STATE OF NEW YORK

185

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. CAHILL -- Multi-Sponsored by -- M. of A. COOK, CYMBROWITZ, DiPIETRO, GLICK, J. RIVERA, THIELE -- 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, historic sites and city parks; to amend the tax law, in relation to imposing a fee on single use plastic carryout bags; to amend the state finance law, in relation to establishing the pennies for parks fund; to amend the environmental conservation law, in relation to the prohibition of single use plastic bags; to repeal certain provisions of the environmental conservation law relating thereto; and providing for the repeal of certain provisions upon expiration thereof

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

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

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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.

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-kk 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 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 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-kk 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-kk to read as follows:

§ 92-kk. 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-two, 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 following 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. The title heading of title 27 of article 27 of the environmental conservation law, as added by chapter 641 of the laws of 2008, is amended to read as follows:

SINGLE USE PLASTIC BAG [~~REDUCTION, REUSE AND RECYCLING~~] PROHIBITION

§ 6. Subdivision 4 of section 27-2701 of the environmental conservation law, as added by chapter 641 of the laws of 2008, is REPEALED and a new subdivision 4 is added to read as follows:

4. (a) "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.

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

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

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

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

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

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

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

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

(iv) 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

(v) Reusable bags as defined in subdivision five of this section.

§ 7. Section 27-2703 of the environmental conservation law, as added by chapter 641 of the laws of 2008 and subdivision 1 as amended by chapter 481 of the laws of 2014, is amended to read as follows:

§ 27-2703. Store operator responsibilities.

1. The operator of a store shall establish an at-store recycling program pursuant to the provisions of this title that provides an opportunity for a customer of the store to return to the store clean single use plastic carryout bags and film plastic.

2. A retail establishment that does not meet the definition of a store and that provides single use plastic carryout bags to customers at the point of sale may also adopt an at-store recycling program.

§ 8. 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 27-2706 to read as follows:

§ 27-2706. Prohibition of single use plastic bags.

No store located in the state may distribute single use plastic carryout bags as defined in subdivision four of section 27-2701 of this title.

§ 9. Section 27-2707 of the environmental conservation law, as added by chapter 641 of the laws of 2008 and subdivision 1 as amended by chapter 481 of the laws of 2014, is amended to read as follows:

§ 27-2707. Manufacturer responsibilities.

1. When the manufacturer accepts **single use** plastic carryout bags and film plastic for return, it or its agent shall maintain, for a minimum of three years, records describing the collection, transport and recycling of **such single use** plastic carryout bags and film plastic collected by weight, provided that the manufacturer or its agents may weigh such bags, film plastic and any other plastic resins at a regional collection center. Such records shall be made available to the department upon request, to demonstrate compliance with this title.

2. Manufacturers of compostable plastic bags sold to stores in the state that are subject to the provisions of this title shall have printed on the bag, in a manner visible to the consumer, the words "COMPOSTABLE BAG -- DO NOT PLACE IN RECYCLING BIN". Provided however, such bags may be sold or distributed for one year from the effective date of this section to use the store's existing stock of compostable bags.

§ 10. Section 27-2709 of the environmental conservation law, as amended by chapter 481 of the laws of 2014, is amended to read as follows:

§ 27-2709. Department responsibility.

1. The department shall develop educational materials to [~~encourage the reduction, reuse and recycling~~] **inform the public of the prohibition** of **single use** plastic carryout bags and film plastic and shall make those materials available to stores required to comply with this article.

2. The department shall provide information regarding the availability of recycling facilities and companies that recycle **single use** plastic bags and film plastic, including the addresses and phone numbers of such facilities and companies to stores required to comply with this article.

§ 11. Section 27-2711 of the environmental conservation law is REPEALED.

§ 12. Section 27-2713 of the environmental conservation law is REPEALED.

§ 13. 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 that sections two, three and four of this act shall expire and be deemed repealed 5 years after such effective date when upon such date the provisions of sections five, six, seven, eight, nine, ten, eleven and twelve of this act shall take effect. Provided, further, that the commissioner of parks, recreation and historic preservation, in conjunction with the commissioner of taxation and finance, shall take any actions necessary for the timely implementation of this act on or before the date on which it shall have become a law.