SENATE DOCKET, NO. 269 FILED ON: 1/15/2013

SENATE . . . . . No. 379

The Commonwealth of Massachusetts

PRESENTED BY:

Michael O. Moore

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 adoption of the accompanying bill:

An Act improving recycling in the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael O. Moore	*Second Worcester*
Michael J. Rodrigues	*First Bristol and Plymouth*
Stephen L. DiNatale	*3rd Worcester*
Michael R. Knapik	*Second Hampden and Hampshire*
Colleen M. Garry	*36th Middlesex*
Randy Hunt	*5th Barnstable*
Donald Humason	

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By Mr. Michael O. Moore, a petition (accompanied by bill, Senate, No. 379) of Michael O. Moore, Michael J. Rodrigues, Stephen L. DiNatale, Michael R. Knapik and other members of the General Court for legislation to improve recycling in the Commonwealth. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act improving recycling 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:

SECTION 1. PURPOSE: An economically sound and environmentally progressive solid waste management strategy includes components of conservation, source reduction, reuse, recycling and litter control. Businesses, consumers, and governments share responsibility for managing solid waste and all must cooperate in developing and maintaining the best programs to manage solid waste effectively and efficiently. These statutory changes are necessary to ensure effective solid waste management recovery systems in the Commonwealth including expanded access to and participation in comprehensive recycling programs at home, in public places, and in commercial settings; better recycling promotion and education efforts; incentives for households and businesses to recycle more of their solid waste; and development of comprehensive litter prevention and control programs.

SECTION 2. Chapter 21H of the General Laws is hereby amended by inserting after section 7 the following section:-

Section 7A. The Department shall establish a program to increase recycling opportunities at public facilities visited by at least five thousand individuals annually including, but not limited to, stadiums, arenas, marinas, airports, theaters, and parks. The Department shall work with MassPort, the Massachusetts Cultural Council, the State Racing Commission, the Bureau of State Office Buildings and other entities in order to establish a program. The Department shall file a report on the program annually with the Joint Committee on Environment, Natural Resources and Agriculture, the Joint Committee on Telecommunications, Utilities and Energy, and the House and Senate Committees on Ways and Means on or before December thirty-first of

each year. The report shall contain, but not be limited to, activities promoting recycling at public facilities visited by at least five thousand individuals annually.

SECTION 3. Section 33 of chapter 92 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting at the end thereof the following paragraph:-

The division shall include the provision of recycling opportunities into all new designs and redesigns of reservations and shall establish a program to increase recycling opportunities in all reservations located within the urban parks district. The division shall file an annual report on activities promoting recycling with the Joint Committee on Environment, Natural Resources and Agriculture, the Joint Committee on Telecommunications, Utilities and Energy, and the House and Senate Committees on Ways and Means on or before December thirty-first of each year.

SECTION 4. Effective July 1, 2013, Chapter 94 of the General Laws is hereby amended by inserting after section 323 the following section:-

Section 323G. Municipal Recycling Enhancement Fund.

(a) There shall be established on the books of the Commonwealth a separate fund to be known as the Municipal Recycling Enhancement Fund (the "Fund"). Amounts deposited in said fund shall be used, subject to appropriation, for programs described in paragraphs (c) and (d) of this section.

(b) The Fund shall be governed by the Solid Waste Management Board (the "Board"). The members of the Board shall consist of eleven persons appointed by the Governor including: the Secretary of Environmental Affairs, five distributor/wholesaler representatives subject to the recycling fee pursuant to Section 323H of Chapter 94, two representatives of the solid waste management and recycling industries, two representatives of statewide environmental organizations, and one representative of organized labor.

(c) Not more than eighty percent of amounts deposited in the Fund shall be used for recycling collection programs including, but not limited to, municipal performance-based incentive grants;

unit-based pricing programs; implementation of single-stream collection programs; municipal grants for recycling equipment and technical assistance; private sector grants to qualified redemption centers in order to develop innovative materials collection operations; and recycling media and education campaigns. Funds shall be distributed through a combination of population-based and merit-based formulas based on the recommendations of the Board.

(d) Not more than twenty percent of amounts deposited in the fund shall be used for litter prevention and removal programs including, but not limited to, a state grant program for litter pickup and removal; litter education programs for the public and for schools; increased

access to recycling in public spaces; research relating to litter control; and enforcement of litter related laws in state/municipal-owned places and areas that are accessible to the public. Funds shall be distributed through a combination of population-based and merit-based formulas based on the recommendations of the Board.

(e) The Board shall work with the Department to develop best practices and standards to use as criteria for awarding grants and other funding for recycling and litter control programs.

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

SECTION 5. Section 323D of said chapter 94, as so appearing, is hereby amended by inserting at the end thereof the following sentence:-

Effective July 1, 2013, 50% of amounts collected by the commissioner of revenue pursuant to this section shall be deposited in the Municipal Recycling Enhancement Fund established pursuant to section 323G.

SECTION 6. Said chapter 94 is hereby further amended by inserting after section 323F the following section:-

323H. Assessment.

