

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 2371

STATE OF NEW JERSEY 219th LEGISLATURE

DATED: FEBRUARY 27, 2020

SUMMARY

- Synopsis:** Requires large food waste generators to separate and recycle food waste and amends definition of “Class I renewable energy.”
- Type of Impact:** Annual expenditure increases to the State, public higher educational institutions, counties, municipalities, and school districts. Annual revenue increases to certain municipalities, and potentially the State.
- Agencies Affected:** Department of Environmental Protection, State departments with facilities that are subject to the bill, public higher educational institutions, counties, municipalities, and school districts.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Expenditure Increase		Indeterminate	
State Revenue Increase		Indeterminate	
Local Expenditure Increase		Indeterminate	
Local Revenue Increase		Indeterminate	

- The Office of Legislative Services (OLS) estimates that this bill would lead to an indeterminate annual expenditure increase by the State and State institutions of higher education. No precise estimate is feasible due to the unavailability of information on which State facilities would be affected by the bill. Because the bill authorizes a large food waste generator to petition the Department of Environmental Protection (DEP) for a waiver of the recycling requirement if the transportation cost together with the fee for recycling is at least 10 percent more than the transportation cost and disposal fee for noncontract commercial solid waste disposal, the bill may result in no additional State costs for compliance.
- The OLS determines that this bill may have an indeterminate annual expenditure impact on any county, school district, or municipality that is a large food waste generator. No precise estimate is feasible due to the unavailability of information on which local government or school facilities would be affected by the bill. The ability to obtain a waiver from compliance also applies to local governments and school districts.

- Annual revenue increases may be realized by certain municipalities due to the bill's provision for a local economic benefit payment to any municipality that hosts a facility approved to accept food waste. The payments would be made by authorized food waste recycling facilities located in the municipality. Insufficient data are available upon which to base an estimate of this impact.
- The DEP would incur additional recurring administrative costs to discharge its new responsibilities under the bill and to enforce compliance with the bill's requirements. The OLS has insufficient information upon which to base an estimate of this impact.

BILL DESCRIPTION

This bill would require certain generators of solid waste to separate and recycle food waste, and amend the definition of "Class I renewable energy."

Specifically, beginning one year after the effective date of the bill, every large food waste generator that is located within 25 road miles of an authorized food waste recycling facility and that generates an average projected volume of 52 or more tons per year of food waste would be required to: (1) source separate its food waste from other solid waste; and (2) send that source separated food waste to an authorized food waste recycling facility that has available capacity and will accept it.

Under the bill, if a large food waste generator is not located within 25 road miles of an authorized food waste recycling facility, or the facility will not accept the generator's food waste, the generator may send the food waste for final disposal at a solid waste facility as provided in the approved district solid waste management plan for the solid waste management district in which the generator is located. In addition, a large food waste generator would be deemed in compliance with the bill if the generator: (1) performs enclosed on-site composting, or anaerobic or aerobic digestion of its source separated food waste in accordance with standards adopted by the department; or (2) recycles food waste using an alternative authorized food waste recycling method.

The bill would authorize a large food waste generator to petition the DEP for a waiver of the recycling requirement if the cost of transporting the food waste plus the fee charged by an authorized food waste recycling facility located within 25 road miles of the large food waste generator is at least 10 percent more than the cost of transporting the food waste for disposal as solid waste plus the disposal fee charged for solid waste disposal in the State for noncontract commercial waste by a properly licensed transfer station, sanitary landfill facility, incinerator, or resource recovery facility located within 25 road miles of the large food waste generator.

Any person who violates the bill would be subject to a civil penalty of \$250 for the first offense, \$500 for the second offense, and \$1,000 for the third and subsequent offenses. If the violation is of a continuing nature, each day during which the violation continues would constitute a separate offense.

The DEP would be required to adopt regulations to implement the bill, including: (1) record keeping and reporting requirements for large food waste generators and authorized food waste recycling facilities; (2) guidelines and procedures for businesses to follow to determine whether they are subject to the requirements of the bill, including food waste generation estimates and food waste audits or assessments; (3) a list of food waste products that must be source separated and recycled; (4) standards for the enclosed on-site composting, or anaerobic or aerobic digestion of source separated food waste, including requirements for energy production and other sustainable

uses of the byproducts of recycled food waste; (5) a list of actions businesses may take to reduce the amount of food waste they generate to a level below the threshold amount established in the bill; and (6) procedures for a large food waste generator to follow when petitioning the department for a waiver. The DEP would publish on its Internet website the name, location, and contact information for each authorized food waste recycling facility in the State.

