

# STATE OF NEW YORK

---

3672

2019-2020 Regular Sessions

## IN ASSEMBLY

January 30, 2019

---

Introduced by M. of A. ENGLEBRIGHT, GALEF, L. ROSENTHAL, STIRPE, ARROYO, STECK, OTIS, COLTON, GOTTFRIED, GLICK -- Multi-Sponsored by -- M. of A. THIELE -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation 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:

1 Section 1. Approximately 40 percent of the food produced in the United  
2 States today goes uneaten. Much of this organic waste is disposed of in  
3 solid waste landfills, where its decomposition accounts for over 15  
4 percent of our nation's emissions of methane, a potent greenhouse gas.  
5 Meanwhile, an estimated 2.8 million New Yorkers are facing hunger and  
6 food insecurity. Recognizing the importance of food scraps to our envi-  
7 ronment, economy, and the health of New Yorkers, this act establishes a  
8 food scraps hierarchy for the state of New York. The first tier of the  
9 hierarchy is source reduction, reducing the volume of surplus food  
10 generated. The second tier is recovery, feeding wholesome food to hungry  
11 people. Third is repurposing, feeding animals. Fourth is recycling,  
12 processing any leftover food such as by composting or anaerobic  
13 digestion to create a nutrient-rich soil amendment. This legislation is  
14 designed to address each tier of the hierarchy by: encouraging the  
15 prevention of food waste generation by commercial generators and resi-  
16 dents; directing the recovery of excess edible food from high-volume  
17 commercial food waste generators; and ensuring that a significant  
18 portion of inedible food waste from large volume food waste generators  
19 is managed in a sustainable manner, and does not end up being sent to  
20 landfills or incinerators. In addition, the state has supported the  
21 recovery of wholesome food by providing grants from the environmental  
22 protection fund to increase capacity of food banks, conduct food scraps  
23 audits of high-volume generators of food scraps, support implementation

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

LBD07672-01-9

1 of pollution prevention projects identified by such audits, and expand  
2 capacity of generators and municipalities to donate and recycle food.

3 § 2. Article 27 of the environmental conservation law is amended by  
4 adding a new title 22 to read as follows:

5 TITLE 22

6 FOOD DONATION AND FOOD SCRAPS RECYCLING

7 Section 27-2201. Definitions.

8 27-2203. Designated food scraps generator responsibilities.

9 27-2205. Waste transporter responsibilities.

10 27-2207. Transfer station.

11 27-2209. Food scraps disposal prohibition.

12 27-2211. Department responsibilities.

13 27-2213. Regulations.

14 27-2215. Exclusions.

15 27-2217. Annual Report.

16 27-2219. Severability.

17 § 27-2201. Definitions.

18 1. "Designated food scraps generator" means a person who generates at  
19 a single location an annual average of two tons per week or more of food  
20 scraps based on a methodology established by the department pursuant to  
21 regulations, including, supermarkets, restaurants, higher educational  
22 institutions, hotels, food processors, correctional facilities, sports  
23 or entertainment venues and health care facilities. For a location with  
24 multiple independent food service businesses, such as a mall or college  
25 campus, the entity responsible for contracting for solid waste hauling  
26 services is responsible for managing food scraps from the independent  
27 businesses.

28 2. "Food scraps" means inedible food, trimmings from the preparation  
29 of food, food-soiled paper, and edible food that is not donated. Food  
30 scraps shall not include used cooking oil, yellow grease or food from  
31 residential sources, or any food identified in regulations promulgated  
32 by the department in consultation with the department of agriculture and  
33 markets or any food which is subject to a recall or seizure due to the  
34 presence of pathogens, including but not limited to: Listeria Monocytogenes,  
35 confirmed Clostridium Botulinum, E. coli 0157:H7 and all salmonella  
36 in ready-to-eat foods.

37 3. "Organics recycler" means a facility, permitted by the department,  
38 that recycles food scraps through use as animal feed or a feed ingredi-  
39 ent, rendering, land application, composting, aerobic digestion, anaero-  
40 bic digestion, fermentation, or ethanol production. Animal scraps, food  
41 soiled paper, and post-consumer food scraps are prohibited for use as  
42 animal feed or as a feed ingredient. The proportion of the product  
43 created from food scraps by a composting or digestion facility, includ-  
44 ing a wastewater treatment plant that operates a digestion facility, or  
45 other treatment system, must be used in a beneficial manner as a soil  
46 amendment and shall not be disposed of or incinerated.

47 4. "Person" means any business entity, partnership, company, corpo-  
48 ration, not-for-profit corporation, association, governmental entity,  
49 public benefit corporation, public authority, firm, or organization.

50 5. "Single location" means contiguous property under common ownership,  
51 which may include one or more buildings.

52 6. "Incinerator" shall have the same meaning as provided in section  
53 72-0401 of this chapter.

54 7. "Landfill" shall have the same meaning as provided in section  
55 72-0401 of this chapter.

1     8. "Transfer station" means a solid waste management facility, whether  
2 owned or operated by a private or public entity, other than a recycla-  
3 bles handling and recovery facility, used oil facility, or a  
4 construction and demolition debris processing facility, where solid  
5 waste is received for the purpose of subsequent transfer to another  
6 solid waste management facility for processing, treating, disposal,  
7 recovery, or further transfer.

8     § 27-2203. Designated food scraps generator responsibilities.

