

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Robert A. O'Leary

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 Establishing The Clean Communities and Recycling Grant Program in the Commonwealth.

PETITION OF:

NAME:

Robert A. O'Leary

DISTRICT/ADDRESS:

Cape and Islands

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT ESTABLISHING THE CLEAN COMMUNITIES AND RECYCLING GRANT PROGRAM 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. Chapter 94 of the general laws, as appearing in the 2006 official edition, is hereby
2 amended by striking sections 321 through 327, inclusive, and inserting in place thereof the following
3 sections: -

4 Section 321. Sections 321 through 327A shall be known and may be cited as the “Clean Communities
5 and Recycling Grant Act.”

6 Section 322. In this section, the following words, unless their context clearly indicates otherwise, shall
7 have the following meanings: -

8 “Litter” shall mean any used or unconsumed substance or waste material which has been discarded,
9 whether made of aluminum, glass, plastic, rubber, paper, or other natural or synthetic material, or any
10 combination thereof, including, but not limited to, any bottle, jar or can, or any top, cap or detachable
11 tab of any bottle, jar or can, any unlighted cigarette, cigar, match or any flaming or glowing material or
12 any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste, newspapers,

13 magazines, glass, metal, plastic or paper containers or other packaging or construction material, but
14 shall not include the waste of the primary processes of mining or other extraction processes, logging,
15 sawmilling, farming or manufacturing.

16 “Litter-generating products” shall mean the following specific goods which are produced, distributed, or
17 purchased in disposable containers, packages or wrappings; or which are not usually sold in packages,
18 containers or wrappings but which are commonly discarded in public places; or which are of an unsightly
19 or unsanitary nature, commonly thrown, dropped, discarded, placed or deposited by a person on public
20 property, or on private property not owned by that person:

- 21 a. Beer and other malt beverages;
- 22 b. Cigarettes and tobacco products;
- 23 c. Cleaning agents and toiletries;
- 24 d. Distilled spirits;
- 25 e. Food for human or pet consumption;
- 26 f. Glass containers sold as such;
- 27 g. Groceries;
- 28 h. Metal containers sold as such;
- 29 i. Motor vehicle tires;
- 30 j. Newsprint and magazine paper stock;
- 31 k. Drugstore sundry products, but not including prescription drugs or nonprescription drugs;
- 32 l. Paper products and household paper, but not including roll stock produced by paper
33 product manufacturers and wood pulp;

- 34 m. Plastic or fiber containers made of synthetic material and sold as such, but not including any
- 35 container which is routinely reused, has a useful life of more than one year and is ordinarily
- 36 sold empty at retail;
- 37 n. Soft drinks and carbonated water; and
- 38 o. Wine.

39 “Litter receptacle” shall mean a container suitable for the depositing of litter.

40 “Municipality” shall mean any city or town situated within the boundaries of the commonwealth.

41 “Person” shall mean any individual or business concern.

42 “Public place” shall mean any area that is used or held out for use by the public, whether owned or
43 operated by public or private interests.

44 “Recycling” shall mean any process by which materials which would otherwise become solid waste are
45 collected, separated or processed and returned to the economic mainstream in the form of raw
46 materials or products.

47 “Sold within the commonwealth” or “sales within the commonwealth” shall mean all sales of retailers
48 engaged in business within the commonwealth and, in the case of manufacturers, wholesalers and
49 distributors, all sales of products for use and consumption within the commonwealth. It shall be
50 presumed that all sales of manufacturers, wholesalers and distributors sold within the commonwealth
51 are for use and consumption within the commonwealth unless it is determined by the commissioner of
52 the department of revenue that the products are shipped out of the commonwealth for out-of-state
53 use.

