

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 939

Short Title: Food Waste Reduction Act. (Public)

Sponsors: Representatives Hawkins, Ager, and Brown (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

May 12, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE FOOD RECOVERY AND RECYCLING ACT.
3 The General Assembly of North Carolina enacts:

4
5 **FOOD SCRAP RECYCLING PROGRAM**

6 **SECTION 1.(a)** Article 9 of Chapter 130A of the General Statutes is amended by
7 adding a new Part to read:

8 "Part 9. Food Donation and Food Scrap Recycling.

9 **"§ 130A-310.80. Definitions.**

10 Unless a different meaning is required by the context, the definitions of G.S. 130A-290 and
11 the following definitions apply throughout this Part:

- 12 (1) Designated food scraps generator. – A person who generates at a single
13 location an annual average of 2 tons per week or more of food scraps based
14 on a methodology established by the Department by rule, including
15 supermarkets, large food service businesses, higher educational institutions,
16 hotels, food processors, correctional facilities, and sports or entertainment
17 venues. For a location with multiple independent food service businesses,
18 such as a mall or college campus, the entity responsible for contracting for
19 solid waste hauling services is responsible for managing food scraps from the
20 independent businesses.
- 21 (2) Food scraps. – Inedible food, trimmings from the preparation of food, and
22 edible food that is not donated. Food scraps shall not include used cooking oil,
23 grease, or any food subject to a recall or seizure by the Department of
24 Agriculture and Consumer Services or any other State agency due to the
25 presence of pathogens, including, but not limited to: Listeria Monocytogenes,
26 confirmed Clostridium Botulinum, E. coli 0157:H7, and all salmonella in
27 ready-to-eat foods.
- 28 (3) Organics recycler. – A facility, permitted by the Department, that recycles
29 food scraps through use as animal feed or a feed ingredient, rendering, land
30 application, composting, aerobic digestion, anaerobic digestion, fermentation,
31 or ethanol production under the law applicable to each type of organics
32 recycler. The proportion of the product created from food scraps by a
33 composting or digestion facility, including a wastewater treatment plant that
34 operates a digestion facility, or other combined-stream treatment system, must



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1 be used in a beneficial manner as a soil amendment and shall not be disposed
2 of or incinerated.

3 (4) Single location. – Contiguous property under common ownership, which may
4 include one or more buildings.

5 (5) Transfer facility. – A solid waste management facility permitted under this
6 Article, whether owned or operated by a private or public entity, other than a
7 recyclables handling and recovery facility, used oil facility, or a construction
8 and demolition debris processing or disposal facility, where solid waste is
9 received for the purpose of subsequent transfer to another solid waste
10 management facility for processing, treating, disposal, recovery, or further
11 transfer.

12 **"§ 130A-310.82. Purpose.**

13 The purposes of this Part are (i) to reduce the amount of food that is wasted and sent to
14 decompose in landfills by requiring designated food scraps generators to donate their excess
15 edible food for human consumption and to deliver additional food scraps to an organics recycler
16 for processing and (ii) to encourage education of the citizens of the State on the benefits that can
17 be derived from food waste diversion and compost procurement and use.

18 **"§ 130A-310.84. Findings.**

19 The General Assembly finds the following:

20 (1) The State has a growing food recovery infrastructure consisting of commercial
21 composting facilities with enough total permitted capacity to process the
22 majority of the excess food to meet the goal set by the U.S. Environmental
23 Protection Agency, U.S. Food & Drug Administration, and U.S. Department
24 of Agriculture to reduce food waste through organic waste diversion by fifty
25 percent (50%) by 2030.

26 (2) Local compost manufacturing plays a crucial role in our State's solid waste
27 infrastructure and economy and assists in meeting the State's solid waste
28 management policy and goals, as stated in G.S. 130A-309.04, of promoting
29 solid waste management strategies that are alternatives to landfill disposal.

30 (3) Composting benefits North Carolina agencies, counties, cities, businesses, and
31 residents by diverting food and yard waste from landfills, reducing solid waste
32 costs, and lowering carbon emissions, and creates a value-added product from
33 those waste materials that can be used to improve soil health.

