

**Department of Legislative Services**  
 Maryland General Assembly  
 2021 Session

**FISCAL AND POLICY NOTE**  
**Enrolled - Revised**

House Bill 264

(Delegate Charkoudian)

Environment and Transportation

Education, Health, and Environmental Affairs

**Solid Waste Management - Organics Recycling and Waste Diversion - Food Residuals**

This bill requires certain generators of large quantities of “food residuals” to separate the food residuals from other solid waste and ensure that the food residuals are diverted from final disposal in a refuse disposal system, as specified. The implementation timeline for this requirement is staggered, based on weekly tonnages of food residuals, beginning January 1, 2023. Affected generators may apply for a waiver. The Maryland Department of the Environment (MDE) must establish related guidelines and mapping systems as well as a plan to implement the bill, as specified. MDE must issue warnings for violations; after receiving a warning, a violator is subject to specified civil penalties. Finally, the bill establishes reporting requirements.

**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$191,900 in FY 2022; future years reflect annualization and ongoing costs. As early as FY 2023, State expenditures (multiple fund types) may increase to dispose of food residuals. Potential minimal increase in special fund revenues/expenditures due to the bill’s civil penalty provisions.

| (in dollars)         | FY 2022     | FY 2023 | FY 2024 | FY 2025 | FY 2026 |
|----------------------|-------------|---------|---------|---------|---------|
| Revenues             | \$0         | \$0     | \$0     | \$0     | \$0     |
| GF Expenditure       | 191,900     | 137,600 | 141,400 | 146,200 | 151,200 |
| GF/SF/Higher Ed Exp. | 0           | -       | -       | -       | -       |
| Net Effect           | (\$191,900) | (-)     | (-)     | (-)     | (-)     |

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** Local revenues may be affected due to diverting food residuals from landfills to alternative disposal options. Local food disposal costs may increase. **This bill may impose a mandate on a unit of local government.**

**Small Business Effect:** Meaningful.

## Analysis

**Bill Summary:** “Food residuals” means material derived from the processing or discarding of food, including pre- and post-consumer vegetables, fruits, grains, dairy products, and meats.

A person who generates food residuals must separate the food residuals from other solid waste and ensure that the food residuals are diverted from final disposal in a refuse disposal system by (1) reducing the amount of food residuals generated; (2) donating servable food; (3) managing the food residuals in an on-site organics recycling system; (4) providing for the collection and transportation of the food residuals for agricultural use (including for use as animal feed) or for processing in an organics recycling facility; or (5) engaging in some combination of those waste diversion activities.

“Person” includes (1) an individual facility owned or operated by a local school system; (2) an individual public primary or secondary school; (3) an individual nonpublic school; (4) a supermarket, convenience store, mini-mart, or similar establishment; (5) a business, school, or institutional cafeteria; and (6) a cafeteria operated by or on behalf of the State or a local government. Person does *not* include (1) the aggregate of all school buildings and facilities in a local school system or (2) a restaurant establishment that accommodates the public and is equipped with a dining room with facilities for preparing and serving regular meals.

An affected person who generates food residuals may apply for, and MDE may grant, a waiver from the above requirements if the person demonstrates undue hardship, as specified. MDE must establish waiver application procedures.

The food residual diversion requirements only apply to a person who (1) meets specified threshold amounts of food residuals generated and (2) generates the food residuals at a location that is within a 30-mile radius of an organics recycling facility that has the capacity to, is willing to, accept and process all of the person’s food residuals for recycling, and is willing to enter into a contract to accept and process the person’s food residuals. The diversion requirements apply (1) beginning January 1, 2023, for a person who generates at least two tons of food residuals each week and (2) beginning January 1, 2024, for a person who generates at least one ton of food residuals each week.

MDE must issue a warning to a person who violates the bill, or any regulations adopted pursuant to the bill. After receiving a warning, a person who subsequently violates the bill or any regulations adopted pursuant to the bill is subject to a civil penalty to be collected in a civil action brought by MDE; the civil penalty is \$250 for a second violation, \$500 for a third violation, and \$1,000 for a fourth or subsequent violation. Each day a violation occurs is a separate violation. Penalties collected under the bill are directed to a special

fund to be used only to finance incentives that encourage food waste reduction and composting in the State.

