



House of Representatives

General Assembly

File No. 365

January Session, 2013

Substitute House Bill No. 6437

House of Representatives, April 4, 2013

The Committee on Environment reported through REP. GENTILE of the 104th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING A MATTRESS STEWARDSHIP PROGRAM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2013*) For the purposes of this
2 section and sections 2 to 7, inclusive, of this act:

3 (1) "Brand" means a name, symbol, word or mark that attributes a
4 mattress to the producer of such mattress;

5 (2) "Commissioner" means the Commissioner of Energy and
6 Environmental Protection;

7 (3) "Covered entity" means any political subdivision of the state,
8 mattress retailer, permitted transfer station, waste-to-energy facility,
9 health care facility, educational facility, correctional facility, military
10 base or commercial or nonprofit lodging establishment that possesses a
11 discarded mattress that was discarded in this state. "Covered entity"
12 does not include any renovator, refurbisher or any person who only
13 transports a discarded mattress;

14 (4) "Department" means the Department of Energy and
15 Environmental Protection;

16 (5) "Discarded mattress" means any mattress that a consumer
17 discarded, intends to discard or abandoned;

18 (6) "Energy recovery" means the process by which all or a portion of
19 solid waste materials are processed or combusted in order to utilize the
20 heat content or other forms of energy derived from such solid waste
21 materials;

22 (7) "Foundation" means any ticking-covered structure that is used to
23 support a mattress and that is composed of one or more of the
24 following: A constructed frame, foam or a box spring. "Foundation"
25 does not include any bed frame or base made of wood, metal or other
26 material that rests upon the floor and that serves as a brace for a
27 mattress;

28 (8) "Mattress" means any resilient material or combination of
29 materials that is enclosed by ticking, used alone or in combination with
30 other products, and that is intended for or promoted for sleeping
31 upon. "Mattress" includes any foundation and any renovated mattress.
32 "Mattress" does not include any mattress pad, mattress topper,
33 sleeping bag, pillow, car bed, carriage, basket, dressing table, stroller,
34 playpen, infant carrier, lounge pad, crib bumper, liquid or gaseous
35 filled ticking, including any water bed and any air mattress that does
36 not contain upholstery material between the ticking and the mattress
37 core, and any upholstered furniture that does not otherwise contain a
38 detachable mattress;

39 (9) "Mattress core" means the principal support system that is
40 present in a mattress, including, but not limited to, springs, foam, air
41 bladder, water bladder or resilient filling;

42 (10) "Mattress recycling council" or "council" means the nonprofit
43 organization created by producers or created by any trade association
44 that represents producers who account for a majority of mattress

45 production in the United States to design, submit and implement the
46 mattress stewardship program described in section 2 of this act;

47 (11) "Mattress stewardship fee" means the amount added to the
48 purchase price of a mattress sold in this state that is necessary to cover
49 the cost of collecting, transporting and processing discarded mattresses
50 by the council pursuant to the mattress stewardship program;

51 (12) "Mattress stewardship program" or "program" means the state-
52 wide program described in section 2 of this act and implemented
53 pursuant to the mattress stewardship plan;

54 (13) "Mattress topper" means any item that contains resilient filling,
55 with or without ticking, that is intended to be used with or on top of a
56 mattress;

57 (14) "Performance goal" means a metric proposed by the council and
58 approved by the commissioner, to measure, on an annual basis, the
59 performance of the mattress stewardship program, taking into
60 consideration technical and economic feasibilities, in achieving
61 continuous, meaningful improvement in improving the rate of
62 mattress recycling in the state and any other specified goal of the
63 program;

64 (15) "Producer" means any person who manufactures or renovates a
65 mattress that is sold, offered for sale or distributed in the state under
66 the producer's own name or brand. "Producer" includes (A) the owner
67 of a trademark or brand under which a mattress is sold, offered for sale
68 or distributed in this state, whether or not such trademark or brand is
69 registered in this state, and (B) any person who imports a mattress into
70 the United States that is sold or offered for sale in this state and that is
71 manufactured or renovated by a person who does not have a presence
72 in the United States;

73 (16) "Recycling" means any process in which discarded mattresses,
74 components and by-products may lose their original identity or form
75 as they are transformed into new, usable or marketable materials.