54 Section 323.

55 A. There is imposed upon each person engaged in business in the commonwealth as a
56 manufacturer, wholesaler, or distributor of litter-generating products a user fee of 3/100 of 1%
57 (.0003) on sales of those products within the commonwealth, and upon each person engaged in
58 business in the commonwealth as a retailer of litter-generating products a user fee of 2.25/100
59 of 1% (.000225) on sales of those products within the commonwealth. Any retailer with less
60 than \$500,000 in annual retail sales of litter-generating products shall be exempt from the user
61 fee imposed under this section. A sale by a wholesaler or distributor to another wholesaler or
62 distributor, a sale by a company to another company owned wholly by the same individuals or
63 companies, or a sale by a wholesaler or distributor owned cooperatively by retailers to those
64 retailers shall not be subject to the user fee imposed under this section. For the purposes of this
65 section, "retailer" includes the owner or operator of a take-out or drive-thru restaurant, the
66 principal activity of which consists of selling for consumption off the premises of the restaurant
67 a meal or food prepared and ready to be eaten. A retailer shall not include: (1) the owner or
68 operator of a restaurant with less than 10% in annual retail sales of meals or food prepared and
69 ready to be eaten for consumption off the premises of the restaurant; or (2) the owner or
70 operator of a restaurant, the principal activity of which consists of preparing for consumption
71 within the restaurant a meal of food to be eaten on the premises.

72 B. Every person subject to the user fee on the sale of litter-generating products imposed pursuant
73 to Section 323 (A) above shall file with the commissioner of the department of revenue a
74 certificate of registration on a form prescribed by the commissioner. Any person who is
75 registered under any law administered by the department of revenue or who is subject to and
76 files returns under any of these laws shall not be required to comply with the provisions of this
77 subsection.

- 78 C. Every person subject to the user fee on the sale of litter-generating products imposed pursuant
79 to section 323 (A) shall, on or before March 15 of each year, prepare and file a return, under
80 oath, for the preceding calendar year with the commissioner of the department of revenue on
81 forms and containing any information as the commissioner shall prescribe. The return shall
82 indicate the dollar value of the sales within the commonwealth of litter-generating products and
83 at the same time the person shall pay the full amount of user fees due.
- 84 D. If a return required by this section is not filed, or if a return is filed incorrectly or insufficiently in
85 the opinion of the commissioner of the department of revenue, the amount of user fees due
86 shall be determined by the commissioner based on collections from the person liable for the
87 payment of the user fees during the previous five years. Notice of the determination shall be
88 given to the person liable for the payment of the user fees. The determination shall finally and
89 irrevocably fix the user fees unless the person against whom it is assessed, within 90 days after
90 the giving of the notice of determination, shall file a protest and request a hearing, or unless the
91 commissioner, on his/her own motion, shall redetermine the same. Following the hearing the
92 commissioner shall give notice of the determination to the person whom the user fees are
93 assessed.
- 94 E. Any person who fails to file a return when due or fails to pay any user fee when the user fee
95 becomes due, as herein provided, shall be subject to such penalties and interest as provided by
96 law. If the commissioner of the department of revenue determines that the failure to comply
97 with the provisions of this section was excusable under the circumstances, the commissioner
98 may remit any part of the penalty as shall be deemed appropriate.
- 99 F. In addition to the other powers granted by this section, the commissioner of the department of
100 revenue may:

- 101 1. Delegate to any officer or employee of the department of revenue those powers and
102 duties as the commissioner may deem necessary to carry out efficiently the provisions
103 of this section, and the person or persons to whom the powers have been delegated
104 shall possess, and may exercise, all of the powers and perform all of the duties
105 delegated by the commissioner;
- 106 2. Prescribe and distribute all necessary forms for the implementation of this section; and
107 3. Adopt any rules and regulations necessary for the implementation of this section.
- 108 G. Any deduction of the user fee imposed in section 323 (A) allowed in computing a taxpayer's
109 taxable income which the taxpayer is required to report in the United States Treasury
110 Department for the purpose of computing its federal taxable income shall be allowed in
111 determining the taxpayer's "entire net income."

112 Section 324. Clean Communities Program Fund.

113 The Clean Communities Program Fund, hereafter referred to as "the fund," is hereby established as a
114 non-lapsing, revolving fund within the Department of Environmental Protection to be administered by
115 the commissioner of said department. Said fund shall be credited, in addition to any appropriations
116 made thereto, with all user fees or penalties imposed, and any sums received as voluntary contributions
117 from private sources. Interest received on moneys in the fund shall be credited to the fund. All
118 available moneys in the fund shall be appropriated annually solely for the following purposes and no
119 others:

- 120 A. 20% of the estimated annual balance of the fund shall be used for a state-wide program of
121 litter pickup and removal and of enforcement of litter-related laws, rules and regulations in
122 commonwealth owned places and areas that are accessible to the public, and for a
123 comprehensive anti-litter education campaign as detailed in section 325 below;

