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I N S E N A T E

April 15, 2016

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed 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:

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

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

6 TITLE 28

7 STATE AND LOCAL GOVERNMENT FOOD WASTE PREVENTION AND DIVERSION  
8 ACT

9 SECTION 27-2801. DEFINITIONS.

10 27-2803. REQUIRED STATE AND MUNICIPAL FOOD SERVICE ORGANICS  
11 WASTE MANAGEMENT.

12 27-2805. POWERS OF MUNICIPALITIES.

13 S 27-2801. DEFINITIONS.

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

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

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

25 3. "CONTRACTORS" AND "LESSEES" MEAN ANY PERSON OR ENTITY THAT HAS A  
26 CONTRACT WITH AN AGENCY, MUNICIPALITY OR LOCAL EDUCATION AGENCY FOR  
27 PUBLIC WORKS OR IMPROVEMENTS TO BE PERFORMED, FOR A FRANCHISE, CONCES-  
28 SION OR LEASE OF PROPERTY, FOR GRANT MONIES OR GOODS AND SERVICES OR

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

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1 SUPPLIES TO BE PURCHASED AT THE EXPENSE OF THE AGENCY, MUNICIPALITY OR  
2 LOCAL EDUCATION AGENCY OR TO BE PAID OUT OF MONIES DEPOSITED IN THE  
3 TREASURY OR OUT OF TRUST MONIES UNDER THE CONTROL OR COLLECTED BY THE  
4 AGENCY, MUNICIPALITY OR LOCAL EDUCATION AGENCY.

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

7 (A) IT IS OPERATED BY AN AGENCY, MUNICIPALITY, LOCAL EDUCATION AGENCY,  
8 OR ANY CONTRACTOR OR LESSEE OF AN AGENCY, MUNICIPALITY, OR LOCAL EDUCA-  
9 TION AGENCY;

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

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

14 (II) IN TWO THOUSAND NINETEEN AND TWO THOUSAND TWENTY, OVER ONE THOU-  
15 SAND POUNDS OF FOOD WASTE PER WEEK; AND

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

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

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

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

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

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

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

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

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

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

50 (B) TO THE GREATEST EXTENT PRACTICABLE, REDUCE THE NEED FOR DISPOSAL  
51 OF ITS GENERATED EXCESS, UNUSED FOOD, FOOD SCRAPS AND ANY OTHER COMPOST-  
52 ABLE OR ORGANIC WASTE, BY PROVIDING IT FOR THE FOLLOWING PURPOSES, IN  
53 DESCENDING ORDER OF PRIORITY:

54 (I) FEEDING OR DISTRIBUTING EXCESS, UNUSED, APPARENTLY WHOLESOME FOOD  
55 TO PEOPLE, SUCH AS THE FOOD INSECURE, THROUGH LOCAL VOLUNTARY COMMUNITY

1 NOT-FOR-PROFIT FOOD ASSISTANCE OR SIMILAR PROGRAMS AS AUTHORIZED BY  
2 STATE AND FEDERAL LAW;

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

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

9 (C) EFFECTUATE PARAGRAPH (B) OF THIS SUBDIVISION BY DOING THE FOLLOW-  
10 ING:

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

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

23 (D) PROVIDE COLLECTION AND EDUCATIONAL RESOURCES, INCLUDING REGULAR  
24 PERIODICAL GUIDANCE, TRAINING, UPDATES, SIGNAGE, AND FLYERS, FOR ITS  
25 WORKFORCE AND THE PUBLIC FOR THE PURPOSES OF TEACHING AND RETAINING  
26 EFFECTIVE PROCEDURES FOR SORTING MATERIALS FOR ORGANICS AND OTHER RECY-  
27 CLING.

28 2. EACH COVERED FOOD SERVICE ESTABLISHMENT MAY PROVIDE TO ITS MUNICI-  
29 PALITY, PLANNING UNIT, OR THE DEPARTMENT, INFORMATION ON ITS PRACTICES,  
30 INCLUDING AMOUNTS OF EXCESS FOOD, FOOD SCRAPS, OR ORGANIC WASTE MANAGED  
31 BY VARIOUS METHODS SUCH AS THOSE IMPLEMENTED PURSUANT TO SUBDIVISION ONE  
32 OF THIS SECTION, ENTITIES OR RESOURCES UTILIZED FOR REDUCING AND MANAG-  
33 ING SUCH MATERIALS, OR FINANCING MECHANISMS AND INCENTIVES UTILIZED.

