



# House of Representatives

General Assembly

**File No. 360**

January Session, 2009

Substitute House Bill No. 5215

*House of Representatives, March 31, 2009*

The Committee on Environment reported through REP. ROY, R. of the 119th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT PROMOTING REUSABLE SHOPPING BAGS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2009*) (a) For purposes of this  
2 section:

3 (1) "Retailer" has the same meaning as in subdivision (12) of  
4 subsection (a) of section 12-407 of the general statutes, but does not  
5 include a restaurant;

6 (2) "Customer" means an individual who purchases goods from a  
7 retailer;

8 (3) "Restaurant" means a business that has the sole purpose of  
9 preparing and selling food and beverages intended for individual  
10 portion service and includes the site at which individual portions are  
11 sold, regardless of whether the consumption of food or beverage  
12 occurs on or off of such site; and

13 (4) "Disposable bag" means a paper or plastic sack provided at the  
14 point of sale for the storage of purchased goods, but excludes (A)  
15 reusable bags made of cloth or durable plastic that is at least 2.25 mils  
16 thick, (B) bags used to store produce, flowers, baked goods or meat  
17 which are provided by a retailer at a location other than the point of  
18 sale, (C) bags used to cover dry cleaned items, (D) paper bags  
19 provided by a pharmacy for the storage of purchased pharmaceuticals,  
20 or (E) plastic bags used to envelop newspapers intended for delivery at  
21 a residence.

22 (b) On and after January 1, 2010, any retailer who provides a  
23 disposable bag at the point of sale to a customer shall charge such  
24 customer a fee of five cents for each such bag. The retailer shall transfer  
25 the proceeds of such fee to the Commissioner of Revenue Services in  
26 accordance with the provisions of subsection (c) of this section.

27 (c) On or before April 30, 2010, each retailer collecting the fee as  
28 provided in this section shall submit a return to the Commissioner of  
29 Revenue Services that is applicable to the quarter commencing January  
30 1, 2010, on a form prescribed by the commissioner, together with  
31 payment of the quarterly proceeds of the fee collected in accordance  
32 with the provisions of subsection (b) of this section. Each retailer shall  
33 submit such return and payment to the commissioner each calendar  
34 quarter thereafter, on or before the last day of the month immediately  
35 following the end of each such calendar quarter. The Commissioner of  
36 Revenue Services shall deposit any such payment in the recycling  
37 initiatives account established in subsection (e) of this section.

38 (d) Whenever the proceeds of such fee is not paid when due, a  
39 penalty of ten per cent of the amount due or fifty dollars, whichever is  
40 greater, shall be added to the amount due and such penalty shall  
41 immediately accrue, and thereafter such proceeds shall bear interest at  
42 the rate of one and one-half per cent per month until the same is paid.  
43 The Commissioner of Revenue Services shall cause copies of a form  
44 prescribed for submitting returns as required under this section to be  
45 distributed throughout the state. Failure to receive such form shall not

46 be construed to relieve anyone subject to the provisions of this section  
47 from the obligations of submitting a return, together with payment of  
48 such proceeds within the time required.

49 (e) There is established an account to be known as the "recycling  
50 initiatives account" which shall be a separate, nonlapsing account  
51 within the General Fund. The account shall contain any moneys  
52 required by law to be deposited in the account. Moneys in the account  
53 shall be expended by the Department of Environmental Protection for  
54 the purposes of the grant programs created pursuant to sections 3 and  
55 4 of this act and of fulfilling the Commissioner of Environmental  
56 Protection's duties under titles 7, 22a and 23 of the general statutes.

57 (f) On and after October 1, 2009, no municipality shall adopt an  
58 ordinance restricting the retail use of plastic or paper bags. The  
59 provisions of this section shall not be construed to affect any such  
60 ordinance adopted prior to said date.

61 (g) Nothing in this section shall be construed to affect the amount of  
62 sales tax charged to the customer under chapter 219 of the general  
63 statutes.

