

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

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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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  
2 hereby amended by striking sections 321 through 327, inclusive, and inserting in place thereof  
3 the following sections: -

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

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

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

14 other packaging or construction material, but shall not include the waste of the primary processes  
15 of mining or other extraction processes, logging, sawmilling, farming or manufacturing.

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

22 Beer and other malt beverages;

23 Cigarettes and tobacco products;

24 Cleaning agents and toiletries;

25 Distilled spirits;

26 Food for human or pet consumption;

27 Glass containers sold as such;

28 Groceries;

29 Metal containers sold as such;

30 Motor vehicle tires;

31 Newsprint and magazine paper stock;

32 Drugstore sundry products, but not including prescription drugs or nonprescription drugs;

33 Paper products and household paper, but not including roll stock produced by paper  
34 product manufacturers and wood pulp;

35 Plastic or fiber containers made of synthetic material and sold as such, but not including  
36 any container which is routinely reused, has a useful life of more than one year and is ordinarily  
37 sold empty at retail;

38 Soft drinks and carbonated water; and

39 Wine.

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

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

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

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

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

49 “Sold within the commonwealth” or “sales within the commonwealth” shall mean all  
50 sales of retailers engaged in business within the commonwealth and, in the case of  
51 manufacturers, wholesalers and distributors, all sales of products for use and consumption within  
52 the commonwealth. It shall be presumed that all sales of manufacturers, wholesalers and

53 distributors sold within the commonwealth are for use and consumption within the  
54 commonwealth unless it is determined by the commissioner of the department of revenue that the  
55 products are shipped out of the commonwealth for out-of-state use.

56 Section 323.

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

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

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

86           If a return required by this section is not filed, or if a return is filed incorrectly or  
87 insufficiently in the opinion of the commissioner of the department of revenue, the amount of  
88 user fees due shall be determined by the commissioner based on collections from the person  
89 liable for the payment of the user fees during the previous five years. Notice of the  
90 determination shall be given to the person liable for the payment of the user fees. The  
91 determination shall finally and irrevocably fix the user fees unless the person against whom it is  
92 assessed, within 90 days after the giving of the notice of determination, shall file a protest and  
93 request a hearing, or unless the commissioner, on his/her own motion, shall redetermine the  
94 same. Following the hearing the commissioner shall give notice of the determination to the  
95 person whom the user fees are assessed.

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

101 In addition to the other powers granted by this section, the commissioner of the  
102 department of revenue may:

103 Delegate to any officer or employee of the department of revenue those powers and  
104 duties as the commissioner may deem necessary to carry out efficiently the provisions of this  
105 section, and the person or persons to whom the powers have been delegated shall possess, and  
106 may exercise, all of the powers and perform all of the duties delegated by the commissioner;

107 Prescribe and distribute all necessary forms for the implementation of this section; and

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

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

113 Section 324. Clean Communities Program Fund.

114 The Clean Communities Program Fund, hereafter referred to as "the fund," is hereby  
115 established as a non-lapsing, revolving fund within the Department of Environmental Protection  
116 to be administered by the commissioner of said department. Said fund shall be credited, in

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

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

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

129           Planning grants to reimburse municipalities up to 80% of approved costs to prepare  
130 municipal waste management plans and studies;

131           Recycling grants to reimburse municipalities up to 90% of approved costs to establish,  
132 maintain and expand municipal recycling programs. Financially distressed municipalities may  
133 be reimbursed up to 100%;

134           Performance grants to reimburse municipalities which have established recycling  
135 programs. The amount of the grant shall be based upon type and weight of materials and the  
136 percentage of recyclables diverted from landfills;

137           Host municipal inspector grants to reimburse up to 50% of approved costs of employing  
138 certified inspectors for landfills;

139           Individual permit application review grants to reimburse up to \$10,000 for each review  
140 by a professional engineer of a municipal facilities permit application;

141           Household hazardous waste collection and disposal grants to reimburse municipalities up  
142 to 50% of the cost of Household Hazardous Waste disposal programs. However, under no  
143 circumstance shall a grant of this nature exceed \$10,000.

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

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

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

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

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



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

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

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

166           Coordinate the various industry and business organizations seeking to aid in the anti-litter  
167 effort;

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

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

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

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

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

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