76 "Recycling" does not include the use of incineration for energy
77 recovery;

78 (17) "Renovate" or "renovation" means altering a mattress for the
79 purpose of resale including any one, or a combination of, the
80 following: Replacing the ticking or filling, adding additional filling, or
81 replacing components with new or recycled materials. "Renovate" or
82 "renovation" does not include (A) the stripping of a mattress of its
83 ticking or filling without adding new material, (B) the sanitization or
84 sterilization of a mattress without otherwise altering the mattress, or
85 (C) the altering of a mattress by a renovator when a person retains the
86 altered mattress for personal use, in accordance with regulations of the
87 Department of Consumer Protection;

88 (18) "Renovator" means any person who renovates discarded
89 mattresses for the purpose of reselling such mattresses to consumers;

90 (19) "Retailer" means any person who sells mattresses in this state or
91 offers mattresses in this state to a consumer;

92 (20) "Sanitization" means the direct application of chemicals to a
93 mattress to kill human disease-causing pathogens;

94 (21) "Sale" means the transfer of title of a mattress for consideration,
95 including, but not limited to, the use of a sales outlet, catalog, Internet
96 web site or similar electronic means;

97 (22) "Sterilization" means the mitigation of any deleterious
98 substances or organisms, including human disease-causing pathogens,
99 fungi and insects from a mattress or filling material using a process
100 approved by the Commissioner of Consumer Protection;

101 (23) "Ticking" means the outermost layer of fabric or material of a
102 mattress. "Ticking" does not include any layer of fabric or material
103 quilted together with, or otherwise attached to, the outermost layer of
104 fabric or material of a mattress; and

105 (24) "Upholstery material" means all material, loose or attached,

106 between the ticking and the core of a mattress.

107 Sec. 2. (NEW) (*Effective October 1, 2013*) (a) On or before July 1, 2014,
108 each producer shall join the mattress recycling council and by said date
109 such council shall submit a plan, for the Commissioner of Energy and
110 Environmental Protection's approval, to establish a state-wide mattress
111 stewardship program, as described in this subsection. Retailers may
112 participate in said council. Such mattress stewardship program shall,
113 to the extent it is technologically feasible and economically practical:
114 (1) Minimize public sector involvement in the management of
115 discarded mattresses; (2) provide for free, convenient and accessible
116 state-wide opportunities for the receipt of discarded mattresses from
117 any person in the state with a discarded mattress that was discarded in
118 the state, including, but not limited to, participating covered entities
119 that accumulate and segregate a minimum of fifty discarded
120 mattresses for collection at one time and municipal transfer stations
121 that discard a minimum of thirty mattresses at one time; (3) provide
122 for free collection of discarded mattresses from municipal transfer
123 stations that accumulate and segregate fewer than thirty mattresses,
124 provided the transfer stations require such collection due to space or
125 permit requirements; (4) provide for council-financed end-of-life
126 management for discarded mattresses collected pursuant to
127 subdivisions (2) and (3) of this subsection; (5) provide suitable storage
128 containers at, or make other mutually agreeable storage and transport
129 arrangements for, permitted municipal transfer stations for segregated,
130 discarded mattresses, at no cost to such municipality, provided such
131 municipal transfer station makes space available for such purpose and
132 imposes no fee for placement of such storage container on the
133 municipal transfer station's premises; and (6) include a mattress
134 stewardship fee that is sufficient to cover the costs of operating and
135 administering the program.

136 (b) The plan submitted pursuant to subsection (a) of this section
137 shall: (1) Identify each producer participating in the program; (2)
138 describe the fee structure for the program; (3) establish performance
139 goals for the first two years of the program; (4) identify proposed

140 facilities to be used by the program; (5) detail how the program will
141 promote the recycling of discarded mattresses; and (6) include a
142 description of the public education program.

143 (c) The council shall establish and implement a fee structure that
144 covers, but does not exceed, the costs of developing the plan described
145 in subsection (b) of this section, operating and administering the
146 program described in subsection (a) of this section and maintaining a
147 financial reserve sufficient to operate the program over a multi-year
148 period of time in a fiscally prudent and responsible manner. The
149 council shall maintain all records relating to the program for a period
150 of not less than three years.

151 (d) Pursuant to the program, recycling shall be preferred over any
152 other disposal method for mattresses, to the extent that recycling is
153 technologically feasible and economically practical.

154 (e) The Commissioner of Energy and Environmental Protection shall
155 approve the plan for the establishment of the mattress stewardship
156 program, provided such plan meets the requirements of subsections
157 (a) to (d), inclusive, of this section. Not later than ninety days after
158 submission of the plan pursuant to this section, the commissioner shall
159 make a determination whether to approve the plan. Prior to making
160 such determination, the commissioner shall post the plan on the
161 department's Internet web site and solicit public comments on the
162 plan. Such solicitation shall not be conducted pursuant to chapter 54 of
163 the general statutes. In the event that the commissioner disapproves
164 the plan because it does not meet the requirements of subsections (a) to
165 (d), inclusive, of this section, the commissioner shall describe the
166 reasons for the disapproval in a notice of determination that the
167 commissioner shall provide to the council. The council shall revise and
168 resubmit the plan to the commissioner not later than forty-five days
169 after receipt of notice of the commissioner's disapproval notice. Not
170 later than forty-five days after receipt of the revised plan, the
171 commissioner shall review and approve or disapprove the revised
172 plan, and provide a notice of determination to the council. The council