64 (h) The provisions of sections 12-548 to 12-554, inclusive, of the  
65 general statutes and section 12-555a of the general statutes shall apply  
66 to the provisions of this section in the same manner and with the same  
67 force and effect as if the language of sections 12-548 to 12-554,  
68 inclusive, of the general statutes and section 12-555a of the general  
69 statutes had been incorporated in full into this section and had  
70 expressly referred to the fee imposed under this section, except to the  
71 extent that any provision is inconsistent with a provision in this section  
72 and except that the term "tax" shall be read as "fee".

73 Sec. 2. Subsection (h) of section 22a-220 of the general statutes is  
74 repealed and the following is substituted in lieu thereof (*Effective*  
75 *October 1, 2009*):

76 (h) On or before August 31, 1991, and annually thereafter, each

77 municipality, or its designated regional agent, shall provide a report to  
78 the Commissioner of Environmental Protection describing the  
79 measures taken during the preceding year to meet its obligations  
80 under this section. The commissioner shall provide each municipality  
81 with a form for such report by June 1, 1991. Such form may be  
82 amended from time to time. Such report shall include, but not be  
83 limited to, (1) a description of the efforts made by the municipality to  
84 promote recycling, (2) a description of its efforts to ensure compliance  
85 with separation requirements, [(3) the amount of each recyclable item  
86 contained in its solid waste stream which has been delivered to a  
87 recycling facility as reported to the municipality or its designated  
88 regional agent by the owner or operator of a recycling facility pursuant  
89 to section 22a-208e or by a scrap metal processor pursuant to section  
90 22a-208f, and (4)] and (3) the amount of solid waste generated within  
91 its boundaries which has been delivered to a resources recovery  
92 facility or solid waste facility for disposal as reported to the  
93 municipality or its designated regional agent by the owner or operator  
94 of the resources recovery facility or solid waste facility pursuant to  
95 section 22a-208e.

96 Sec. 3. (NEW) (*Effective July 1, 2009*) (a) Not later than January 1,  
97 2011, the Department of Environmental Protection shall establish a  
98 municipal recycling matching grant program for the purpose of  
99 awarding grants to municipalities to implement recycling programs or  
100 improve existing recycling programs. Such grants shall be used by the  
101 municipalities for the following purposes, which shall include, but not  
102 be limited to, establishing: (1) A system for residents within a  
103 municipality to pay for trash removal based upon the volume or  
104 weight of solid waste that such residents generate, with no fee for  
105 recyclables, (2) other incentives for recycling, such as retail coupons  
106 given as awards for meeting volume benchmarks of recycling quantity  
107 per household, or (3) single-stream recycling. Each such grant shall not  
108 exceed two hundred thousand dollars, and each such grant shall not be  
109 for more than fifty per cent of the estimated costs for the  
110 implementation or improvement of the municipal recycling program.  
111 A municipality shall be eligible for only one such grant. The total

112 amount of grants awarded annually pursuant to this section shall not  
113 exceed four million six hundred thousand dollars.

114 (b) A municipality may apply for a grant for such program by  
115 submitting an application to the Department of Environmental  
116 Protection on forms prescribed by the commissioner. The  
117 commissioner may reject any grant application that the commissioner  
118 determines to be incomplete. If the commissioner rejects an  
119 application, the commissioner shall promptly notify the applicant of  
120 the reasons for the rejection and, not later than fifteen days after the  
121 receipt of such notice, such applicant may resubmit the application in  
122 the same manner as the original application.

123 (c) Each municipality selected by the commissioner to receive a  
124 grant for such program shall submit a recycling plan for the  
125 commissioner's approval. Such plan shall include: (1) An estimate of  
126 the operational and capital expenses and income required to  
127 implement the plan, (2) goals for recycling, (3) an estimate of savings  
128 in tipping fees, if applicable, (4) a method for tracking the actual cost of  
129 the program, and (5) any other information required by the  
130 commissioner.

