

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Colleen M. Garry

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to update the bottle deposit system and lower the cost of recycling beverage containers in the Commonwealth.

PETITION OF:

NAME:

Colleen M. Garry

DISTRICT/ADDRESS:

36th Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO UPDATE THE BOTTLE DEPOSIT SYSTEM AND LOWER THE COST OF RECYCLING BEVERAGE CONTAINERS IN THE COMMONWEALTH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. PURPOSE: An economically sound and environmentally safe solid waste management
2 strategy includes components of conservation, source reduction, reuse, recycling and litter control. In
3 order to stimulate the construction of an appropriate infrastructure in an integrated system of solid
4 waste management, business and government must engage in cooperative participation to accomplish
5 these goals. The following statutory changes are necessary in order to stimulate the creation of an
6 appropriate solid waste management infrastructure: expanded access and participation to
7 comprehensive recycling programs, development of comprehensive litter abatement programs, analysis
8 and expansion of markets for recyclable materials, and facilitation of expanded residential and
9 commercial recycling throughout the Commonwealth.

10 SECTION 2. Chapter 21A of the General Laws, as appearing in the 2006 Official Edition, is hereby
11 amended by inserting after Section 18A the following new section:—
12 Section 18B. The Secretary shall establish a program to determine the use of recyclable materials in the
13 Commonwealth. Such program shall include, but not be limited to, a method for determining the
14 percentage of recyclable material that is actually reused rather than discarded. The Secretary shall file a
15 report on the program annually with the Joint Committee on Natural Resources and Agriculture, the
16 Joint Committee on Energy, and the House and Senate Committees on Ways and Means on or before
17 December thirty-first of each year. The report shall contain, but not be limited to, information
18 concerning statewide use of recycled material in the Commonwealth.

19 SECTION 3. Chapter 21H of the General Laws, as appearing in the 2006 Official Edition, is hereby
20 amended by inserting after Section 7 the following new section:—
21 Section 7A. The Department shall establish a program to increase recycling opportunities at public
22 facilities visited by at least five thousand individuals annually, including but not limited to, stadiums,
23 arenas, marinas, airports, theatres, and pedestrian walkways. The Department shall work with
24 MassPort, the Massachusetts Cultural Council, the State Racing Commission, the Bureau of State Office

25 Buildings, WasteCap of Massachusetts, and other entities in order to establish a program. The
26 Department shall file a report on the program annually with the Joint Committee on Natural Resources
27 and Agriculture, the Joint Committee on Energy, and the House and Senate Committees on Ways and
28 Means on or before December thirty-first of each year. The report shall contain, but not be limited to,
29 activities promoting recycling at public facilities visited by at least five thousand individuals annually.

30 SECTION 4. Section 33 of Chapter 92 of the General Laws, as appearing in the 2006 Official Edition is
31 hereby amended by inserting after the first paragraph the following new paragraph:—

32 The Commission shall include the development of recycling opportunities in all new designs and
33 redesigns of reservations.

34 SECTION 5. Section 33 of Chapter 92 of the General Laws, as appearing in the 2006 Official Edition, is
35 hereby amended by inserting after the second paragraph the following new paragraph:—

36 The Commission shall establish a program to increase recycling opportunities in all public reservations
37 located within the metropolitan parks district. The Commission shall file a report on the program
38 annually with the Joint Committee on Natural Resources and Agriculture, the Joint Committee on
39 Energy, and the House and Senate Committees on Ways and Means on or before December thirty-first
40 of each year. The report shall contain, but not be limited to, activities promoting recycling in all public
41 reservations within the metropolitan parks district.

42 SECTION 6. Effective July 1, 2009, Chapter 94 of the General Laws is hereby amended by inserting a new
43 section 323F:—

44 Section 323F. Clean Environment Fund.

45 (a) There shall be established on the books of the Commonwealth a separate fund to be known as the
46 Clean Environment Fund (the "Fund"). Amounts deposited in said fund shall be used, subject to
47 appropriation, for programs described in paragraphs (c) through (f) of this section.

