

# SENATE NO. 1968

## **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 2004 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,  
17 or purchased in disposable containers, packages or wrappings; or which are not usually sold in  
18 packages, containers or wrappings but which are commonly discarded in public places; or which are of

19 an unsightly or unsanitary nature, commonly thrown, dropped, discarded, placed or deposited by a  
20 person on public 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  
35 any container which is routinely reused, has a useful life of more than one year and is  
36 ordinarily 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  
45 are 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 use.  
53 Section 323.

54 A. There is imposed upon each person engaged in business in the commonwealth as a  
55 manufacturer, wholesaler, or distributor of litter-generating products a user fee of  $\frac{3}{100}$  of 1%  
56 (.0003) on sales of those products within the commonwealth, and upon each person engaged in  
57 business in the commonwealth as a retailer of litter-generating products a user fee of  $\frac{2.25}{100}$   
58 of 1% (.000225) on sales of those products within the commonwealth. Any retailer with less  
59 than \$500,000 in annual retail sales of litter-generating products shall be exempt from the user  
60 fee imposed under this section. A sale by a wholesaler or distributor to another wholesaler or  
61 distributor, a sale by a company to another company owned wholly by the same individuals or  
62 companies, or a sale by a wholesaler or distributor owned cooperatively by retailers to those  
63 retailers shall not be subject to the user fee imposed under this section. For the purposes of this  
64 section, “retailer” includes the owner or operator of a take-out or drive-thru restaurant, the

65 principal activity of which consists of selling for consumption off the premises of the  
66 restaurant a meal or food prepared and ready to be eaten. A retailer shall not include: (1) the  
67 owner or operator of a restaurant with less than 10% in annual retail sales of meals or food  
68 prepared and ready to be eaten for consumption off the premises of the restaurant; or (2) the  
69 owner or operator of a restaurant, the principal activity of which consists of preparing for  
70 consumption within the restaurant a meal of food to be eaten on the premises.

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

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

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

88 irrevocably fix the user fees unless the person against whom it is assessed, within 90 days after  
89 the giving of the notice of determination, shall file a protest and request a hearing, or unless the  
90 commissioner, on his/her own motion, shall redetermine the same. Following the hearing the  
91 commissioner shall give notice of the determination to the person whom the user fees are  
92 assessed.

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

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

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

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

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

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

111 Section 324. Clean Communities Program Fund.

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

- 119       A. 20% of the estimated annual balance of the fund shall be used for a state-wide program of  
120       litter pickup and removal and of enforcement of litter-related laws, rules and regulations in  
121       commonwealth owned places and areas that are accessible to the public, and for a  
122       comprehensive anti-litter education campaign as detailed in section 325 below;
- 123       B. 80% of the estimated annual balance of the fund shall be distributed in the form of grants,  
124       to be administered by the department of environmental protection for the purposes of  
125       establishing, maintaining or expanding municipal recycling programs. Said grants shall  
126       include, but not be limited to, the following initiatives:
- 127           1. Planning grants to reimburse municipalities up to 80% of approved costs to prepare  
128           municipal waste management plans and studies;
  - 129           2. Recycling grants to reimburse municipalities up to 90% of approved costs to  
130           establish, maintain and expand municipal recycling programs. Financially  
131           distressed municipalities may be reimbursed up to 100%;

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

147 C. 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 public  
150 information and education program concerning anti-littering activities and other aspects of responsible  
151 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 eligible  
153 municipalities for programs of litter pickup and removal. All funds for each fiscal year for which  
154 these funds are to be distributed shall be distributed by June 30 of the following year.

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

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

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

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

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

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

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

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

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

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