S T A T E O F N E W Y O R K

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2015-2016 Regular Sessions

I N A S S E M B L Y

May 29, 2015

Introduced by M. of A. KAVANAGH, ENGLEBRIGHT, JAFFEE, ABINANTI, ROZIC -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to prevention and diversion of food waste

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "state and local government food waste prevention and diversion act".

S 2. Article 27 of the environmental conservation law is amended by adding a new title 28 to read as follows:

TITLE 28

STATE AND LOCAL GOVERNMENT FOOD WASTE PREVENTION AND DIVERSION ACT

SECTION 27-2801. DEFINITIONS.
27-2803. REQUIRED STATE AND MUNICIPAL FOOD SERVICE ORGANICS WASTE MANAGEMENT.
27-2805. POWERS OF MUNICIPALITIES.

S 27-2801. DEFINITIONS.

FOR THE PURPOSES OF THIS TITLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "AGENCY" MEANS ANY STATE DEPARTMENT, AGENCY, BOARD, PUBLIC BENEFIT CORPORATION, PUBLIC AUTHORITY, OR COMMISSION.

2. "COMPOSTABLE" MEANS ALL THE MATERIALS IN THE PRODUCT OR PACKAGE WILL (A) UNDERGO DEGRADATION BY BIOLOGICAL PROCESSES DURING COMPOSTING TO YIELD CARBON DIOXIDE, WATER, INORGANIC COMPOUNDS, AND BIOMASS AT A RATE CONSISTENT WITH OTHER KNOWN COMPOSTABLE MATERIALS AND (B) LEAVE NO VISIBLE, DISTINGUISHABLE OR TOXIC RESIDUE, INCLUDING NO ADVERSE IMPACT ON THE ABILITY OF COMPOSTS TO SUPPORT PLANT GROWTH ONCE THE FINISHED COMPOST IS PLACED IN SOIL.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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3. "CONTRACTORS" AND "LESSEES" MEAN ANY PERSON OR ENTITY THAT HAS A CONTRACT WITH AN AGENCY, MUNICIPALITY OR LOCAL EDUCATION AGENCY FOR PUBLIC WORKS OR IMPROVEMENTS TO BE PERFORMED, FOR A FRANCHISE, CONCESSION OR LEASE OF PROPERTY, FOR GRANT MONIES OR GOODS AND SERVICES OR SUPPLIES TO BE PURCHASED AT THE EXPENSE OF THE AGENCY, MUNICIPALITY OR LOCAL EDUCATION AGENCY OR TO BE PAID OUT OF MONIES DEPOSITED IN THE TREASURY OR OUT OF TRUST MONIES UNDER THE CONTROL OR COLLECTED BY THE AGENCY, MUNICIPALITY OR LOCAL EDUCATION AGENCY.

4. "COVERED FOOD SERVICE ESTABLISHMENT" MEANS ANY PREMISES OR PART OF A PREMISES TO WHICH ALL OF THE FOLLOWING APPLY:

(A) IT IS OPERATED BY AN AGENCY, MUNICIPALITY, LOCAL EDUCATION AGENCY, OR ANY CONTRACTOR OR LESSEE OF AN AGENCY, MUNICIPALITY, OR LOCAL EDUCATION AGENCY;

(B) IT GENERATES, FROM ITS FOOD PREPARATION AND SERVICE, AS AVERAGED OVER THE COURSE OF THE PREVIOUS TEN WEEKS:

(I) IN TWO THOUSAND SIXTEEN AND TWO THOUSAND SEVENTEEN, OVER TWO THOUSAND POUNDS OF FOOD WASTE PER WEEK;

(II) IN TWO THOUSAND EIGHTEEN AND TWO THOUSAND NINETEEN, OVER ONE THOUSAND POUNDS OF FOOD WASTE PER WEEK; AND

(III) IN TWO THOUSAND TWENTY AND THEREAFTER, OVER FIVE HUNDRED POUNDS OF FOOD WASTE PER WEEK; AND

(C) IT IS LOCATED WHERE FOOD IS PREPARED AND PROVIDED DIRECTLY TO THE CONSUMER, WHETHER SUCH FOOD IS PROVIDED FREE OF CHARGE OR SOLD, AND WHETHER CONSUMPTION OCCURS ON OR OFF THE PREMISES. "COVERED FOOD SERVICE ESTABLISHMENTS" SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING WHICH ALSO MEET THE CONDITIONS OF PARAGRAPHS (A), (B), AND (C) OF THIS SUBDIVISION: FULL-SERVICE RESTAURANTS, FAST FOOD RESTAURANTS, CAFES, DELICATESSENS, COFFEE SHOPS, AND CAFETERIAS, BUT SHALL NOT INCLUDE RETAIL FOOD STORES, CONVENIENCE STORES, PHARMACIES AND MOBILE FOOD VENDING UNITS.