48 (b) The Fund shall be governed by the Solid Waste Management Board (the "Board"). The members of
49 the Board shall consist of eleven persons appointed by the Governor, each of whom shall be
50 represented by the following: the Secretary of Environmental Affairs, five representatives from the
51 various segments of business and industry being assessed pursuant to Section 323G of Chapter 94
52 (beverage container manufacturer, wholesaler/distributor, and dealer), two representatives of the solid
53 waste management and recycling industries, two representatives of statewide environmental
54 organizations, and one representative of organized labor.

55 (c) Not more than sixty-five percent of amounts deposited in the Fund shall be used for recycling
56 collection programs including, but not limited to, municipal performance-based incentive grants; unit-
57 based pricing programs; municipal grants for recycling equipment and technical assistance; private
58 sector grants to qualified redemption centers in order to develop innovative materials collection
59 operations; and recycling media and education campaigns.

60 (d) Not more than fifteen percent of amounts deposited in the Fund shall be used for recycling market
61 development programs including, but not limited to, the recycling loan fund for small recycling
62 businesses; demonstration projects to process and manufacture recycled products; recycled product
63 purchasing by state agencies; municipal buy recycled programs; and expanded source reduction
64 initiatives.

65 (e) Not more than twenty percent of amounts deposited in the fund shall be used for litter prevention
66 and removal programs including, but not limited to, a state grant program for litter pickup and removal;
67 litter education programs for the public and for schools; research relating to litter control; and
68 enforcement of litter related laws in state/municipal-owned places and areas that are accessible to the
69 public.

70 (f) The amounts deposited in the Fund shall be used to promote and expand waste diversion programs
71 in the Commonwealth. This shall include, but not be limited to, enhancing capabilities to recycle
72 beverage containers in residential and commercial programs, improving access to comprehensive
73 recycling and composting programs, providing technical assistance to residential and commercial
74 recycling and composting programs, promoting reduction efforts, improving markets for diverted
75 material, and other such programs as determined by the Board. The Fund shall also support
76 comprehensive litter prevention and control measures including, at a minimum, a statewide litter
77 education and prevention campaign, promotion of voluntary and public/private partnerships for litter
78 control, and coordination of existing litter programs in the state.

79 Subject to the approval of the Board, the Department of Environmental Protection shall develop model
80 municipal litter prevention and control programs. Monies distributed from the Fund, to eligible
81 municipalities, shall be used solely to supplement litter pickup and removal activities. To be eligible for
82 a grant under this section, a municipality must certify to the department the adoption of at least one of
83 the model programs.

84 A sum of not less than \$250,000 shall be allocated to WasteCap of Massachusetts on an annual basis for
85 developing programs that shall include, but are not limited to, enhancing the ability of existing
86 Massachusetts' manufacturers to utilize and process recovered materials; assisting businesses and
87 technologies in the Commonwealth; identifying support needs (i.e., research and technical assistance);
88 and addressing waste reduction and recycling issues confronted by businesses (i.e., Awareness
89 Campaigns, Business Recycling Cooperatives, Buy Recycled Programs).

90 (g) The Board shall submit to the Secretary of Administration and Finance, the House and Senate
91 Committees on Ways and Means, the Joint Committee on Energy, and the Joint Committee on Natural
92 Resources and Agriculture an annual report of its activities and an evaluation of any and all programs
93 entered into during the course of the fiscal year.

94 SECTION 7. Section 323F of Chapter 94 is hereby amended by adding the following new section:—

95 323G. Assessment.

96 Between January 1, 2012 and December 31, 2012 an amount not to exceed five million six hundred
97 thousand dollars (\$5,600,000) shall be deposited into said Fund based on assessments levied by the
98 Commissioner of Revenue ("Commissioner") as follows:

99 (a) Distributors/wholesalers shall contribute the sum of five million two hundred sixty-four thousand
100 dollars (\$5,264,000). The Commissioner shall compute the assessment for each distributor/wholesaler
101 of these beverages based on the distributor/wholesaler's pro-rated share of the total number of
102 beverage containers sold within the state between January 1, 2010 and December 31, 2010. The
103 Commissioner shall undertake the necessary steps to obtain beverage container sales information for
104 this period, shall treat the information as confidential, and, by June 30, 2011, shall compute each
105 distributor/wholesaler's assessment and notify each distributor/wholesaler of his assessment.

