FIVE OF THIS
52 ARTICLE. ALL THE PROVISIONS OF THIS ARTICLE, INCLUDING THE DEFINITION
53 AND EXEMPTION PROVISIONS AND THE PROVISIONS RELATING OR APPLICABLE TO
54 THE ADMINISTRATION, COLLECTION AND DISPOSITION OF THE TAXES IMPOSED BY
55 THAT SECTION WILL APPLY TO THE FEE IMPOSED BY THIS SECTION SO FAR AS
56 THOSE PROVISIONS CAN BE MADE APPLICABLE TO THE FEE IMPOSED BY THIS

1 SECTION, WITH SUCH MODIFICATIONS AS MAY BE NECESSARY IN ORDER TO ADAPT
2 THE LANGUAGE OF THOSE PROVISIONS TO THE FEE IMPOSED BY THIS SECTION.
3 THOSE PROVISIONS WILL APPLY WITH THE SAME FORCE AND EFFECT AS IF THE
4 LANGUAGE OF THOSE PROVISIONS HAD BEEN SET FORTH IN FULL IN THIS SECTION,
5 EXCEPT TO THE EXTENT THAT ANY OF THOSE PROVISIONS IS EITHER INCONSISTENT
6 WITH A PROVISION OF THIS SECTION OR IS NOT RELEVANT TO THE FEE IMPOSED
7 BY THIS SECTION. FOR PURPOSES OF THIS SECTION, ANY REFERENCE IN THIS
8 CHAPTER TO A TAX OR THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED FIVE OF
9 THIS ARTICLE WILL BE DEEMED TO ALSO REFER TO THE FEE IMPOSED BY THIS
10 SECTION UNLESS A DIFFERENT MEANING IS CLEARLY REQUIRED.

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

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

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

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

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

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

44 2. (A) ALL MONIES RECEIVED BY THE COMPTROLLER OR THE COMMISSIONER OF
45 TAXATION AND FINANCE FOR THE PURPOSE OF THIS FUND SHALL BE DEPOSITED
46 HEREIN. NO MONIES MAY BE TRANSFERRED FROM THIS ACCOUNT TO ANY OTHER
47 ACCOUNT EXCEPT BY AUTHORITY OF THE COMMISSIONER OF THE DEPARTMENT OF
48 ENVIRONMENTAL CONSERVATION.

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

52 3. MONIES OF THE FUND, FOLLOWING APPROPRIATION BY THE LEGISLATURE,
53 SHALL BE UTILIZED BY THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL
54 CONSERVATION FOR CAPITAL EXPENDITURES AT STATE PARKS AND HISTORIC SITES
55 PURSUANT TO THE PROVISIONS OF SECTION 3-0319 OF THE ENVIRONMENTAL
56 CONSERVATION LAW. THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL

1 CONSERVATION MAY, AT HIS OR HER DISCRETION, MAKE AVAILABLE UP TO TEN
2 PERCENT OF THE MONIES IN THE FUND FOR OPERATIONAL EXPENDITURES ANNUALLY.

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

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