STATE OF NEW YORK

1255

2019-2020 Regular Sessions

IN SENATE

January 11, 2019

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Cultural Affairs, Tourism, Parks and Recreation

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, historic sites and city parks; to amend the tax law, in relation to imposing a fee on single use plastic 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 Assembly, do enact as follows:

Section 1. Legislative findings and intent. The legislature finds and declares that state parks, historic sites and city parks 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, historic sites as well as city parks 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, historic sites and city parks 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 plastic carryout 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 trees and 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 plastic carryout bags.

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

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

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

§ 13.32 Pennies for parks. The commissioner is authorized to utilize the monies allocated to the state parks and historic sites capital account for the purpose of supplementing the existing budget of the office to provide additional funding for capital projects.

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

§ 1105-D. Fee on single use plastic carryout 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 five cent fee on each single use plastic carryout bag provided to a customer by a person required to collect tax.

(b) For purposes of this section:

(1) "Single use plastic carryout bag" means a 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 plastic carryout bag" does not include:

(A) Paper carryout bags including those paper bags containing any percentage of post-consumer recycled content.

(B) 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;

(C) Bags provided by pharmacists to contain prescription drugs;

(D) 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

(E) 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 similar to, and administered and collected in a like manner as the taxes imposed by section eleven hundred five of this part. 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 part 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 plastic carryout 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 plastic carryout 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) Every person required to collect the fee imposed by this section, may retain one cent from each five cent fee collected as compensation for the administration of this program, and shall keep records to provide a full and accurate accounting of all such funds retained pursuant to this subdivision in the form and manner prescribed by the tax commission pursuant to rules and regulations.

(f) Notwithstanding any provision of law to the contrary, the fees imposed by this section and received by the comptroller, after deducting the amount which the comptroller shall determine to be necessary for reasonable costs to administer, collect and distribute such fees, shall be deposited by the comptroller into the pennies for parks fund established pursuant to section ninety-two-ii 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.

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

§ 92-ii. Pennies for parks fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special fund to be known as the "pennies for parks fund".

2. (a) The pennies for parks fund shall consist of two accounts: (a) the state parks and historic sites capital account; and (b) the city parks capital account. Moneys in each account shall be kept separate and not commingled with any other moneys in the custody of the state comptroller.

(b) The comptroller may retain no more than ten percent of the moneys in the pennies for parks fund available for operational expenditures relating to the administration of the program. The state comptroller is hereby authorized and directed to transfer monthly no later than the last day of each month, any moneys, if any, in excess of the aggregate amounts required to be set aside in order to meet the requirements established in this subdivision for administrative purposes, in the following manner: forty-five percent of the moneys in the pennies for

parks fund shall be transferred to the state parks and historic sites capital account; and forty-five percent of the moneys in the pennies for parks fund shall be transferred to the city parks capital account.

(c) Moneys in the state parks and historic sites capital account shall, following appropriation by the legislature, be transferred to the existing budget of the office of parks, recreation and historic preservation to provide supplemental funding for capital projects.

(i) Not later than sixty days after the end of the state fiscal year, the office of parks, recreation and historic preservation shall provide to the state comptroller, the chairpersons of the senate finance and assembly ways and means committees and the division of the budget, a detailed description of each capital project let during the completed prior year that is funded fully or partially from the state parks and historic sites capital account. Such description shall include a project identification number, a description of the project in less than thirty words, the work type, the estimated total cost of the project and the probable life of each such project.

(ii) Not later than March first of each state fiscal year, the office of parks, recreation and historic preservation shall provide to the state comptroller, the chairpersons of the senate finance and assembly ways and means committees and the division of the budget, a detailed description of each capital project anticipated or available to be let in the next fiscal year that is planned to be funded fully or partially from the state parks and historic sites capital account. Such description shall include a project identification number, a description of the project in less than thirty words, the work type, the estimated total cost of the project and the probable life of each such project.

(d) Moneys in the city park capital account shall, following appropriation by the legislature, be transferred to the specific city parks designated to receive such funding as outlined by the following subparagraphs.

(i) There shall be a comprehensive financial report and plan for the city park capital account. The governor shall annually submit such plan to the legislature and the state comptroller in accordance with the release of the executive budget. The report will detail the city park and the appropriation to be released for capital project purposes.

(ii) Not later than sixty days after the end of the state fiscal year, the division of the budget shall provide to the state comptroller and the chairpersons of the senate finance and assembly ways and means committees, a detailed description of each city capital project let during the completed prior year that is funded fully or partially from the city parks capital account. Such description shall include a project identification number, a description of the project in less than thirty words, the work type, the estimated total cost of the project and the probable life of each such project.

(e) All payments of moneys from the fund shall be made on the audit and warrant of the state comptroller.

(f) The state comptroller, in conjunction with the department of taxation and finance and the office of parks, recreation and historic preservation shall publish on or before December thirty-first, two thousand twenty, and annually thereafter, a report for the legislature. Such report shall be made available to the public by being posted on the state comptroller's official website. Such report shall consider the total fees collected and the expenses of the program on an annual basis. The report will also include a study into the percentage reduction in single use plastic carryout bags by residents of New York state follow-

ing the implementation of the bag fee to ensure progress towards reaching a decrease in the use of such bags. Copies of the report will be submitted to the speaker of the assembly, the majority leader of the senate, the division of budget and the state comptroller.

§ 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 a 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.