106 (b) Beverage container manufacturers shall contribute the sum of two hundred eighty thousand dollars
107 (\$280,000). After consultation with the Can Manufacturers Institute, Glass Packaging Institute, American
108 Plastics Council, and the Steel Recycling Institute, the Board shall file a report with the Commissioner, no
109 later than June 30, 2009, detailing the assessment on beverage container manufacturers.

110 (c) Dealers shall contribute the sum of fifty-six thousand dollars (\$56,000). This assessment shall be in
111 addition to any liability of dealers who may also be subject to assessments as distributor/wholesalers
112 under paragraph (a). After consultation with the Massachusetts Food Association and the Massachusetts
113 Package Store Association, the Board shall file a report with the Commissioner, no later than June 30,
114 2011, detailing the assessment on dealers.

115 SECTION 8. The effective date of Sections 10 through 19 is January 1, 2012.

116 SECTION 9. Chapter 94 of the General Laws as appearing in the 2006 Official Edition, is hereby amended
117 by striking section three hundred and twenty-one and replacing it with the following new section:—

118 Section 321. DEFINITIONS. The following definitions shall, unless the context clearly requires otherwise,
119 have the following meaning:

120 “Beverage,” carbonated, noncarbonated-alcoholic and noncarbonated-nonalcoholic drinks intended for
121 human consumption except milk and dairy derived products, infant formula, or medical food.

122 “Beverage container,” any sealable bottle, can, jar, or carton, which is primarily composed of glass,
123 metal, plastic or any combination of those materials and is produced for purpose of containing a
124 beverage. This definition shall not include containers made of biodegradable material.

125 “Beverage container manufacturer,” any person who engages in the manufacture or fabrication of
126 beverage containers.

127 “Carbonated beverage,” soda water or similar carbonated soft drinks, mineral water, and beer and other
128 malt beverages intended for human consumption.

129 “Dealer,” any person including any operator of a vending machine who sells, offers to sell or engages in
130 the sale of beverages in beverage containers to consumers in the state.

131 “Distributor/wholesaler,” any person who engages in the sale of beverages in beverage containers
132 directly to dealers in the state, including any manufacturer who engages in such sales.

133 “Infant formula,” any liquid food described or sold as an alternative for human milk for the feeding of
134 infants.

135 “Manufacturer,” any person who bottles, cans, or otherwise places beverages in beverage containers for
136 sale to a distributor/wholesaler or dealer.

137 “Medical food,” a food or beverage that is formulated to be consumed, or administered enterally under
138 the supervision of a physician, and that is intended for specific dietary management of diseases or
139 health conditions for which distinctive nutritional requirements, based on recognized scientific
140 principles, are established by medical evaluation. A “medical food” is a specially formulated and
141 processed product, for the partial or exclusive feeding of a patient by means of oral intake or enteral

142 feeding by tube, and is not a naturally occurring foodstuff used in its natural state. "Medical food"
143 includes any product that meets the definition of "medical food" in the federal Food, Drug, and
144 Cosmetic Act (21 U.S.C. Sec.360ee (b)(3)).

145 "Noncarbonated-alcoholic beverage," any liquid intended for human consumption and containing one-
146 half of one percent or more of alcohol by volume at sixty degrees Fahrenheit, including wine and wine-
147 based drinks, spirits and spirit-based drinks and hard cider.

148 "Noncarbonated-nonalcoholic beverage," fruit and vegetable juice, still water, iced tea, sports drinks
149 and other noncarbonated drinks intended for human consumption, except for milk and dairy derived
150 products, infant formula, or medical food.

151 "Sales within the state," within the exterior limits of the state of Massachusetts and includes all territory
152 within these limits owned by or ceded to the United States of America.

153 SECTION 10. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is hereby
154 amended by striking section three hundred and twenty-two.

155 SECTION 11. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is hereby
156 amended by striking section three hundred and twenty-three.

157 SECTION 12. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is hereby
158 amended by striking section three hundred and twenty-three B.