(a) Beginning July 1, 2014 all beverages in beverage containers sold in the Commonwealth shall be subject to a 1¢ recycling fee.

(b) The recycling fee shall be levied on the sale of beverages in beverage containers by a distributor/wholesaler. Beverage containers sold for consumption outside of the Commonwealth are exempt from the fee.

(c) The Commissioner of Revenue ("commissioner") shall develop implementing regulations for the collection and deposit of the recycling fee into the Fund including procedures for identifying and registering distributor/wholesalers subject to the fee and for quarterly payment of the fee by distributor/wholesalers. The commissioner shall also develop an annual payment procedure to reduce the administrative burden on smaller distributor/wholesalers. The commissioner shall prepare an annual report at the conclusion of each fiscal year listing registered distributor/wholesalers and reporting total Fund collections. Payment amounts from individual distributor/wholesalers shall be considered confidential business information and not disclosed by the Commissioner except in conjunction with audits conducted under (d).

(d) The Commissioner shall coordinate periodic audits of distributor/wholesalers to ensure that appropriate records exist to document fee payments and that all distributor/wholesalers subject to the fee are paying in to the Fund.

SECTION 7. Said chapter 94 is hereby further amended by striking out section 321 and inserting in place thereof the following section:-

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

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

"Beverage container," any sealable bottle, can, jar, or carton, which is primarily composed of glass, metal, plastic, paper, or any combination of those materials, has a capacity of 4 liters or less, and is produced for purpose of containing a beverage.

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

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

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

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

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

"Medical food," a food or beverage that is formulated to be consumed, or administered enterally under the supervision of a physician, and that is intended for specific dietary management of diseases or health conditions for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation. A "medical food" is a specially formulated and processed product, for the partial or exclusive feeding of a patient by means of oral intake or enteral feeding by tube, and is not a naturally occurring foodstuff used in its natural state. "Medical food" includes any product that meets the definition of "medical food" in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec.360ee (b)(3)).

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

"Noncarbonated-nonalcoholic beverage," fruit and vegetable juices, still, flavored, and enhanced waters, iced tea, sports drinks, and other noncarbonated drinks intended for human consumption, except for milk and dairy derived products, infant formula, or medical food.

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

SECTION 8. Section 322, 323 and 323B of said chapter 94 of the General Laws are hereby repealed.

SECTION 9. Said chapter 94 is hereby further amended by striking out section 323C and inserting in place thereof the following section:-

Section 323C. Abandoned deposit amounts; determination.

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

SECTION 10. Said chapter 94 is hereby further amended by striking out section 323D and inserting in place thereof the following section:-

Section 323D. Transfer of abandoned deposit amounts.

Each bottler or distributor shall turn over to the commissioner of revenue any deposit amounts deemed to be abandoned, pursuant to section three hundred and twenty-three C. Such amounts may be paid from the Deposit Transaction Fund. Amounts collected by the commissioner of revenue pursuant to this section shall be deposited into the Municipal Recycling Enhancement Fund, established pursuant to section three hundred and twenty-three G.

SECTION 11. Section 323E and 325 of said chapter 94 of the General Laws are hereby repealed.

SECTION 12. Said chapter 94 is hereby further amended by striking out section 326 and inserting in place thereof the following section:-

Section 326. Administration; rules and regulations.

(a) The Secretary of the Executive Office of Energy and Environmental Affairs shall administer the provisions of sections three hundred and twenty-one, three hundred and twenty-three G (b) through (f), and three hundred and twenty-four. Said Secretary shall promulgate and from time to time revise rules and regulations to effectuate the purposes of said sections. Said Secretary shall determine through rules and regulations which plastic bottles and rigid plastic

containers may be exempt from the labeling requirements of section three hundred and twenty-three A, including but not limited to the following: (1) readily identifiable plastic bottles and rigid plastic containers; (2) plastic bottles and rigid plastic containers for which there is no technological capability for recycling, reclamation or reuse; and (3) plastic bottles and rigid plastic containers for which recycling, reclamation or reuse is not economically feasible.

(b) The Commissioner of the Department of Revenue shall administer the provisions of sections three hundred and twenty-three C, three hundred and twenty-three D, three hundred and twenty-three G (a), and three hundred and twenty-three H. The collection of revenues pursuant to sections three hundred and twenty-three D and three hundred and twenty-three H by said commissioner shall, to the extent consistent with this chapter, be governed by the provisions of chapter sixty-two C. The Commissioner of the Department of Revenue shall promulgate and from time to time revise rules and regulations to effectuate the purposes of said sections.

SECTION 13. Said chapter 94 is hereby further amended by striking out section 327 and inserting in place thereof the following section:-

Section 327. Enforcement; penalty; interest.

The Attorney General and District Attorneys shall enforce the provisions of sections three hundred and twenty-one to three hundred and twenty-seven, inclusive. Any manufacturer, wholesaler, distributor, or dealer who knowingly violates any provisions of sections three hundred and twenty-one to three hundred and twenty-six, inclusive, shall be subject to a civil penalty for each violation of not more than one thousand dollars.

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

SECTION 14. Sections 7 to 13 shall take effect on July 1, 2014.