

**SENATE . . . . . No. 1525**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Robert A. O'Leary**

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*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:	DISTRICT/ADDRESS:
Robert A. O'Leary	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 tab  
11 of any bottle, jar or can, any unlighted cigarette, cigar, match or any flaming or glowing material or any  
12 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 shall

14 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 product  
33 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 materials or  
46 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 are  
51 for use and consumption within the commonwealth unless it is determined by the commissioner of the  
52 department of revenue that the products are shipped out of the commonwealth for out-of-state use.

53 Section 323.

54 A. There is imposed upon each person engaged in business in the commonwealth as a manufacturer,  
55 wholesaler, or distributor of litter-generating products a user fee of  $\frac{3}{100}$  of 1% (.0003) on sales  
56 of those products within the commonwealth, and upon each person engaged in business in the  
57 commonwealth as a retailer of litter-generating products a user fee of  $\frac{2.25}{100}$  of 1% (.000225)  
58 on sales of those products within the commonwealth. Any retailer with less than \$500,000 in  
59 annual retail sales of litter-generating products shall be exempt from the user fee imposed under  
60 this section. A sale by a wholesaler or distributor to another wholesaler or distributor, a sale by a  
61 company to another company owned wholly by the same individuals or companies, or a sale by a

62 wholesaler or distributor owned cooperatively by retailers to those retailers shall not be subject to  
63 the user fee imposed under this section. For the purposes of this section, “retailer” includes the  
64 owner or operator of a take-out or drive-thru restaurant, the principal activity of which consists of  
65 selling for consumption off the premises of the restaurant a meal or food prepared and ready to be  
66 eaten. A retailer shall not include: (1) the owner or operator of a restaurant with less than 10% in  
67 annual retail sales of meals or food prepared and ready to be eaten for consumption off the  
68 premises of the restaurant; or (2) the owner or operator of a restaurant, the principal activity of  
69 which consists of preparing for consumption within the restaurant a meal of food to be eaten on  
70 the premises.

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

76 C. Every person subject to the user fee on the sale of litter-generating products imposed pursuant to  
77 section 323 (A) shall, on or before March 15 of each year, prepare and file a return, under oath,  
78 for the preceding calendar year with the commissioner of the department of revenue on forms and  
79 containing any information as the commissioner shall prescribe. The return shall indicate the  
80 dollar value of the sales within the commonwealth of litter-generating products and at the same  
81 time the person shall pay the full amount of user fees due.

82 D. If a return required by this section is not filed, or if a return is filed incorrectly or insufficiently in  
83 the opinion of the commissioner of the department of revenue, the amount of user fees due shall  
84 be determined by the commissioner based on collections from the person liable for the payment  
85 of the user fees during the previous five years. Notice of the determination shall be given to the  
86 person liable for the payment of the user fees. The determination shall finally and irrevocably fix  
87 the user fees unless the person against whom it is assessed, within 90 days after the giving of the

88 notice of determination, shall file a protest and request a hearing, or unless the commissioner, on  
89 his/her own motion, shall redetermine the same. Following the hearing the commissioner shall  
90 give notice of the determination to the person whom the user fees are assessed.

91 E. Any person who fails to file a return when due or fails to pay any user fee when the user fee  
92 becomes due, as herein provided, shall be subject to such penalties and interest as provided by  
93 law. If the commissioner of the department of revenue determines that the failure to comply with  
94 the provisions of this section was excusable under the circumstances, the commissioner may  
95 remit any part of the penalty as shall be deemed appropriate.

96 F. In addition to the other powers granted by this section, the commissioner of the department of  
97 revenue may:

98 1. Delegate to any officer or employee of the department of revenue those powers and  
99 duties as the commissioner may deem necessary to carry out efficiently the provisions of  
100 this section, and the person or persons to whom the powers have been delegated shall  
101 possess, and may exercise, all of the powers and perform all of the duties delegated by  
102 the commissioner;

103 2. Prescribe and distribute all necessary forms for the implementation of this section; and

104 3. Adopt any rules and regulations necessary for the implementation of this section.

105 G. Any deduction of the user fee imposed in section 323 (A) allowed in computing a taxpayer's  
106 taxable income which the taxpayer is required to report in the United States Treasury Department  
107 for the purpose of computing its federal taxable income shall be allowed in determining the  
108 taxpayer's "entire net income."

109 Section 324. Clean Communities Program Fund.

110 The Clean Communities Program Fund, hereafter referred to as "the fund," is hereby established as a non-  
111 lapsing, revolving fund within the Department of Environmental Protection to be administered by the  
112 commissioner of said department. Said fund shall be credited, in addition to any appropriations made

113 thereto, with all user fees or penalties imposed, and any sums received as voluntary contributions from  
114 private sources. Interest received on moneys in the fund shall be credited to the fund. All available  
115 moneys in the fund shall be appropriated annually solely for the following purposes and no others:

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

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

- 124 1. Planning grants to reimburse municipalities up to 80% of approved costs to prepare  
125 municipal waste management plans and studies;
- 126 2. Recycling grants to reimburse municipalities up to 90% of approved costs to  
127 establish, maintain and expand municipal recycling programs. Financially distressed  
128 municipalities may be reimbursed up to 100%;
- 129 3. Performance grants to reimburse municipalities which have established recycling  
130 programs. The amount of the grant shall be based upon type and weight of materials  
131 and the percentage of recyclables diverted from landfills;
- 132 4. Host municipal inspector grants to reimburse up to 50% of approved costs of  
133 employing certified inspectors for landfills;
- 134 5. Individual permit application review grants to reimburse up to \$10,000 for each  
135 review by a professional engineer of a municipal facilities permit application;
- 136 6. Household hazardous waste collection and disposal grants to reimburse  
137 municipalities up to 50% of the cost of Household Hazardous Waste disposal

138 programs. However, under no circumstance shall a grant of this nature exceed  
139 \$10,000.

140 7. Pay-as-you-throw grants. Not less than 20% of the 80% set aside for municipal  
141 recycling grants shall be expended annually as remediation for the establishment,  
142 maintenance and/or expansion of “pay-as-you-throw” programs, so-called, in  
143 municipalities.

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

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

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

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

155 1. The department of environmental protection shall report to the Governor and the  
156 Senate and House committees on Energy on the success of the municipal litter pickup  
157 and removal programs in reducing litter in the commonwealth not later than August  
158 30 of each year.

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

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

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

166 B. Conduct periodic litter surveys or random inspections in various parts of the commonwealth  
167 to ensure the satisfactory implementation of the municipal litter pickup and removal  
168 programs required;

169 C. Encourage and cooperate with all local voluntary and government anti-litter campaigns  
170 attempting to focus public attention on the state wide public information and education  
171 program concerning anti-littering activities and other aspects of responsible solid waste  
172 handling behavior as part of the Clean Communities Program;

173 D. Investigate the availability of, and apply for, funds available from any private or public  
174 source to be used in the Clean Communities Program;

175 E. Investigate the successful methods of litter pickup and removal programs in other states or  
176 jurisdictions, encourage the use of litter and recycling receptacles and evaluate their possible  
177 incorporation into the Clean Communities Program.

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

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