Under the bill, any municipality within which an authorized food waste recycling facility is located, pursuant to an adopted district solid waste management plan approved after the effective date of the bill would be entitled to an economic benefit. The bill would also establish the Food Waste Recycling Market Development Council. The bill would require State departments and agencies to use, where technically feasible, environmentally sound, and competitively priced, compost, mulch, or other soil amendments produced from municipal solid waste, food waste, sludge, yard waste, clean wood waste, or other similar materials that the supplier has certified comply with applicable project standards and specifications. Finally, the bill would amend the definition of “Class I renewable energy” to include electric energy produced from methane gas from a composting or anaerobic or aerobic digestion facility that converts food waste or other organic waste to energy.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that this bill would lead to an indeterminate annual expenditure increase by the State and State institutions of higher education. No precise estimate is feasible due to the unavailability of information on which State facilities would be affected by the bill. Because the bill authorizes a large food waste generator to petition the DEP for a waiver of the recycling requirement if the transportation cost together with the fee for recycling is at least 10 percent more than the transportation cost and disposal fee for noncontract commercial solid waste disposal, the bill may result in no additional State costs for compliance.

Rutgers University, New Brunswick has informed the OLS that it will not be required to send its food waste to a recycling facility because it is implementing a program for the on-site recycling of its food waste. In addition, Rutgers University, Newark and Kean University have indicated that they will not be subject to the bill's provisions because they generate less than 52 tons of food waste per year. The OLS also notes that William Patterson University, Stockton University, and Ramapo College are currently not covered by the bill's provisions because they are more than 25 road miles from the nearest food waste recycling facility. There are currently four DEP-certified food waste recycling facilities in the State, located in Gloucester City, the City of Trenton, Middlesex Borough, and the City of Elizabeth.

The New Jersey Institute of Technology (NJIT) has indicated that implementing a food waste recycling program would increase its disposal costs by approximately 300 percent. NJIT would therefore qualify for a waiver from the DEP. This may indicate that the costs of implementing food waste recycling programs at large institutions are currently well above the 10 percent threshold for a waiver, in which case many other State facilities that are large food waste generators would likely seek a waiver and see no additional costs. NJIT has also informed the OLS that it paid roughly \$168 per ton for solid waste disposal in FY 2019, suggesting that facilities who do

not qualify for the waiver could expect to pay a maximum of roughly \$16 additionally per ton, under the bill—assuming NJIT's costs are representative.

The same potential impacts, mitigating factors, and insufficiency of data apply to local governments and school districts that may be required to comply with the bill's requirements. Burlington County has informed the OLS that it does not have any facilities that produce more than 52 tons of food waste per year. In addition, much of Salem, Cumberland, Cape May, Atlantic, Ocean, Warren, Sussex, and Bergen counties is farther than 25 road miles from the nearest food waste recycling facility, and thus the bill's provisions would not affect facilities in these areas.

County landfills may see decreased revenue in tipping fees as a result of the bill's provisions, since food waste that is currently being disposed of in landfills would be diverted to food waste recycling facilities. Burlington County has informed the OLS that it anticipates an annual revenue decrease of between \$450,000 and \$1,000,000 due to decreased tipping fees. However, it is unclear how the county estimated the decrease in food waste, given the uncertainty about which entities will qualify for and seek a waiver from the DEP or would use an alternative authorized composting or recycling method. The bill's provisions may also affect county landfill gas-to-energy (LGTE) facilities, since food waste that is currently producing landfill gas in these facilities would be diverted to food waste recycling facilities. The OLS notes that Atlantic, Burlington, Cape May, Cumberland, Middlesex, Monmouth, Ocean, Salem, and Sussex counties currently have a LGTE facility. However, this effect would be mitigated for the LGTE facilities in Atlantic, Cape May, Cumberland, Ocean, Salem, and Sussex counties, since, as noted above, large areas of these counties are currently not within 25 road miles of an authorized food waste recycling facility. Moreover, the LGTE facility in Burlington County is scheduled to cease operations in 2020.

Any municipality within which an authorized food waste recycling facility is located, pursuant to an adopted district solid waste management plan approved after the effective date of the bill, would be entitled to an annual economic benefit of at least \$0.50 per ton of all food waste accepted for processing at the authorized food waste recycling facility each year. The payments would be made by authorized food waste recycling facilities located in the municipality. The OLS anticipates that the bill would generate demand for new food waste recycling facilities in the State, but it cannot predict the municipalities in which they will be constructed.

The OLS notes that there may be marginal recurring revenue gains from the civil penalties associated with the bill. In addition, the DEP would incur additional recurring administrative costs to discharge its new responsibilities under the bill and to enforce compliance with the bill's requirements. The additional duties would include the operation of the temporary Food Waste Recycling Market Development Council. The OLS has insufficient information upon which to base an estimate of these impacts.

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).