5. "EXCESS FOOD" MEANS FOOD THAT IS NOT REQUIRED TO MEET THE NEEDS OF THE COVERED FOOD SERVICE ESTABLISHMENT.

6. "LOCAL EDUCATION AGENCY" MEANS A SCHOOL DISTRICT, BOARD OF COOPERATIVE EDUCATIONAL SERVICES, COMMUNITY COLLEGE, AGRICULTURAL AND TECHNICAL COLLEGE, STATE UNIVERSITY OF NEW YORK COLLEGE OF TECHNOLOGY AND A CENTER FOR ADVANCED TECHNOLOGY DESIGNATED PURSUANT TO SECTION THREE THOUSAND ONE HUNDRED TWO-A OF THE PUBLIC AUTHORITIES LAW, AND OTHER POSTSECONDARY PROVIDER OF CAREER EDUCATION AS SET FORTH ANNUALLY BY THE COMMISSIONER AS ELIGIBLE RECIPIENTS UNDER THE FEDERAL VOCATIONAL EDUCATION ACT OF NINETEEN HUNDRED EIGHTY-FOUR.

7. "MUNICIPALITY" MEANS A VILLAGE, TOWN, CITY, OR COUNTY, OR ANY DESIGNATED AGENCY THEREOF.

8. "ORGANIC" MEANS MATERIALS PRODUCED BY OR FROM LIVING ORGANISMS.

9. "ORGANIC WASTE" MEANS READILY DEGRADABLE ORGANIC MATERIAL INCLUDING, BUT NOT LIMITED TO, FOOD WASTE, SOILED OR UNRECYCLABLE PAPER, AND YARD WASTE IN COMBINATION WITH ANY OF THE FORMER MATERIALS. IT DOES NOT INCLUDE BIOSOLIDS, SLUDGE, OR SEPTAGE.

S 27-2803. REQUIRED STATE AND MUNICIPAL FOOD SERVICE ORGANICS WASTE MANAGEMENT.

1. ANY COVERED FOOD SERVICE ESTABLISHMENT SHALL DO THE FOLLOWING:

(A) TO THE GREATEST EXTENT PRACTICABLE, MINIMIZE ITS GENERATION OF EXCESS, UNUSED FOODS IN ADDITION TO FOOD SCRAPS AND ORGANIC WASTE INCLUDING, BUT NOT LIMITED TO, FOOD TRIMMINGS AND PACKAGING;

(B) TO THE GREATEST EXTENT PRACTICABLE, REDUCE THE NEED FOR DISPOSAL OF ITS GENERATED EXCESS, UNUSED FOOD, FOOD SCRAPS AND ANY OTHER COMPOST-

ABLE OR ORGANIC WASTE, BY PROVIDING IT FOR THE FOLLOWING PURPOSES, IN DESCENDING ORDER OF PRIORITY:

(I) FEEDING OR DISTRIBUTING EXCESS, UNUSED, APPARENTLY WHOLESOME FOOD TO PEOPLE, SUCH AS THE FOOD INSECURE, THROUGH LOCAL VOLUNTARY COMMUNITY NOT-FOR-PROFIT FOOD ASSISTANCE OR SIMILAR PROGRAMS AS AUTHORIZED BY STATE AND FEDERAL LAW;

(II) FEEDING EXCESS, UNUSED FOOD, OR FOOD SCRAPS TO ANIMALS AS FEED AS AUTHORIZED BY STATE AND FEDERAL LAW;

(III) COMPOSTING, ANAEROBIC DIGESTION, OR OTHER PROCESSING OF FOOD, FOOD WASTE, OR ORGANIC WASTE TO GENERATE SOIL AMENDMENT OR OTHER PRODUCTS FOR USE IN AGRICULTURAL, HORTICULTURAL, MANUFACTURING, OR OTHER APPLICATIONS;

(C) EFFECTUATE PARAGRAPH (B) OF THIS SUBDIVISION BY DOING THE FOLLOWING:

(I) FOR MANAGEMENT OF EXCESS FOODS OR FOOD SCRAP PURSUANT TO SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (B) OF THIS SUBDIVISION, OTHER THAN THOSE MANAGED ON-SITE, TRANSFER, OR ARRANGE FOR SUCH TRANSFER, TO LOCATIONS INTENDED FOR THEIR CONSUMPTION OR FROM WHICH THEY WILL BE DISTRIBUTED FOR ULTIMATE CONSUMPTION; AND

(II) FOR MANAGEMENT OF ORGANIC WASTES PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (B) OF THIS SUBDIVISION, BY TAKING ACTIONS TO (A) SOURCE SEPARATE ORGANIC WASTES FROM OTHER WASTE AND SUBSCRIBE TO A BASIC LEVEL OF RECYCLING SERVICE THAT INCLUDES THEIR COLLECTION AND RECYCLING; (B) RECYCLE ITS ORGANIC WASTES ON-SITE OR SELF-HAUL THEM FOR RECYCLING; OR (C) SUBSCRIBE TO AN ORGANIC WASTE RECYCLING SERVICE THAT MAY INCLUDE MIXED WASTE PROCESSING THAT SPECIFICALLY RECYCLES ORGANIC WASTE.

(D) PROVIDE COLLECTION AND EDUCATIONAL RESOURCES, INCLUDING REGULAR PERIODICAL GUIDANCE, TRAINING, UPDATES, SIGNAGE, AND FLYERS, FOR ITS WORKFORCE AND THE PUBLIC FOR THE PURPOSES OF TEACHING AND RETAINING EFFECTIVE PROCEDURES FOR SORTING MATERIALS FOR ORGANICS AND OTHER RECYCLING.

2. EACH COVERED FOOD SERVICE ESTABLISHMENT MAY PROVIDE TO ITS MUNICIPALITY, PLANNING UNIT, OR THE DEPARTMENT, INFORMATION ON ITS PRACTICES, INCLUDING AMOUNTS OF EXCESS FOOD, FOOD SCRAPS, OR ORGANIC WASTE MANAGED BY VARIOUS METHODS SUCH AS THOSE IMPLEMENTED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, ENTITIES OR RESOURCES UTILIZED FOR REDUCING AND MANAGING SUCH MATERIALS, OR FINANCING MECHANISMS AND INCENTIVES UTILIZED.

3. WAIVERS. IF THE COST FOR A COVERED FOOD SERVICE ESTABLISHMENT TO COMPLY WITH THE REQUIREMENTS OF PARAGRAPH (C) OF SUBDIVISION ONE OF THIS SECTION FOR ANY OR ALL PORTIONS OF EXCESS FOOD, FOOD SCRAPS, OR ORGANIC WASTE EXCEEDS FIFTEEN PERCENT OF THE COST OF ITS DISPOSAL BY LANDFILL OR INCINERATION, THE COVERED FOOD SERVICE ESTABLISHMENT MAY REQUEST FROM THE COMMISSIONER A WAIVER OF THE REQUIREMENTS FOR THE PORTIONS, BASED ON DOCUMENTED EFFORTS TO COMPLY. THE COMMISSIONER SHALL REVIEW THE REQUEST AND, IF VALIDATED, GRANT THE WAIVER FOR A PERIOD OF NO GREATER THAN TWENTY-FOUR MONTHS.

4. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO CONTRACTS IN EFFECT ON THE EFFECTIVE DATE OF THIS SECTION; PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS SECTION SHALL APPLY TO ALL RENEWALS OR EXTENSIONS OF SUCH CONTRACTS ENTERED INTO ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION.

5. IN THE EVENT THAT TWO OR MORE COVERED FOOD SERVICE ESTABLISHMENTS SHARE A COMMON PHYSICAL FACILITY AND SHARE SERVICES SUCH AS WASTE/RECYCLING COLLECTION AND HAULING, DINING AREAS AND/OR RESTROOMS, ALL FACILITIES SHALL BE CONSIDERED TO BE ONE COVERED FOOD SERVICE ESTAB-

LISHMENT FOR THE PURPOSE OF CALCULATING THE AMOUNT OF FOOD WASTE AS PROVIDED IN SUBDIVISION FOUR OF SECTION 27-2801 OF THIS TITLE.

6. THE DEPARTMENT SHALL PROMOTE ACTIONS FOR COVERED FOOD SERVICE ESTABLISHMENTS TO TAKE PURSUANT TO THE REQUIREMENTS OF SUBDIVISION ONE OF THIS SECTION, AND FOR ALL ENTITIES AND THE PUBLIC TO TAKE IN EFFORTS TO MANAGE EXCESS FOOD, FOOD SCRAPS, AND ORGANIC WASTE IN A SIMILAR MANNER.