131 (d) Not later than January 1, 2012, and annually thereafter, the  
132 Department of Environmental Protection shall submit a report, in  
133 accordance with the provisions of section 11-4a of the general statutes,  
134 to the joint standing committee of the General Assembly having  
135 cognizance of matters relating to the environment. Such report shall  
136 include, but not be limited to, the number of grants issued pursuant to  
137 this section and section 4 of this act, the number of municipalities to  
138 receive such grants, and the amount of solid waste generated by any  
139 municipality to receive such a grant the year following the receipt of  
140 such grant.

141 (e) The commissioner may retain not more than two hundred  
142 thousand dollars annually for administrative expenses associated with  
143 the grant programs established under this section and section 4 of this  
144 act.

145       Sec. 4. (NEW) (*Effective October 1, 2009*) (a) Not later than January 1,  
 146 2011, the Department of Environmental Protection shall establish a  
 147 municipal recycling receptacle grant program for the purpose of  
 148 awarding grants to municipalities to purchase recycling receptacles for  
 149 public spaces, including, but not limited to, parks, schools and  
 150 municipal buildings where trash receptacles are located. Each such  
 151 grant shall not exceed five thousand dollars and a municipality shall  
 152 be eligible for only one such grant. The total amount of grants awarded  
 153 annually pursuant to this section shall not exceed two hundred fifty  
 154 thousand dollars.

155       (b) A municipality may apply for a grant for such program by  
 156 submitting an application to the Department of Environmental  
 157 Protection on forms prescribed by the commissioner. The  
 158 commissioner may reject any grant application that the commissioner  
 159 determines to be incomplete. If the commissioner rejects an  
 160 application, the commissioner shall promptly notify the applicant of  
 161 the reasons for the rejection and, not later than fifteen days after the  
 162 receipt of such notice, such applicant may resubmit the application in  
 163 the same manner as the original application.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	New section
Sec. 2	<i>October 1, 2009</i>	22a-220(h)
Sec. 3	<i>July 1, 2009</i>	New section
Sec. 4	<i>October 1, 2009</i>	New section

**ENV**       *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

### **OFA Fiscal Note**

#### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 10 \$</b>	<b>FY 11 \$</b>
Department of Environmental Protection	GF - See Below	None	See Below
Department of Revenue Services	GF - Revenue Gain	10 million	20 million
Department of Revenue Services	GF - Cost	131,000	262,000
Comptroller Misc. Accounts (Fringe Benefits) <sup>1</sup>	GF - Cost	25,652	51,305

Note: GF=General Fund

#### **Municipal Impact:**

<b>Municipalities</b>	<b>Effect</b>	<b>FY 10 \$</b>	<b>FY 11 \$</b>
Various Municipalities	Revenue Gain	None	See Below

#### **Explanation**

The bill is estimated to result in a revenue gain to the General Fund from a five cent disposable bag fee of approximately \$10 million in FY 10 and \$20 million in FY 11. The bill requires retailers to collect a five cent fee for each disposable bag they distribute. The retailers must submit the fee proceeds to the Department of Revenue Services (DRS).

The bill is anticipated to result in administrative costs to DRS of approximately \$156,652 (\$100,875 salary, \$25,652 fringe benefits) in FY

<sup>1</sup> The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller on an actual cost basis. The following is provided for estimated costs associated with additional personnel. The estimated non-pension fringe benefit rate as a percentage of payroll is 25.43%. Fringe benefit costs for new positions do not initially include pension costs as the state's pension contribution is based upon the 6/30/08 actuarial valuation for the State Employees Retirement System (SERS) which certifies the contribution for FY 10 and FY 11. Therefore, new positions will not impact the state's pension contribution until FY 12 after the next scheduled certification on 6/30/2010.

10 and \$313,305 (\$201,750 salary, \$51,305 fringe benefits) in FY 11. Three new full time employees (2 audit, 1 operations) would be required to audit and ensure compliance of the five cent fee.

Section 1 establishes the recycling initiatives account as a separate, nonlapsing account within the General Fund. The Department of Environmental Protection (DEP) would use this account for grant programs established in Sections 3 and 4.