34 (4) A growing number of local governments are recognizing the benefits of
35 composting programs and exploring ways to provide organics recycling, but
36 a statewide program is necessary in order to assure the benefits of organics
37 composting and diversion of food waste to all of the State's citizens.

38 **"§ 130A-310.86. Designated food scraps generator responsibilities.**

39 (a) Donation. – All designated food scraps generators shall separate their excess edible
40 food for donation for human consumption to the maximum extent practicable and in accordance
41 with applicable laws and rules related to food donation.

42 (b) Diversion. – Except as provided in subsection (c) of this section, each designated food
43 scraps generator that is within 50 miles of an organics recycler, to the extent that the recycler has
44 capacity to accept all of such generator's food scraps based on the department's yearly estimate
45 of an organics recycler's capacity pursuant to G.S. 130A-310.94(a), shall do all of the following:

46 (1) Separate all food scraps remaining after meeting the requirements of
47 subsection (a) of this section from other solid waste.

48 (2) Ensure proper storage for food scraps on-site which shall preclude such
49 materials from becoming odorous or attracting vectors, such as a container
50 that has a lid and a latch that keeps the lid closed and is resistant to tampering
51 by rodents or other wildlife and has sufficient capacity.

- 1 (3) Have information available and provide training for employees concerning the
2 proper methods to separate and store food scraps.
- 3 (4) Obtain a transporter that will deliver food scraps to an organics recycler,
4 self-haul its food scraps to an organics recycler, or provide for organics
5 recycling on-site via in vessel composting, aerobic or anaerobic digestion, or
6 any other method of processing organic waste as the Department may specify
7 by rule, for some or all of the food waste it generates on its premises, provided
8 that the remainder is delivered to an organics recycler.

9 (c) Exception. – The provisions of subsection (b) of this section shall not apply to any
10 designated food scraps generator that has all of its food scraps processed in a composting facility
11 permitted by the Department to accept the kinds of food scraps generated by the designated food
12 scraps generator.

13 (d) Report. – All designated food scraps generators shall submit an annual report in an
14 electronic format to the Department on or before October 1, 2023, and annually thereafter. The
15 annual report shall summarize for the previous fiscal year the amount of edible food donated, the
16 amount of food scraps recycled, the organics recycler or recyclers and associated transporters
17 used, and any other information as required by the department.

18 (e) Waiver. – A designated food scraps generator may petition the Department for a
19 temporary waiver from some or all of the requirements of this Part. The petition shall include
20 evidence of undue hardship based on any of the following:

- 21 (1) The designated food scraps generator does not meet the 2 tons per week
22 threshold.
- 23 (2) The cost of processing organic waste is not reasonably competitive with the
24 cost of disposing of waste by landfill.
- 25 (3) The organics recycler does not have sufficient capacity, despite the
26 Department's calculation.
- 27 (4) Other unique circumstances of the designated food scraps generator.

28 A waiver shall be no longer than one year in duration; provided, however, the Department
29 may renew such waiver.

30 **"§ 130A-310.88. Waste transporter responsibilities.**

31 (a) Any waste transporter that collects food scraps for recycling from a designated food
32 scraps generator shall dispose of the food scraps by either of the following:

- 33 (1) Delivery to a transfer facility that will deliver such food scraps to an organics
34 recycler unless the generator has received a temporary waiver under
35 G.S. 130A-310.86(e).
- 36 (2) Delivery directly to an organics recycler.

37 (b) Any waste transporter that collects food scraps from a designated food scraps
38 generator shall take all reasonable precautions to not deliver those food scraps to an incinerator
39 or a landfill nor commingle the material with any other solid waste unless such commingled
40 waste can be processed by an organics recycler or unless such generator has received a temporary
41 waiver under G.S. 130A-310.86(e).

42 **"§ 130A-310.90. Transfer facility.**

43 Any transfer facility that receives food scraps from a designated food scraps generator must
44 ensure that the food scraps are taken to an organics recycler unless such generator has received
45 a temporary waiver under G.S. 130A-310.86(e). A transfer facility shall take all reasonable
46 precautions to not commingle the material with any other solid waste unless such commingled
47 waste can be processed by an organics recycler.