9     1. Effective January first, two thousand twenty-two:

10     (a) all designated food scraps generators shall separate their excess  
11 edible food for donation for human consumption to the maximum extent  
12 practicable, and in accordance with applicable laws, rules and regu-  
13 lations related to food donation; and

14     (b) except as provided in paragraph (c) of this subdivision, each  
15 designated food scraps generator that is within fifteen miles of an  
16 organics recycler, to the extent that the recycler has capacity to  
17 accept all of such generator's food scraps based on the department's  
18 yearly estimate of an organic recyclers' capacity pursuant to section  
19 27-2211 of this title, shall:

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

21         (ii) ensure proper storage for food scraps on site which shall  
22 preclude such materials from becoming odorous or attracting vectors,  
23 such as a container that has a lid and a latch that keeps the lid closed  
24 and is resistant to tampering by rodents or other wildlife and has  
25 sufficient capacity;

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

28         (iv) obtain a transporter that will deliver food scraps to an organics  
29 recycler, self-haul its food scraps to an organics recycler, or provide  
30 for organics recycling on-site via in vessel composting, aerobic or  
31 anaerobic digestion or any other method of processing organic waste that  
32 the department approves by regulation, for some or all of the food waste  
33 it generates on its premises, provided that the remainder is delivered  
34 to an organics recycler.

35     (c) The provisions of paragraph (b) of this subdivision shall not  
36 apply to any designated food scraps generator that has all of its food  
37 scraps processed in a mixed solid waste composting or mixed solid waste  
38 anaerobic digestion facility.

39     2. All designated food scraps generators shall submit an annual report  
40 to the department on or before March first, two thousand twenty-three,  
41 and annually thereafter, in an electronic format. The annual report must  
42 summarize the amount of edible food donated, the amount of food scraps  
43 recycled, the organics recycler or recyclers and associated transporters  
44 used, and any other information as required by the department.

45     3. A designated food scraps generator may petition the department for  
46 a temporary waiver from some or all of the requirements of this title.  
47 The petition must include evidence of undue hardship based on:

48         (a) the designated food scraps generator does not meet the two tons  
49 per week threshold;

50         (b) the cost of processing organic waste is not reasonably competitive  
51 with the cost of disposing of waste by landfill;

52         (c) the organics recycler does not have sufficient capacity, despite  
53 the department's calculation; or

54         (d) the unique circumstances of the generator.

55     A waiver shall be no longer than one year in duration provided, howev-  
56 er, the department may renew such waiver.

§ 27-2205. Waste transporter responsibilities.

1. Any waste transporter that collects food scraps for recycling from a designated food scraps generator shall:

(a) deliver food scraps to a transfer station that will deliver such food scraps to an organics recycler unless such generator has received a temporary waiver under subdivision three of section 27-2203 of this title; or

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

2. Any waste transporter that collects food scraps from a designated food scraps generator shall take all reasonable precautions to not deliver those food scraps to an incinerator or a landfill nor commingle the material with any other solid waste unless such commingled waste can be processed by an organics recycler or unless such generator has received a temporary waiver under subdivision three of section 27-2203 of this title.

§ 27-2207. Transfer station.

Any transfer station that receives food scraps from a designated food scraps generator must ensure that the food scraps are taken to an organics recycler unless such generator has received a temporary waiver under subdivision three of section 27-2203 of this title. A transfer station shall take all reasonable precautions to not commingle the material with any other solid waste unless such commingled waste can be processed by an organics recycler.

§ 27-2209. Food scraps disposal prohibition.

Incinerators and landfills shall take all reasonable precautions to not accept food scraps from designated food scraps generators required to send their food scraps to an organics recycler as outlined under section 27-2203 of this title, after January first, two thousand twenty-two, unless the designated food scraps generator has received a temporary waiver under subdivision three of section 27-2203 of this title.

§ 27-2211. Department responsibilities.

1. The department shall publish on its website: (a) the methodology the department will use to determine who is a designated food scrap generator; (b) the waiver process; (c) procedures to minimize odors and vectors; and (d) a list of all designated food scraps generators, organics recyclers, and all waste transporters that manage source-separated organics.

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

3. The department shall develop and make available educational materials to assist designated food scraps generators with compliance with this title. The department shall also develop education materials on food waste minimization and encourage municipalities to disseminate these materials both on their municipal websites and in any such future mailings to their residents as they may distribute.

4. The department shall regulate organics recyclers to ensure that their activities do not impair water quality or otherwise harm human health and the environment.

§ 27-2213. Regulations.

The department shall, after one or more public hearings, promulgate rules and regulations necessary to implement the provisions of this title including: (a) the methodology the department will use to deter-

1 mine who is a designated food scraps generator; (b) the waiver process;  
2 (c) procedures to minimize odors and vectors; (d) a list of all desig-  
3 nated food scraps generators, organics recyclers, and all waste trans-  
4 porters that manage source-separated organics; and (e) how designated  
5 food scraps generators shall comply with the provisions of paragraph (a)  
6 and subparagraph (i) of paragraph (b) of subdivision one of section  
7 27-2203 of this title.

8 § 27-2215. Exclusions.

9 1. This title shall not apply to any designated food scraps generators  
10 located in a city with a population of one million or more which has a  
11 local law, ordinance or regulation in place which requires the diversion  
12 of edible food and food scraps from disposal.

13 2. This title does not apply to hospitals, elementary and secondary  
14 schools.

15 § 27-2217. Annual report.

16 No later than January first, two thousand twenty-three, and on an  
17 annual basis thereafter, the department shall submit an annual report to  
18 the governor and legislature describing the operation of the food  
19 donation and food scraps recycling program including amount of edible  
20 food donated, amount of food scraps recycled, sample educational materi-  
21 als, and number of waivers provided.

22 § 27-2219. Severability.

23 The provisions of this title shall be severable and if any portion  
24 thereof or the applicability thereof to any person or circumstance is  
25 held invalid, the remainder of this title and the application thereof  
26 shall not be affected thereby.

27 § 3. This act shall take effect immediately.