Section 3 establishes a **municipal recycling matching grant program** by 1/1/11, to award grants to various municipalities to implement recycling programs or to improve existing recycling programs using the account established under Section 1 of the bill. Each municipal grant would not exceed \$200,000, would not be more than 50% of the estimated cost of the implementation or improvement of each municipal recycling program, and each municipality would receive only one grant. The total amount of grants awarded annually would not exceed \$4.6 million.

Section 4 requires DEP by 1/1/11, to establish a **municipal recycling receptacle grant program** to award grants to various municipalities to purchase recycling receptacles for certain public spaces and municipal buildings where trash receptacles are located. Each grant would not exceed \$5,000 and each municipality would only be eligible for one grant. The total amount of grants awarded annually would not exceed \$250,000.

Section 3 also allows DEP to retain \$200,000 annually for administrative expenses related to the grant programs established in Sections 3 and 4 of the bill.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of municipalities who apply and who are approved for the grant programs. The revenue gain identified above for various municipalities would not continue

into the future since each municipality would only receive one grant. Lastly, the revenue gain to the General Fund identified above may significantly decrease in the out years if alternatives to disposable bags are used.

**OLR Bill Analysis****sHB 5215*****AN ACT PROMOTING REUSABLE SHOPPING BAGS.*****SUMMARY:**

This bill requires retailers other than restaurants to charge customers (people who buy goods from retailers) five cents for each disposable paper or plastic bag they distribute, starting January 1, 2010. It requires that a part of the proceeds fund municipal recycling programs, which the bill creates. It prohibits municipalities from regulating the retail use of plastic or paper bags starting October 1, 2009 but does not affect any such ordinance adopted before then.

By law, towns must report annually to the Department of Environmental Protection (DEP) on their recycling obligations. The bill eliminates a requirement that this report include the amount of each recyclable item delivered to a recycling facility or scrap metal dealer, as reported to the municipality by the facility or dealer.

EFFECTIVE DATE: October 1, 2009, except for the provision requiring DEP (1) to create a municipal recycling grant program and (2) to report annually on the programs created by the bill, which takes effect July 1, 2009.

**DISPOSABLE BAG FEE*****Amount and Purpose***

The bill requires retailers who provide customers with disposable plastic or paper bags at the point of sale to charge customers five cents per bag, starting January 1, 2010. Retailers must submit the fee proceeds to the Department of Revenue Services (DRS).

The bill excludes restaurants from this requirement. It requires DEP to use the fee proceeds to fund recycling programs the bill creates,

preserve open space, protect the environment, and oversee state parks and forests.

Under the bill, a restaurant is a business whose sole purpose is preparing and selling food and beverages intended for individual portion service, including the location where the sale takes place, regardless of where the food or beverage is consumed.

### ***Submitting Fee Proceeds to the State***

Retailers must submit the disposable bag fee proceeds to DRS for the quarter beginning January 1, 2010, together with a DRS-prescribed return form, by April 30, 2010. Retailers must thereafter submit these forms and fees to DRS each calendar quarter, by the last day of the month immediately following the end of each quarter (i.e., by April 30 for the quarter ending March 31). The DRS commissioner must distribute copies of the return forms throughout the state. But retailers who do not receive a return form still must submit a return, along with the proceeds, by the quarterly deadlines.

### ***Penalty for Late Payment***

A retailer who fails to submit the fees on time will be charged a penalty of 10% of the amount due, or \$50, whichever is greater, in addition to the amount owed. The penalty begins accruing immediately. The retailer must thereafter pay 1.5% interest per month on the delinquent amount until it is paid.

### ***Recycling Initiatives Account***

The bill creates a “recycling initiatives account” as a separate, non-lapsing account in the General Fund into which DRS must deposit the fee proceeds. The account must hold all the money the law requires. The DEP commissioner must use this money to fund the recycling programs the bill creates; preserve open space, including state parks and forests; and protect the environment.