7. THE DEPARTMENT MAY COLLECT AND REPORT INFORMATION TO PROMOTE IMPROVED MANAGEMENT OF EXCESS FOOD, FOOD SCRAPS AND ORGANIC WASTE, INCLUDING INFORMATION ON PRACTICES BY COVERED FOOD ESTABLISHMENTS, OTHER ENTITIES AND THE PUBLIC, OR LISTS OF ENTITIES AND RESOURCES PROVIDING ASSISTANCE FOR REDUCING SUCH MATERIALS, FACILITIES ACCEPTING SUCH MATERIALS, OR FINANCING MECHANISMS AND INCENTIVES AVAILABLE FOR RECOVERY PRACTICES AND FACILITIES.

S 27-2805. POWERS OF MUNICIPALITIES.

ANY AGENCY, MUNICIPALITY OR LOCAL EDUCATION AGENCY MAY PROMULGATE REGULATIONS, ORDINANCES, OR LAWS TO TAKE ANY AND ALL REASONABLE ACTIONS NECESSARY TO IMPLEMENT AND ENFORCE THIS TITLE. THIS TITLE DOES NOT LIMIT THE AUTHORITY OF A LOCAL GOVERNMENTAL AGENCY TO ADOPT, IMPLEMENT, OR, ENFORCE REQUIREMENTS ON MANAGEMENT OF EXCESS FOOD, FOOD SCRAPS, AND ORGANIC WASTE THAT ARE MORE STRINGENT OR COMPREHENSIVE THAN THE REQUIREMENTS OF THIS TITLE.

S 3. Paragraph (c) of subdivision 1 of section 27-0107 of the environmental conservation law, as added by chapter 70 of the laws of 1988, is amended to read as follows:

(c) Such plan shall take into account the objectives of the state solid waste management policy, provide for or take into account management of all solid waste within the planning unit, and embody, as may be appropriate to the circumstances, sound principles of solid waste management, natural resources conservation, energy production, and employment creating opportunities, INCLUDING BUT NOT LIMITED TO:

(I) DESCRIPTION OF EFFORTS OF THE PLANNING UNIT, OR ANY OF THE MUNICIPALITIES THEREIN, TO FACILITATE, PARTICIPATE, OR ASSIST IN THE MANAGEMENT OF EXCESS FOOD, FOOD SCRAPS, AND OTHER ORGANIC WASTE IN THE SOLID WASTE STREAM INCLUDING, BUT NOT LIMITED TO, DESCRIPTION OF PROGRAMS PROVIDING (A) ASSISTANCE WITH REDUCING THE AMOUNT OF EXCESS FOOD, FOOD SCRAPS, AND ORGANIC WASTE GENERATED, (B) EXCESS FOOD TO ENTITIES FOR FEEDING THE FOOD INSECURE, (C) EXCESS FOOD AND FOOD SCRAPS FOR FEEDING ANIMALS, AND (D) FOOD AND OTHER ORGANIC WASTE TO PROCESS AND GENERATE SOIL AMENDMENT OR OTHER PRODUCTS FOR USE IN AGRICULTURAL, HORTICULTURAL, MANUFACTURING, OR OTHER APPLICATIONS; AND

(II) ASSESSMENT AND DESCRIPTION OF (A) KNOWN ENTITIES ACCEPTING EXCESS FOOD DONATIONS FOR THE PURPOSE OF PROVIDING NOURISHMENT TO THE FOOD INSECURE AND ESTIMATED AMOUNTS, ACCORDING TO ANY USEFUL CATEGORIES, SUCH AS PERISHABLE AND NON-PERISHABLE, THAT ARE AVAILABLE, (B) KNOWN ENTITIES THAT ACCEPT EXCESS FOOD AND FOOD SCRAPS FOR FEEDING ANIMALS, AND ESTIMATED AMOUNTS, ACCORDING TO AVAILABLE USEFUL CATEGORIES, AND (C) KNOWN ENTITIES THAT ACCEPT FOOD AND OTHER ORGANIC WASTE TO PROCESS AND GENERATE SOIL AMENDMENT OR OTHER PRODUCTS, AND ESTIMATED AMOUNTS, ACCORDING TO AVAILABLE USEFUL CATEGORIES.

S 4. This act shall take effect on the first of the month following the one hundred eightieth day after it shall have become a law.