

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 1440

(Chair, Environmental Matters Committee, *et al.*) (By
Request - Departmental - Environment)

Environmental Matters

Education, Health, and Environmental Affairs

Recycling - Composting Facilities

This departmental bill requires the Maryland Department of the Environment (MDE) to adopt regulations governing the permitting and operation of composting facilities and prohibits a person from operating a composting facility that is not in accordance with the regulations or any permit or order issued under the composting laws in Title 9 of the Environment Article. The bill alters several definitions accordingly, in order to treat compost and composting separately from the regulation of solid waste. Finally, the bill provides for the enforcement of State composting laws and regulations through existing enforcement provisions in the water pollution control subtitle of the Environment Article.

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: Workloads increase for MDE beginning in FY 2014 to develop the required regulations and to administer and enforce the regulations; any increase in workloads can be handled with existing budgeted resources. Special fund revenues may increase from the application of existing penalties to the bill or the regulations required by the bill; any increase is assumed to be minimal.

Local Effect: Local government expenditures may increase for any jurisdictions that operate a composting facility and are subject to more onerous permitting requirements; it is unknown whether and to what extent costs increase for a locally owned composting facility. Revenues are not directly affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: MDE has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary: The regulations required to be adopted by MDE under the bill may establish (1) conditions for constructing and operating a composting facility; (2) a tiered system of permits for facilities based on size, feedstock type, or other factors; (3) design and operational conditions to protect public health and the environment and to minimize nuisances; (4) permit exceptions; and (5) any other provision deemed necessary by MDE to implement the bill. The regulations may also exempt certain organic materials from designation as solid waste. The bill alters a current exclusion from regulation for composting by a consumer or farmer by specifying that such composting must be on a farm or residential site that is controlled by the consumer or farmer.

The bill excludes material that is composted under MDE regulations from the definition of “solid waste.” The definitions of “solid waste” and “solid waste stream” are altered to include organic material that is capable of being composted but that is not composted in accordance with MDE regulations under the bill. The bill defines a “composting facility” as a facility where composting takes place, and specifies that a facility that is required to obtain a sewage sludge utilization, refuse disposal permit, or natural wood waste recycling facility permit is not a composting facility. The bill also alters the definition of “recycling” by specifying that it applies only to *recyclable* materials, and the definition of “recyclable materials” is altered to include materials that may be composted. Thus, organic materials capable of being composted still count toward county recycling rates, despite the fact that some materials may be excluded from “solid waste.”

Enforcement provisions in the water pollution control subtitle of the Environment Article apply to violations of the bill, or any regulations adopted under the bill, or any orders or permits issued under the bill. These existing enforcement provisions generally pertain to the issuance of complaints, corrective orders, injunctive relief, hearings and judicial review, and the imposition of civil and administrative penalties.

Current Law: “Composting” is defined as the controlled biological decomposition of organic waste material in accordance with the standards established by MDE. Various MDE regulations provide standards for the composting of certain types of materials, the operation of certain composting facilities, and the properties of saleable compost.

“Compost” is defined as the product of composting in accordance with product standards for commercial use and distribution established by the Secretary of Agriculture in

consultation with MDE. These standards include certification requirements for operators of composting facilities and a classification scheme for compost.

An owner or operator of a refuse disposal system in Maryland is prohibited from accepting truckloads of separately collected yard waste for final disposal unless the owner or operator provides for the composting or mulching of the yard waste. All yard waste collected separately from other solid waste may be transported to a composting facility. The composting facility may be located at a refuse disposal system. These provisions do not prohibit a consumer or farmer from composting for their own personal, household, family, or agricultural purposes.

State law also requires any State or local unit responsible for the maintenance of public lands, to the maximum extent practicable, to give consideration and preference to the use of compost in any land maintenance activity paid for with public funds.

Within Montgomery and Prince George's counties, unless the Washington Suburban Sanitary Commission (WSSC) takes precautions to make a composting facility free of offensive off-site odors, WSSC may not construct the facility in an area that has more than 100 homes that are located within five miles of the facility. If the commission does not control and eliminate any offensive off-site odor that is caused by a composting facility constructed after July 1, 1986, WSSC must close the facility within four months.