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

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

48 5. IN THE EVENT THAT TWO OR MORE COVERED FOOD SERVICE ESTABLISHMENTS  
49 SHARE A COMMON PHYSICAL FACILITY AND SHARE SERVICES SUCH AS  
50 WASTE/RECYCLING COLLECTION AND HAULING, DINING AREAS AND/OR RESTROOMS,  
51 ALL FACILITIES SHALL BE CONSIDERED TO BE ONE COVERED FOOD SERVICE ESTAB-  
52 LISHMENT FOR THE PURPOSE OF CALCULATING THE AMOUNT OF FOOD WASTE AS  
53 PROVIDED IN SUBDIVISION FOUR OF SECTION 27-2801 OF THIS TITLE.

54 6. THE DEPARTMENT SHALL PROMOTE ACTIONS FOR COVERED FOOD SERVICE  
55 ESTABLISHMENTS TO TAKE PURSUANT TO THE REQUIREMENTS OF SUBDIVISION ONE  
56 OF THIS SECTION, AND FOR ALL ENTITIES AND THE PUBLIC TO TAKE IN EFFORTS

1 TO MANAGE EXCESS FOOD, FOOD SCRAPS, AND ORGANIC WASTE IN A SIMILAR  
2 MANNER.

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

10 S 27-2805. POWERS OF MUNICIPALITIES.

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

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

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

27 (I) DESCRIPTION OF EFFORTS OF THE PLANNING UNIT, OR ANY OF THE MUNICI-  
28 PALITIES THEREIN, TO FACILITATE, PARTICIPATE, OR ASSIST IN THE MANAGE-  
29 MENT OF EXCESS FOOD, FOOD SCRAPS, AND OTHER ORGANIC WASTE IN THE SOLID  
30 WASTE STREAM INCLUDING, BUT NOT LIMITED TO, DESCRIPTION OF PROGRAMS  
31 PROVIDING (A) ASSISTANCE WITH REDUCING THE AMOUNT OF EXCESS FOOD, FOOD  
32 SCRAPS, AND ORGANIC WASTE GENERATED, (B) EXCESS FOOD TO ENTITIES FOR  
33 FEEDING THE FOOD INSECURE, (C) EXCESS FOOD AND FOOD SCRAPS FOR FEEDING  
34 ANIMALS, AND (D) FOOD AND OTHER ORGANIC WASTE TO PROCESS AND GENERATE  
35 SOIL AMENDMENT OR OTHER PRODUCTS FOR USE IN AGRICULTURAL, HORTICULTURAL,  
36 MANUFACTURING, OR OTHER APPLICATIONS; AND

37 (II) ASSESSMENT AND DESCRIPTION OF (A) KNOWN ENTITIES ACCEPTING EXCESS  
38 FOOD DONATIONS FOR THE PURPOSE OF PROVIDING NOURISHMENT TO THE FOOD  
39 INSECURE AND ESTIMATED AMOUNTS, ACCORDING TO ANY USEFUL CATEGORIES, SUCH  
40 AS PERISHABLE AND NON-PERISHABLE, THAT ARE AVAILABLE, (B) KNOWN ENTITIES  
41 THAT ACCEPT EXCESS FOOD AND FOOD SCRAPS FOR FEEDING ANIMALS, AND ESTI-  
42 MATED AMOUNTS, ACCORDING TO AVAILABLE USEFUL CATEGORIES, AND (C) KNOWN  
43 ENTITIES THAT ACCEPT FOOD AND OTHER ORGANIC WASTE TO PROCESS AND GENER-  
44 ATE SOIL AMENDMENT OR OTHER PRODUCTS, AND ESTIMATED AMOUNTS, ACCORDING  
45 TO AVAILABLE USEFUL CATEGORIES.

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