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 passage of the accompanying:

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 F. Humason, Jr.	*4th Hampden*

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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

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.

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

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

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

33 Section 323G. Municipal Recycling Enhancement Fund.

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

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

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

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

53 (d) Not more than twenty percent of amounts deposited in the fund shall be used
54 for litter prevention and removal programs including, but not limited to, a state grant program for
55 litter pickup and removal; litter education programs for the public and for schools; increased
56 access to recycling in public spaces; research relating to litter control; and enforcement of litter
57 related laws in state/municipal-owned places and areas that are accessible to the public. Funds

58 shall be distributed through a combination of population-based and merit-based formulas based
59 on the recommendations of the Board.

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

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

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

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

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

75 323H. Assessment.

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

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

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

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

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

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

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

100 "Beverage container," any sealable bottle, can, jar, or carton, which is primarily
101 composed of glass, metal, plastic, paper, or any combination of those materials, has a capacity of
102 4 liters or less, and is produced for purpose of containing a beverage.

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

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

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

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

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

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

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

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

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

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

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

133 Section 323C. Abandoned deposit amounts; determination.

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

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

141 Section 323D. Transfer of abandoned deposit amounts.

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

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

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

151 Section 326. Administration; rules and regulations.

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

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

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

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

171 Section 327. Enforcement; penalty; interest.

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

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

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