

# STATE OF NEW YORK

6081

2019-2020 Regular Sessions

## IN ASSEMBLY

February 27, 2019

Introduced by M. of A. ORTIZ -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the tax law, in relation to the donation of excess food and recycling of food scraps

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 27 of the environmental conservation law is amended by adding a new title 22 to read as follows:

### TITLE 22

#### FOOD RECOVERY AND RECYCLING

##### Section 27-2201. Definitions.

27-2203. Designated food scraps generator responsibilities.

27-2205. Transporter responsibilities.

27-2207. Transfer facility or other intermediary responsibilities.

27-2209. Food scraps disposal prohibition.

27-2211. Department responsibilities.

27-2213. Regulations.

27-2215. Exclusions.

27-2217. Preemption and severability.

##### § 27-2201. Definitions.

1. "Designated food scraps generator" means a person who generates at a single location an annual average of two tons per week or more, prior to January first, two thousand twenty-three, and one ton per week on and after such date, or more of excess food and food scraps, based on a methodology established by the department pursuant to regulations, including, but not limited to, supermarkets, restaurants, higher educational institutions, hotels, food processors, correctional facilities, sports or entertainment venues, and hospitals or other health care facilities. For a location with multiple independent food service businesses, such as a mall or college campus, the entity responsible for

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

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1 contracting with a transporter for solid waste transportation services  
2 is responsible for managing excess food and food scraps from the inde-  
3 pendent businesses for the purposes of determining if the generator is a  
4 designated food scraps generator.

5 2. "Excess food" means wholesome food that is not sold or used by its  
6 generator.

7 3. "Food scraps" means inedible solid or liquid food, trimmings from  
8 the preparation of food, food-soiled paper, and excess food that is not  
9 donated. Food scraps shall not include used cooking oil, yellow grease  
10 or food from residential sources or any food which is subject to a  
11 recall or seizure due to the presence of pathogens, including but not  
12 limited to: Listeria Monocytogenes, confirmed Clostridium Botulinum, E.  
13 coli 0157:H7 and all salmonella in ready-to-eat foods.

14 4. "Incinerator" shall have the same meaning as such term is defined  
15 in section 27-0707 of this article.

16 5. "Organics recycler" means a facility that recycles food scraps  
17 through use as animal feed or a feed ingredient, rendering, land appli-  
18 cation, composting, aerobic digestion, anaerobic digestion, or fermenta-  
19 tion. Animal scraps, food soiled paper, and post-consumer food scraps  
20 are prohibited for use as animal feed or as a feed ingredient. The  
21 proportion of the product created from food scraps by a composting or  
22 digestion facility, including a wastewater treatment plant that operates  
23 a digestion facility, or other treatment system, must be used in a bene-  
24 ficial manner as a soil amendment and shall not be disposed of or incin-  
25 erated. The department may designate other techniques or technologies by  
26 regulation, provided they do not include incineration or landfilling. If  
27 wastewater treatment plants recycling food scraps can demonstrate to the  
28 department's satisfaction that beneficial use of biosolids is not avail-  
29 able or not economically feasible, the biosolids may be disposed of in a  
30 landfill or incinerated at a facility authorized to accept those wastes.

31 6. "Person" means any individual, business entity, partnership, compa-  
32 ny, corporation, not-for-profit corporation, association, governmental  
33 entity, public benefit corporation, public authority, firm, organization  
34 or any other group of individuals, or any officer or employee or agent  
35 thereof.

36 7. "Single location" means contiguous property under common ownership,  
37 which may include one or more buildings.

38 8. "Transfer facility" means a facility that receives solid waste for  
39 the purpose of subsequent transfer to another facility for further proc-  
40 essing, treatment, transfer, or disposal.

41 § 27-2203. Designated food scraps generator responsibilities.

42 1. Beginning January first, two thousand twenty-one:

43 (a) all designated food scraps generators shall separate their excess  
44 food for donation for human consumption to the maximum extent practica-  
45 ble, and in accordance with applicable laws, rules and regulations  
46 related to food donation; and

47 (b) except as provided in paragraph (c) of this subdivision, each  
48 designated food scraps generator that is within a forty-mile radius of  
49 an organics recycler regulated by the department, to the extent that the  
50 recycler has capacity to accept a substantial portion or all of the  
51 generator's food scraps as determined by the department on a yearly  
52 basis, shall:

53 (i) separate its remaining food scraps from other solid waste;

54 (ii) ensure proper storage for food scraps collection on site which  
55 shall preclude such materials from becoming odorous or attracting  
56 vectors such as a container that has a lid and a latch that keeps the

1 lid closed, is resistant to tampering by rodents or other wildlife and  
2 has sufficient capacity;

3 (iii) have information available and provide training for employees  
4 concerning the proper methods to separate and store food scraps; and

5 (iv) obtain a transporter that will deliver its food scraps to an  
6 organics recycler, either directly or through an intermediary, self-haul  
7 its food scraps to an organics recycler, either directly or through an  
8 intermediary, or provide for organics recycling on-site.

9 (c) The provisions of paragraph (b) of this subdivision shall not  
10 apply to any designated food scraps generator that has all of its solid  
11 waste processed in a mixed solid waste composting or other mixed solid  
12 waste organics recycling facility.