Background: Chapter 363 of 2011 (HB 817) required MDE, in consultation with the Maryland Department of Agriculture and the Maryland Environmental Service, to study composting in Maryland, including the laws or regulations governing composting, and to make recommendations about how to promote composting in Maryland. MDE was required to report its findings, recommendations, and a summary of the laws and regulations governing composting, to the General Assembly, by January 1, 2013; the report has not yet been submitted, however. The composting workgroup established pursuant to Chapter 363 reviewed other states' composting requirements, determined ways to further encourage composting in Maryland, and considered model composting regulations from the U.S. Composting Council. According to MDE, the workgroup has made several recommendations for establishing a conceptual framework for the future regulation of composting facilities, and this bill allows MDE to adopt such regulations.

MDE advises that, currently, composting facilities are considered solid waste acceptance facilities subject to the requirements of a refuse disposal permit if the facility's primary purpose is the processing of solid waste. Because the current definition of solid waste includes organic materials capable of being composted, composting facilities typically must obtain a refuse disposal permit. By altering the definition of solid waste and several other definitions, MDE advises that the bill allows compost and composting facilities to

be regulated separately and in a manner that will likely reduce barriers to the construction of new facilities and encourage additional composting in Maryland.

Generally, composting diverts waste from landfills; reduces the emissions of methane, a greenhouse gas; and provides an inexpensive source of natural fertilizer, among other economic and environmental benefits. According to the U.S. Environmental Protection Agency, yard trimmings and food residuals together constituted about 30% of the U.S. municipal solid waste stream in 2010.

MDE promotes and encourages waste diversion across the State. Waste diversion combines both recycling and source-reduction activities. The Maryland Recycling Act, as amended by Chapter 692 of 2012 (HB 929), requires all counties and Baltimore City to recycle 20% or 35% of their waste generated, depending on population. Additionally, Chapter 692 established a new statewide recycling rate goal of 55% and a waste diversion rate goal of 60% by 2020.

Local Fiscal Effect: Local government expenditures may increase for any jurisdictions that operate a composting facility and are subject to more onerous permitting requirements. MDE advises that seven local governments own and operate a composting facility and that several other jurisdictions have expressed interest in constructing a composting facility in the future. Currently, these locally owned composting facilities are subject to regulation under refuse disposal permits. Thus, it is unknown whether and to what extent costs increase for a locally owned composting facility without additional information as to the contents of the regulations required by the bill and how these regulations differ from current regulations and permit requirements. Finally, it is assumed that the bill's definitional changes do not materially affect local operations or finances.

The bill does not directly affect revenues. However, to the extent that the bill's regulations encourage the construction of additional locally owned composting facilities, local revenues from the sale of compost may increase.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Howard, Prince George's, and Montgomery counties; Baltimore City; Maryland Department of Agriculture; Department of Natural Resources; Maryland Department of the Environment; Department of General Services; North East

Maryland Waste Disposal Authority; U.S. Environmental Protection Agency; Department of Legislative Services

Fiscal Note History: First Reader - March 11, 2013
ncs/lgc

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Recycling – Composting Facilities

BILL NUMBER: HB 1440

PREPARED BY: Maryland Department of the Environment

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation is expected to have a meaningful economic impact on Maryland small businesses (independently owned and operated; not dominant in their field; and employing 50 or fewer full-time employees) that own or operate composting facilities. Some of these facilities would be subject to new regulations adopted by MDE under this proposed legislation, including design and operational conditions and a new permit requirement. Existing legal requirements already include some capital-intensive design requirements (such as the impermeable pad requirement for processing facilities) and other permitting requirements that require engineering plans. The existing requirements would be replaced for some facilities by the new permit and conditions created under this proposed legislation; whether this would have a net positive or negative impact on these facilities depends on the content of the regulations.

The proposed legislation and subsequent regulatory clarity it would provide may encourage small business opportunities to establish new composting facilities. Although these new facilities would incur costs in construction and operation, these facilities could also receive revenue from municipalities, businesses, and institutions seeking to manage their organics and from sales of compost materials. The Department is unable to estimate these impacts.