159 SECTION 13. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is hereby
160 amended by striking section three hundred and twenty-three C and replacing it with the following new
161 section:—

162 Section 323C. Abandoned deposit amounts; determination.

163 Any amounts that are or should be in a bottler's or distributor's Deposit Transaction Fund and that are in
164 excess of the sum of (a) income earned on amounts in said account and (b) the total amount of refund
165 values received by said bottler or distributor for non-reusable beverage containers shall be deemed to
166 constitute abandoned deposit amounts. Income earned on said fund may be transferred from said fund
167 for use as funds of the bottler or distributor.

168 SECTION 14. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is hereby
169 amended by striking section three hundred and twenty-three D and replacing it with the following new
170 section:—

171 Section 323D. Transfer of abandoned deposit amounts.

172 Each bottler or distributor shall turn over to the commissioner of revenue any deposit amounts deemed
173 to be abandoned, pursuant to section three hundred and twenty-three C. Such amounts may be paid
174 from the Deposit Transaction Fund. Amounts collected by the commissioner of revenue pursuant to this
175 section shall be deposited into the Clean Environment Fund, established pursuant to section three
176 hundred and twenty-three F.

177 SECTION 15. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition is amended by
178 striking section three hundred and twenty-three E.

179 SECTION 16. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is hereby
180 amended by striking section three hundred and twenty-five.

181 SECTION 17. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is hereby
182 amended by striking section three hundred and twenty-six and replacing it with the following section:—

183 Section 326. Administration; rules and regulations.

184 The secretary of environmental affairs shall administer the provisions of sections three hundred and
185 twenty-one, three hundred and twenty-three F, and three hundred and twenty-four. Said secretary shall
186 promulgate and from time to time revise rules and regulations to effectuate the purposes of said
187 sections.

188 The commissioner of revenue shall administer the provisions of sections three hundred and twenty-
189 three C, three hundred and twenty-three D, and three hundred and twenty-three G. The collection of
190 revenues pursuant to sections three hundred and twenty-three D and three hundred and twenty-three
191 G by said commissioner shall, to the extent consistent with this chapter, be governed by the provisions
192 of chapter sixty-two C.

193 The commissioner of revenue shall promulgate and from time to time revise rules and regulations to
194 effectuate the purposes of said sections. Said rules and regulations shall include a provision to permit
195 manufacturers, wholesalers, distributors and retailers to borrow, without any interest charge, against
196 their deposit transaction funds subject to such terms and conditions as the commissioner deems
197 appropriate.

198 Said secretary shall determine through rules and regulations which plastic bottles and rigid plastic
199 containers may be exempt from the labeling requirements of section three hundred and twenty-three A,
200 including but not limited to the following: (1) readily identifiable plastic bottles and rigid plastic
201 containers; (2) plastic bottles and rigid plastic containers for which there is no technological capability
202 for recycling, reclamation or reuse; and (3) plastic bottles and rigid plastic containers for which recycling,
203 reclamation or reuse is not economically feasible.

204 SECTION 18. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is hereby
205 amended by striking section three hundred and twenty-seven and replacing it with the following
206 section:—

207 Section 327. Enforcement; penalty; interest.

208 The attorney general and district attorneys shall enforce the provisions of sections three hundred and
209 twenty-one to three hundred and twenty-seven, inclusive. Any manufacturer, wholesaler, distributor, or
210 retailer who knowingly violates any provisions of sections three hundred and twenty-one to three
211 hundred and twenty-six, inclusive, shall be subject to a civil penalty for each violation of not more than
212 one thousand dollars.

213 Any manufacturer, wholesaler, distributor or retailer failing to make full and timely payments as
214 required by section three hundred and twenty-three G shall pay interest on any unpaid amounts at the
215 rate of one and one-half percent for each month or part thereof until payment is made in full.

216 SECTION 19. The Department of Environmental Protection shall conduct a study pertaining to existing
217 so-called single stream recycling programs within the commonwealth. The study shall evaluate actual
218 costs of these several programs, and actual saving experiences by these communities in which they
219 operate when compared to multi-stream systems utilized by other local governments.

220 The Department of Environmental Protection shall report its findings to the Legislature's Joint
221 Committee on Utilities, Telecommunications and Energy, including recommendations for encouraging
222 and expanding so called single stream recycling programs throughout the commonwealth.