124 B. 80% of the estimated annual balance of the fund shall be distributed in the form of grants,
125 to be administered by the department of environmental protection for the purposes of
126 establishing, maintaining or expanding municipal recycling programs. Said grants shall
127 include, but not be limited to, the following initiatives:

- 128 1. Planning grants to reimburse municipalities up to 80% of approved costs to prepare
129 municipal waste management plans and studies;
- 130 2. Recycling grants to reimburse municipalities up to 90% of approved costs to
131 establish, maintain and expand municipal recycling programs. Financially distressed
132 municipalities may be reimbursed up to 100%;
- 133 3. Performance grants to reimburse municipalities which have established recycling
134 programs. The amount of the grant shall be based upon type and weight of
135 materials and the percentage of recyclables diverted from landfills;
- 136 4. Host municipal inspector grants to reimburse up to 50% of approved costs of
137 employing certified inspectors for landfills;
- 138 5. Individual permit application review grants to reimburse up to \$10,000 for each
139 review by a professional engineer of a municipal facilities permit application;
- 140 6. Household hazardous waste collection and disposal grants to reimburse
141 municipalities up to 50% of the cost of Household Hazardous Waste disposal
142 programs. However, under no circumstance shall a grant of this nature exceed
143 \$10,000.
- 144 7. Pay-as-you-throw grants. Not less than 20% of the 80% set aside for municipal
145 recycling grants shall be expended annually as remediation for the establishment,
146 maintenance and/or expansion of "pay-as-you-throw" programs, so-called, in
147 municipalities.

148 C. A municipality may not use more than 5% of funds received from the fund for administrative
149 expenses.

150 Section 325. The department of environmental protection shall administer a state-wide public
151 information and education program concerning anti-littering activities and other aspects of responsible
152 solid waste handling behavior as part of the Clean Communities Program.

153 Section 326. No contract shall be required as a prerequisite to the distribution of aid to eligible
154 municipalities for programs of litter pickup and removal. All funds for each fiscal year for which these
155 funds are to be distributed shall be distributed by June 30 of the following year.

156 A. Each municipality shall submit a brief annual report to the department of environmental
157 protection summarizing the uses and expenditure of funds received for its program of litter
158 pickup and removal.

159 1. The department of environmental protection shall report to the Governor and the
160 Senate and House committees on Energy on the success of the municipal litter
161 pickup and removal programs in reducing litter in the commonwealth not later than
162 August 30 of each year.

163 2. Additional expenditures or incremental costs necessary and reasonably incurred by
164 a municipality for the abatement and control of litter or any other anti-littering
165 activities as a direct result of the implementation of said programs shall be
166 considered expenditures mandated by state law.

167 Section 326A. The department of environmental protection shall:

168 A. Coordinate the various industry and business organizations seeking to aid in the anti-litter
169 effort;

- 170 B. Conduct periodic litter surveys or random inspections in various parts of the commonwealth
171 to ensure the satisfactory implementation of the municipal litter pickup and removal
172 programs required;
- 173 C. Encourage and cooperate with all local voluntary and government anti-litter campaigns
174 attempting to focus public attention on the state wide public information and education
175 program concerning anti-littering activities and other aspects of responsible solid waste
176 handling behavior as part of the Clean Communities Program;
- 177 D. Investigate the availability of, and apply for, funds available from any private or public
178 source to be used in the Clean Communities Program;
- 179 E. Investigate the successful methods of litter pickup and removal programs in other states or
180 jurisdictions, encourage the use of litter and recycling receptacles and evaluate their
181 possible incorporation into the Clean Communities Program.

182 Section 327. Any person found to be in violation of the provisions of these sections for which no penalty
183 is specifically provided is subject to, for a first offense, a written warning; a second violation shall be
184 punishable by a fine of not more than \$100; all subsequent violations shall be punishable by a fine of not
185 more than \$300. If said violation is of a continuing nature, each day during which it continues
186 constitutes a separate and distinct offense.

187 Section 327A. The commissioner of the department of environmental protection shall adopt rules and
188 regulations as necessary to effectuate the provisions of the Clean Communities Program.