48 **"§ 130A-310.92. Food scraps disposal prohibition.**

49 Incinerators and landfills permitted under this Article shall take all reasonable precautions to
50 not accept food scraps from designated food scraps generators required to send their food scraps

1 to an organics recycler as outlined under G.S. 130A-310.86 unless the designated food scraps
2 generator has received a temporary waiver under G.S. 130A-310.86(e).

3 **"§ 130A-310.94. Responsibilities of Department.**

4 (a) No later than January 1, 2023, and annually thereafter, the Department shall assess
5 the capacity of each organic recycler and notify designated food scraps generators if they are
6 required to comply with the provisions of G.S. 130A-310.86(b) during the next fiscal year.

7 (b) The Department shall maintain on its website a list of all designated food scraps
8 generators, organics recyclers, and all waste transporters that manage source-separated organics.

9 (c) The Department shall develop and make available educational materials and a
10 technical assistance program for designated food scraps generators and organics recyclers to
11 comply with this Part. The Department shall also develop education materials on the benefits that
12 can be derived from food waste diversion and compost procurement and use such as, but not
13 limited to, increased water retention in soils, improved water quality, soil health, and forage
14 quantity and quality.

15 (d) The Department shall regulate organics recyclers to ensure that their activities do not
16 impair water quality or otherwise harm human health and the environment.

17 **"§ 130A-310.96. Rules.**

18 The Department shall adopt rules or amend existing rules necessary to implement the
19 provisions of this Part, including, at a minimum, the following:

20 (1) The methodology the department will use to determine who is a designated
21 food scraps generator.

22 (2) The waiver process.

23 (3) Procedures to minimize odors and vectors.

24 (4) How designated food scraps generators shall comply with the provisions of
25 G.S. 130A-310.86(a) and G.S. 130A-310.86(b)(1).

26 **"§ 130A-310.98. Exclusions.**

27 (a) This Part shall not apply to any of the following:

28 (1) Hospitals, nursing homes, or adult care facilities.

29 (2) Local school administrative units, charter schools, regional schools, and other
30 elementary or secondary schools operated by the State Board of Education.

31 (b) Nothing in this section is intended to prevent the entities listed in subsection (a) of
32 this section from participating in the programs established by this Part on a voluntary basis.

33 **"§ 130A-310.100. Report.**

34 No later than October 1, 2024, and annually thereafter, the Department shall submit an annual
35 report to the Environmental Review Commission describing the operation of the food donation
36 and food scraps recycling program including the amount of edible food donated, the amount of
37 food scraps recycled, sample educational materials, and number of waivers provided."

38 **SECTION 1.(b)** G.S. 130A-309.10(f) is amended by adding a new subdivision to
39 read:

40 "(16) Food scraps, except as provided in Part 9 of this Article."

41 **SECTION 1.(c)** G.S. 130A-309.10(f1) is amended by adding a new subdivision to
42 read:

43 "(9) Food scraps, except as provided in Part 9 of this Article."

44 **SECTION 1.(d)** Subsection (a) of this section becomes effective January 1, 2023.
45 Subsections (b) and (c) of this section become effective July 1, 2023.

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47 **APPROPRIATIONS**

48 **SECTION 2.(a)** Two hundred thousand dollars (\$200,000) in recurring funds and
49 fifty thousand dollars (\$50,000) in nonrecurring funds for the 2021-2022 fiscal year is
50 appropriated from the General Fund to the Department of Environmental Quality and allocated
51 to the Division of Waste Management and the Division of Environmental Assistance and

1 Customer Service to implement the provisions of Section 1 of this act. The Department may
2 establish up to four FTE positions with the funds appropriated by this section.
3 **SECTION 2.(b)** This section becomes effective July 1, 2021.
4 **SECTION 3.** The provisions of this act shall be severable, and if any portion thereof
5 or the applicability thereof to any person or circumstance is held invalid, the remainder of this
6 act and the application shall not be affected by that holding.
7 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
8 law.