### ***Other Fee Provisions***

The bill requires that the disposable bag fee not affect the amount of

state sales tax charged the customer. This appears to mean that the charge for the bags is not subject to the sales tax. Existing laws concerning tax refund claims; willful failure to pay taxes; tax records, hearings and appeals procedures; allowing the DRS commissioner to examine tax records; tax collection; and liens against real estate as security for a tax apply to the disposable bag fee, except that all statutory references to "tax" must be read as "fee."

## **RECYCLING PROGRAM GRANTS**

### ***Grant Awards and Purpose***

The bill requires DEP to establish, by January 1, 2011, a municipal recycling matching grant program for municipalities to implement, or improve existing, recycling programs. The maximum grant is \$200,000, which cannot be used to fund more than half the estimated cost of implementing or improving a recycling program. DEP cannot award more than \$4.6 million annually. Each municipality can receive only one grant.

Municipalities must use the grants to establish (1) a pay-as-you-throw program in which residents pay (a) nothing for material they recycle and (b) for trash removal based on the volume or weight of the solid waste they generate; (2) other recycling incentives, such as offering retail coupons to households that meet certain recycling goals; or (3) single stream recycling.

Single stream recycling is a system in which a resident combines all paper fibers and containers (metal, plastic, glass, etc.) in a collection bin, instead of separating them.

### ***Application Process***

A municipality may apply by submitting a DEP-prescribed application form. The commissioner may reject a grant application she finds is incomplete. If she rejects an application, the commissioner must promptly notify the applicant and explain why she did so. The applicant may resubmit its application no later than 15 days after receiving this notice.

Each municipality the commissioner selects to receive a grant must submit a plan for her approval that includes:

1. an estimate of the operating and capital expenses and income required to implement the plan;
2. recycling goals;
3. an estimate of the savings in tipping fees, if applicable;
4. a method to track the program's actual cost; and
5. any additional information the commissioner requires.

### **RECYCLING RECEPTACLE GRANTS**

By January 1, 2011, the DEP must establish a municipal recycling receptacle grant program for municipalities to buy recycling receptacles for public spaces such as parks, schools, and municipal buildings that already have trash receptacles. The maximum grant is \$5,000, and each municipality is eligible for one grant. DEP cannot award more than \$250,000 in grants annually.

The application process is the same as for the recycling program matching grant program, but applicants do not have to submit a plan for the commissioner's approval.

The DEP commissioner may retain up to \$200,000 a year to administer the matching grant and recycling receptacle grant programs.

### **ANNUAL REPORT**

By January 1, 2012 and annually thereafter, the DEP must report to the Environment Committee on the number of grants it issued, the number of municipalities receiving the grants, and the amount of solid waste generated by each recipient town in the year following its receipt of the grant.

### **DEFINITIONS**

**Disposable Bag**

Under the bill a disposable bag is a plastic or paper sack provided at the point of sale for the storage of purchased goods. The bill excludes (1) reusable bags made of cloth or durable plastic at least 2.25 mils (0.00225 inches) thick; (2) bags used to store produce, flowers, baked goods, or meat that a retailer provides at a location other than the point of sale; (3) bags used to cover dry cleaned items; (4) paper bags a pharmacy provides to store purchased pharmaceuticals; and (5) plastic bags used to wrap newspapers delivered to homes.

**Retailer**

By law, retailers include people in the business of making sales (1) at retail or in the business of making retail sales at auctions of tangible personal property and (2) for storage, use, or other consumption, or in the business of making sales at auction of tangible personal property for storage, use or other consumption, It includes sellers rendering specific services; people under whom any salesman or representative, operates in this state, or from whom such salesman or representative obtains the tangible personal property that is sold. It includes certain people making retail sales from outside the state to a destination within the state and not maintaining a place of business here, and others (CGS § 12-407 (12)).

**BACKGROUND*****Municipal Plastic Bag Ordinance***

A Westport town ordinance banning retailers' use of plastic bags took effect March 19, 2009.

**COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute

Yea 21 Nay 9 (03/13/2009)