By December 1, 2023, and annually thereafter, MDE must report to the General Assembly on the bill's implementation, including the impacts on waste diversion in the State. Additionally, MDE must (1) establish guidelines to assist businesses with complying with the bill, as specified; (2) develop mapping and other systems to identify existing composting facilities and the geographic areas within the 30-mile radius of each facility; (3) develop a plan for implementing the bill, including a plan for educating large generators of food residuals, as specified; and (4) by July 1, 2022, report to the General Assembly on MDE's implementation plan.

By January 1, 2023, the Department of Commerce must report to the General Assembly on recommendations for financial and other incentives to encourage food waste reduction and composting in the State.

### **Current Law:**

#### *Waste Management and Recycling in the State*

The Maryland Recycling Act (MRA) serves as the primary law governing waste diversion in Maryland. It requires each county and Baltimore City to recycle either 20% or 35% of its waste depending on population size. Solid waste is managed through a combination of recycling, composting, landfilling, energy recovery, and exporting for disposal or recycling. Recycling of organic materials, such as composting of yard trimmings and food residuals, counts toward counties' MRA recycling rates.

Regulations establish the permitting requirements for constructing and operating composting facilities in the State. In spring 2016, MDE created a general permit for composting.

#### *Yard Waste, Food Residuals, and Other Organic Materials Diversion and Infrastructure Study Group*

Chapter 384 of 2017 required MDE to study and make recommendations regarding the diversion of yard waste, food residuals, and other organic materials from refuse disposal facilities in the State, including ways to encourage investment in infrastructure and to expand capacity for yard waste, food residuals, and other organic materials diversion. MDE published the required [report](#) in July 2019.

**State Fiscal Effect:**

*Maryland Department of the Environment – Administrative Costs*

General fund expenditures for MDE increase by \$191,924 in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects the cost of hiring two environmental compliance specialists to (1) perform outreach; (2) develop the required implementation plan, guidelines, and map; (3) review and approve waivers; (4) respond to complaints, issue warnings, and conduct other enforcement activities; and (5) submit the required annual report. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- MDE must develop plans, guidelines, and mapping systems and submit several reports before the bill’s diversion requirements take effect on January 1, 2023, thus employees must be hired when the bill takes effect (October 1, 2021);
- although only a small number of food scrap generators are likely affected by the bill initially, additional composting and anaerobic digestion facilities will likely be established over time as the demand for food residuals recycling increases;
- at some point, a large number of food scrap generators throughout the State are subject to the bill’s requirements; and
- existing staff cannot absorb the additional responsibilities resulting from the bill.

|   |                  |
|---|------------------|
| Positions                                     | 2.0              |
| Salaries and Fringe Benefits                  | \$100,611        |
| Purchase of Two Vehicles                      | 64,000           |
| Other Equipment/Operating Expenses            | <u>27,313</u>    |
| <b>Total FY 2022 MDE Administrative Costs</b> | <b>\$191,924</b> |

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

*Maryland Department of the Environment – Civil Penalty Provisions*

Special fund revenues for MDE may increase minimally as a result of the bill’s civil penalty provisions; special fund expenditures increase correspondingly. Pursuant to the bill, MDE must use any penalties collected to finance incentives that encourage food waste reduction and composting in the State.

## *Department of Commerce*

Commerce can submit the required report on recommendations for financial and other incentives to encourage food waste reduction and composting in the State by January 1, 2023, with existing budgeted staff and resources.