13 2. All designated food scraps generators shall submit an annual report  
14 to the department on or before March first, two thousand twenty-two, and  
15 annually thereafter, in an electronic format. The annual report must  
16 summarize the amount of excess food and food scraps generated, the  
17 amount of excess food donated, an outline of its efforts to establish a  
18 relationship with a food recovery organization, the amount of food  
19 scraps recycled, the organics recycler or recyclers and associated  
20 transporters used, and any other information as required by the depart-  
21 ment.

22 § 27-2205. Transporter responsibilities.

23 1. Any transporter that collects source-separated food scraps for  
24 recycling from a designated food scraps generator shall:

25 (a) deliver collected food scraps to a transfer facility or other  
26 intermediary that will deliver such food scraps to an organics recycler;  
27 or

28 (b) deliver collected food scraps directly to an organics recycler.

29 2. Any transporter that collects source-separated food scraps from a  
30 designated food scraps generator shall not commingle the food scraps  
31 with any other solid waste unless such waste can be processed by an  
32 organics recycler.

33 § 27-2207. Transfer facility or other intermediary responsibilities.

34 Any transfer facility or other intermediary that receives source-sepa-  
35 rated food scraps from a designated food scraps generator must ensure  
36 that the food scraps are taken to an organics recycler. No transfer  
37 facility or other intermediary may commingle the food scraps with any  
38 other solid waste unless such waste can be processed by an organics  
39 recycler.

40 § 27-2209. Food scraps disposal prohibition.

41 No incinerator or landfill shall knowingly accept or commingle with  
42 solid waste source-separated food scraps from designated food scraps  
43 generators required to send food scraps to an organics recycler as  
44 outlined under section 27-2203 of this title, either directly or from an  
45 intermediary, after January first, two thousand twenty-one.

46 § 27-2211. Department responsibilities.

47 1. The department shall publish on its website a list of all desig-  
48 nated food scraps generators, organics recyclers, food recovery organ-  
49 izations, and all transporters that manage source-separated food scraps.

50 2. No later than June first, two thousand twenty, the department shall  
51 assess the capacity of organic recyclers and notify designated food  
52 scraps generators if they are required to comply with the provisions of  
53 paragraph (b) of subdivision one of section 27-2203 of this title.

54 3. The department shall develop and make available educational materi-  
55 als to assist designated food scraps generators with compliance with  
56 this title. The department shall also develop education materials on

1 food waste minimization and encourage municipalities to disseminate  
2 these materials both on their municipal websites and in any relevant  
3 future mailings to their residents as they may distribute.

4 § 27-2213. Regulations.

5 The department shall promulgate rules and regulations necessary to  
6 implement the provisions of this title. At a minimum, the department  
7 shall promulgate rules and regulations that set forth the methodology  
8 the department will use to determine who is a designated food scraps  
9 generator, after consulting with industry representatives, and what  
10 process a designated generator must follow to dispute such determi-  
11 nation, and how designated food scraps generators shall comply with the  
12 provisions of paragraph (a) and subparagraph (i) of paragraph (b) of  
13 subdivision one of section 27-2203 of this title.

14 § 27-2215. Exclusions.

15 1. This title shall not apply to any designated food scraps generators  
16 located in a city with a population of one million or more which has a  
17 local law, ordinance or regulation in place which requires the diversion  
18 of excess food and food scraps from disposal.

19 2. This title does not apply to elementary and secondary schools.

20 § 27-2217. Preemption and severability.

21 1. Any provision of any local law or ordinance, or any regulation  
22 promulgated thereto, governing the recycling of food scraps shall upon  
23 the effective date of this title be preempted, except in a city with a  
24 population of one million or more. However, local laws or ordinances, or  
25 parts thereof, affecting the recycling of food scraps that include  
26 generators not covered by this title shall not be preempted.

27 2. The provisions of this title shall be severable and if any portion  
28 thereof or the applicability thereof to any person or circumstances is  
29 held invalid, the remainder of this title and the application thereof  
30 shall not be affected thereby.

31 § 2. Section 606 of the tax law is amended by adding a new subsection  
32 (jjj) to read as follows:

33 (jjj) Food recovery and recycling tax credit. (1) For taxable years  
34 beginning on or after January first, two thousand twenty-one, a taxpayer  
35 who is a designated food scraps generator, as defined in section 27-2201  
36 of the environmental conservation law, shall be allowed a credit against  
37 the tax imposed under this article for an amount equal to the cost of  
38 obtaining a transporter to deliver its food scraps to an organics recy-  
39 cler, pursuant to section 27-2203 of the environmental conservation law,  
40 provided, however, such credit shall not exceed fifteen thousand  
41 dollars.

42 (2) If the amount of the credit allowed under this subsection for any  
43 taxable year shall exceed the taxpayer's tax for such year, the excess  
44 shall be treated as an overpayment of tax to be credited or refunded in  
45 accordance with the provisions of section six hundred eighty-six of this  
46 article, provided, however, that no interest shall be paid thereon.

47 (3) The commissioner, in consultation with the commissioner of envi-  
48 ronmental conservation, shall promulgate rules and regulations by Janu-  
49 ary first, two thousand twenty-one to establish the documentation that  
50 will be provided to taxpayers to substantiate to the department eligi-  
51 bility to receive the credit provided by paragraph one of this  
52 subsection.

53 § 3. This act shall take effect immediately.