

# STATE OF NEW YORK

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1255

2019-2020 Regular Sessions

## IN SENATE

January 11, 2019

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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:

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

13 The legislature also finds and declares that the single use plastic  
14 carryout bags distributed by New York retailers have a negative impact  
15 on the environment, littering our communities, parks and beaches; fill-  
16 ing our landfills; harming wildlife; and using millions of trees and  
17 gallons of oil to produce. An additional economic incentive should be  
18 put in place to encourage the use of reusable bags and reduce the stream  
19 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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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, historic sites and city  
4 parks. Such a dedicated funding stream should be devoted as supplemental  
5 to the existing budget of the office of parks, recreation and historic  
6 preservation. The funding stream should be created by imposing a five  
7 cent fee on each single use plastic carryout bag distributed by retail-  
8 ers in New York, to be collected and used to fund capital projects in  
9 state parks, historic sites and city parks. In order to meet the afore-  
10 mentioned goals and uphold the cultural fabric and integrity of the  
11 system of state parks, and historic sites and city parks, the "Pennies  
12 for Parks" program, a fee on single use plastic carryout bags and  
13 pennies for parks fund are established and codified in sections 13.32 of  
14 the parks, recreation and historic preservation law, 1105-D of the tax  
15 law and 92-ii of the state finance law.

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

18 § 13.32 Pennies for parks. The commissioner is authorized to utilize  
19 the monies allocated to the state parks and historic sites capital  
20 account for the purpose of supplementing the existing budget of the  
21 office to provide additional funding for capital projects.

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

24 § 1105-D. Fee on single use plastic carryout bags. (a) In addition to  
25 any other tax or fee imposed by this article or any other law, there is  
26 hereby imposed and there shall be paid a five cent fee on each single  
27 use plastic carryout bag provided to a customer by a person required to  
28 collect tax.

29 (b) For purposes of this section:

30 (1) "Single use plastic carryout bag" means a bag provided to a  
31 customer at the point of sale by a person required to collect tax and  
32 intended for a single use for carrying tangible personal property  
33 purchased.

34 (2) "Single use plastic carryout bag" does not include:

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

37 (B) Bags used by customers inside stores to contain or wrap:

38 (i) bulk items such as fruit, vegetables, nuts, grains, candy or small  
39 hardware items;

40 (ii) frozen foods, meat, or fish, whether pre-packaged or not;

41 (iii) flowers, potted plants or other items where dampness may be a  
42 problem; or

43 (iv) unwrapped prepared foods, food sliced to order or bakery goods;

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

45 (D) Newspaper bags, door-hanger bags, laundry dry-cleaning bags, or  
46 bags sold in packages containing multiple bags intended for use as  
47 garbage, pet waste or yard waste bags; or

48 (E) Reusable bags as defined in section 27-2701 of the environmental  
49 conservation law.

50 (c) (1) Except as otherwise provided in this section, the fee imposed  
51 by this section will be similar to, and administered and collected in a  
52 like manner as the taxes imposed by section eleven hundred five of this  
53 part. All the provisions of this article, including the definition and  
54 exemption provisions and the provisions relating or applicable to the  
55 administration, collection and disposition of the taxes imposed by that  
56 section will apply to the fee imposed by this section so far as those

1 provisions can be made applicable to the fee imposed by this section,  
2 with such modifications as may be necessary in order to adapt the  
3 language of those provisions to the fee imposed by this section. Those  
4 provisions will apply with the same force and effect as if the language  
5 of those provisions had been set forth in full in this section, except  
6 to the extent that any of those provisions is either inconsistent with a  
7 provision of this section or is not relevant to the fee imposed by this  
8 section. For purposes of this section, any reference in this chapter to  
9 a tax or the taxes imposed by section eleven hundred five of this part  
10 will be deemed to also refer to the fee imposed by this section unless a  
11 different meaning is clearly required.

12 (2) Notwithstanding the provisions of paragraph one of this subdivi-  
13 sion, the exemptions provided for in section eleven hundred sixteen of  
14 this article, other than exemptions in paragraphs one, two and three of  
15 subdivision (a) of such section, shall not apply to the fee imposed by  
16 this section.

17 (d) Every person required to collect the fee imposed by this section  
18 shall collect the fee from the customer at the time the single use plas-  
19 tic carryout bag is provided. If the customer is given any sales slip,  
20 invoice, receipt or other statement or memorandum of the price or charge  
21 of the purchase, it shall state the number of single use plastic carry-  
22 out bags provided to the customer and the amount of the fee imposed by  
23 this section shown separately from the price or charge, and separately  
24 from any other fee or tax imposed by this article or any other law.

25 (e) Every person required to collect the fee imposed by this section,  
26 may retain one cent from each five cent fee collected as compensation  
27 for the administration of this program, and shall keep records to  
28 provide a full and accurate accounting of all such funds retained pursu-  
29 ant to this subdivision in the form and manner prescribed by the tax  
30 commission pursuant to rules and regulations.

31 (f) Notwithstanding any provision of law to the contrary, the fees  
32 imposed by this section and received by the comptroller, after deducting  
33 the amount which the comptroller shall determine to be necessary for  
34 reasonable costs to administer, collect and distribute such fees, shall  
35 be deposited by the comptroller into the pennies for parks fund estab-  
36 lished pursuant to section ninety-two-ii of the state finance law within  
37 thirty days of the end of each sales tax quarterly period as described  
38 in subdivision (b) of section eleven hundred thirty-six of this article.

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

41 § 92-ii. Pennies for parks fund. 1. There is hereby established in the  
42 joint custody of the state comptroller and the commissioner of taxation  
43 and finance a special fund to be known as the "pennies for parks fund".

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

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

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

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

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

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

28 (d) Moneys in the city park capital account shall, following appropri-  
29 ation by the legislature, be transferred to the specific city parks  
30 designated to receive such funding as outlined by the following subpara-  
31 graphs.

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

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

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

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

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

5 § 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 a 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 parks, recreation and historic preservation, in conjunc-  
11 tion with the commissioner of taxation and finance, shall take any  
12 action necessary for the timely implementation of this act on or before  
13 the date on which it shall have become a law.