

Department of Legislative Services  
Maryland General Assembly  
2023 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

Senate Bill 262

(Senator Gallion, *et al.*)

Education, Energy, and the Environment

Environment and Transportation

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**Environment - On-Farm Composting Facilities - Permit Exemption**

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This bill requires the Maryland Department of the Environment (MDE) to establish an exemption, by regulation, from the permitting requirements under the Code of Maryland Regulations (COMAR) 26.04.11.06 for an operator of an on-farm composting facility that (1) uses 10,000 square feet (ft<sup>2</sup>) of area or less for active food scrap composting; (2) composts only one or more of a specified list of feedstocks; (3) records the amount and source of specified source-separated organics composted, records the date and time the source-separated organics arrives on the farm, retains the records for five years, and provides the records to MDE on request; and (4) meets any other conditions specified in regulations. The bill also requires MDE's composting facility regulations to require that a new composting facility be constructed and operated in accordance with specified requirements. Finally, the bill establishes several related definitions and a reporting requirement for MDE.

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**Fiscal Summary**

**State Effect:** MDE can promulgate the regulatory changes, generally implement the bill, and report to the General Assembly with existing budgeted resources. State revenues are not affected.

**Local Effect:** The bill is not expected to materially affect local governments.

**Small Business Effect:** Minimal, as discussed below.

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## Analysis

**Bill Summary:** Among the other requirements necessary for exemption, an on-farm composting facility must compost only one or more of the following: (1) organic materials generated on site or at another farm controlled by the same owner or lessee of the farm; (2) animal manure and bedding, generated on site; (3) Type 1 feedstock, regardless of the place of generation; (4) off-site Type 2 feedstock that is not contaminated or liquidated, is immediately mixed with carbonaceous Type 1 feedstock, and is incorporated into active composting within 24 hours after arriving on site; or (5) on-site Type 2 feedstock. MDE must also require that a farm operator provide written notice to MDE before conducting on-farm composting without a permit in accordance with the bill.

In addition to the exemption, the bill requires MDE's composting facility regulations to require that any new composting facility be constructed and operated in accordance with (1) any regulations adopted by MDE; (2) a nutrient management plan, if required under specified regulations; and (3) either a soil conservation and water quality plan (SCWQP) or an agricultural waste management system plan, in accordance with specified regulations, that describes the composting facility components and design, schedule for storage and utilization of the materials, system maintenance, and operational procedures.

The bill establishes definitions for "contaminated feedstock," "farm," "liquid feedstock," "off-site Type 2 feedstock," "on-site Type 2 feedstock," "Type 1 feedstock," and "Type 2 feedstock." "Farm" means the site of a business or activity operated for the primary purpose of tilling, cropping, keeping, pasturing, or producing an agricultural product other than compost, including livestock, poultry, plants, trees, sod, food, feed, or fiber, by in-ground, out-of-ground, container, or other culture.

By December 1, 2028, MDE must submit a report to the General Assembly that analyzes the impact of on-farm composting facilities in Maryland. The bill outlines the requirements for the report.

The bill explicitly states that it is not intended to alter the rules or requirements for farms or composting facilities operating without a composting permit in accordance with regulations in effect on January 1, 2023.

**Current Law:** Chapter 686 of 2013 required MDE to adopt regulations governing the permitting and operation of composting facilities. MDE promulgated the required regulations in 2014 by establishing Chapter 11 under COMAR 26.04, which specifies requirements related to the construction and operation of composting facilities in the State.

Under the regulations, facilities are distinguished as Tier 1, 2, or 3 depending on the feedstock materials that are accepted for processing at the facility. Feedstocks are defined

as Type 1, 2, or 3. Type 1 feedstocks are considered the least risky in terms of hazardous substances, human pathogens, and physical contaminants, and include yard waste and other organic materials that MDE determines pose a low level of risk. Type 2 feedstocks are generally materials that MDE determines pose a low level of risk from hazardous substances and a higher level of risk from physical contaminants and human pathogens, compared to Type 1 feedstocks, and include MDE-approved animal manure and bedding, animal mortalities (on a temporary emergency basis), and manufactured organic materials such as waxed-corrugated cardboard, noncoated paper, and compostable products. Type 3 feedstocks are generally materials that MDE determines pose a low level of risk from hazardous substances and a higher level of risk from physical contaminants and human pathogens, compared to Type 1 and 2 feedstocks. Type 3 feedstocks include sewage sludge, biosolids, and used diapers.

Regulation .06 of Chapter 11 generally prohibits a person from operating an on-farm composting facility without a permit issued by MDE, subject to several exemptions. There is no permit fee. Among other specified exemptions, a facility is exempt from the permitting requirement if it (1) composts only organic materials generated on site or at another farm controlled by the same operator and complies with other specified restrictions; (2) uses only up to 40,000 ft<sup>2</sup> of area in support of composting operations; (3) is constructed and operated in accordance with a nutrient management plan (if required under specified regulations) and either an SCWQP or an agricultural waste management system plan that describes the composting facility components and design, schedule for storage and utilization of the materials, system maintenance, and operational procedures, as specified; and (4) complies with other specified requirements. A facility is also exempt if it uses only up to 5,000 ft<sup>2</sup> of area in support of composting operations and qualifies as a Tier 1 or 2 facility that complies with feedstock, pile size, and other specified regulatory requirements.

**Small Business Effect:** Many farms in the State are small businesses. Under the bill, any on-farm composting facility that is able to engage in composting without having to first obtain a permit from MDE benefits from a reduced regulatory burden. Additionally, any farm that engages in on-farm composting as a result of the bill may benefit from a reduction in solid waste costs. Overall, however, the impact on small businesses is not anticipated to be significant.

MDE notes that the bill does not eliminate the requirement for a National Pollutant Discharge Elimination System (NPDES) permit, currently provided under the stormwater permit. NPDES permits are issued in accordance with the federal Clean Water Act.

## Additional Information

**Prior Introductions:** Similar legislation has been introduced in the last three years. See SB 229 and HB 184 of 2022.

**Designated Cross File:** HB 253 (Delegate Shetty, *et al.*) - Environment and Transportation.

**Information Source(s):** Maryland Department of Agriculture; Maryland Department of the Environment; Department of Legislative Services

**Fiscal Note History:** First Reader - February 7, 2023  
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