### *Potential Food Residual Disposal Costs for State Agencies*

State expenditures (multiple fund types) may increase beginning as early as fiscal 2023 for State facilities that generate large quantities of food scraps and must separate food waste, identify alternative methods of disposal, and ensure that food residuals are diverted from final disposal in a refuse disposal system. The impact for any affected facility depends on the amount of food waste generated, the location of the facility in relation to an organics recycling facility, whether a facility already separates food waste, and the availability of cost-effective disposal options. Affected facilities may include universities and colleges, correctional facilities, hospitals, and cafeterias. As larger numbers of entities are subject to the bill's diversion requirements, an increase in alternative disposal facilities likely results, which could reduce compliance costs over time. Additionally, an affected entity may apply for a waiver if the cost of diverting food residuals from a refuse disposal system is more than 10% more expensive than the cost of disposing the food residuals at a refuse disposal system.

For context, the University System of Maryland advises that the bill requires the University of Maryland, Baltimore Campus (UMB) to scale up its existing systems to support a waste stream diversion process. However, UMB advises that the impact is manageable and absorbable with normal operations. On the other hand, the University of Maryland, College Park Campus and the University of Maryland Baltimore County both advise that costs for each campus increase by approximately \$230,000 annually (if a waiver is not provided). Morgan State University also notes the potential for increased costs.

The Department of Public Safety and Correctional Services was not able to provide a specific estimate of how its costs may be affected, but notes that most Division of Correction facilities already have a SOMAT machine that food residuals are deposited into to be ground into a pulp that then goes into a collection drum. This drum is then picked up by a State-contracted waste management company. Thus, food residuals are already separated from other forms of solid waste.

**Local Revenues:** The bill may result in a decrease in revenues for locally owned refuse disposal systems, such as landfills and resource recovery facilities, due to a decrease in the amount of material discarded in landfills. Landfills are funded in significant part through the payment of tipping fees. For example, Washington County advises that the bill's diversion requirements could reduce its revenues by more than \$1.5 million annually.

On the other hand, revenues may increase for locally operated organics recycling facility (such as composting and anaerobic digestion facilities) from increased business and the sale of compostable material. For example, Prince George's County has extensive infrastructure in place to accept food residuals.

**Local Expenditures:** Similar to the impact described above at the State level, there could be an increase in local expenditures to dispose of food residuals outside of traditional landfills for local entities such as local correctional facilities, hospitals, schools, and cafeterias. However, an affected entity may apply for a waiver if the cost of diverting food residuals from a refuse disposal system is more than 10% more expensive than the cost of disposing the food residuals at a refuse disposal system.

Local governments may also benefit to the extent that any increase in the diversion of food residuals from landfills assists counties in meeting their mandatory recycling rates under MRA.

**Small Business Effect:** Similar to the local and State impacts discussed above, small businesses that generate qualifying amounts of food residuals and are subject to the bill's diversion requirements may incur additional costs to separate, collect, and process food residuals. However, most restaurants are explicitly excluded from the bill's requirements, and an affected small business may apply for a waiver if the cost of diverting food residuals from a refuse disposal system is more than 10% more expensive than the cost of disposing the food residuals at a refuse disposal system.

Businesses that operate organics recycling facilities (such as a composting or anaerobic digestion facility), or those that collect or transport food residuals, benefit from an increase in demand under the bill. However, small business waste disposal companies that do not specialize in the handling of food residuals for nonlandfill processing may incur a loss of business.

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### **Additional Information**

**Prior Introductions:** HB 589 of 2020, a similar bill, received a hearing in the House Environment and Transportation Committee, but no further action was taken.

**Designated Cross File:** SB 483 (Senator Hettleman, *et al.*) - Education, Health, and Environmental Affairs.

**Information Source(s):** Baltimore City; Kent, Montgomery, Washington, and Worcester counties; Department of Commerce; Maryland Association of Counties; Northeast Maryland Waste Disposal Authority; Judiciary (Administrative Office of the Courts);

Baltimore City Community College; University System of Maryland; Morgan State University; Maryland Department of the Environment; Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of Legislative Services

**Fiscal Note History:** First Reader - January 25, 2021  
rh/lgc Third Reader - March 23, 2021  
Revised - Amendment(s) - March 23, 2021  
Enrolled - April 6, 2021  
Revised - Amendment(s) - April 6, 2021

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