173 may resubmit a revised plan to the commissioner for approval on not
174 more than two occasions. If the council fails to submit a plan that is
175 acceptable to the commissioner because it does not meet the
176 requirements of subsections (a) to (d), inclusive, of this section, the
177 commissioner shall modify a submitted plan to make it conform to the
178 requirements of subsections (a) to (d), inclusive, of this section, and
179 approve it. Not later than one hundred twenty days after the approval
180 of a plan pursuant to this section, or one hundred eighty days, in the
181 case of a plan modified by the commissioner, the council shall
182 implement the mattress stewardship program.

183 (f) (1) The council shall submit any proposed substantial change to
184 the program to the Commissioner of Energy and Environmental
185 Protection for approval. For the purposes of this subdivision,
186 "substantial change" means: (A) A change in the processing facilities to
187 be used for discarded mattresses collected pursuant to the program, or
188 (B) a material change to the system for collecting mattresses. If the
189 commissioner does not disapprove a proposed substantial change
190 within ninety days of receipt of notification of such proposed
191 substantial change, such proposed substantial change shall be deemed
192 approved.

193 (2) Not later than October 1, 2016, the council shall submit updated
194 performance goals for approval by the commissioner that are based on
195 the experience of the program during the first two years of the
196 program.

197 (g) The council shall notify the Commissioner of Energy and
198 Environmental Protection of other material changes to the program on
199 an ongoing basis, without resubmission of the plan to the
200 commissioner for approval. Such changes shall include, but not be
201 limited to, a change in the composition, officers or contact information
202 of the council.

203 (h) On or before July 1, 2014, and every two years thereafter, the
204 council shall propose a mattress stewardship fee for all mattresses sold
205 in this state except crib and bassinette mattresses. The council may

206 propose a change to the mattress stewardship fee more frequently than
207 once every two years if the council determines such change is needed
208 to avoid funding shortfalls or excesses for the mattress stewardship
209 program. Any proposed mattress stewardship fee shall be reviewed by
210 an auditor to assure that such assessment does not exceed the cost to
211 fund the mattress stewardship program described in subsection (a) of
212 this section and to maintain financial reserves sufficient to operate said
213 program over a multi-year period in a fiscally prudent and responsible
214 manner. Not later than sixty days after the council proposes a mattress
215 stewardship fee, the auditor shall render an opinion to the
216 Commissioner of Energy and Environmental Protection as to whether
217 the proposed mattress stewardship fee is reasonable to achieve the
218 goals set forth in this section. If the auditor concludes that the mattress
219 stewardship fee is reasonable, then the proposed fee shall go into
220 effect. If the auditor concludes that the mattress stewardship fee is not
221 reasonable, the auditor shall provide the council with written notice
222 explaining the auditor's opinion. Not later than fourteen days after the
223 council's receipt of the auditor's opinion, the council may either
224 propose a new mattress stewardship fee or provide written comments
225 on the auditor's opinion. If the auditor concludes that the fee is not
226 reasonable, the Commissioner of Energy and Environmental
227 Protection shall decide, based on the auditor's opinion and any
228 comments provided by the council, whether to approve the proposed
229 mattress stewardship fee. Such auditor shall be selected by the council.
230 The cost of any work performed by such auditor pursuant to the
231 provisions of this subsection and subsection (k) of this section shall be
232 funded by the mattress stewardship fee described in this subsection.

233 (i) On and after the implementation of the mattress stewardship
234 program, the mattress stewardship fee, established pursuant to
235 subsection (a) of this section and described in subsection (h) of this
236 section, shall be added to the cost of all mattresses sold to retailers and
237 distributors in this state by each producer. On and after such
238 implementation date, each retailer or distributor, as applicable, shall
239 add the amount of such fee to the purchase price of all mattresses sold
240 in this state. In each transaction described above, the fee shall appear

241 on the invoice and shall be accompanied by a brief description of the
242 fee. The council may, subject to the commissioner's approval, establish
243 an alternative, practicable means of collecting or remitting such fee.
244 Any producer who fails to participate in such program shall not sell
245 mattresses in this state.

246 (j) Not later than October fifteenth of each year, the council shall
247 submit an annual report to the Commissioner of Energy and
248 Environmental Protection, on a form prescribed by the commissioner.
249 The commissioner shall post such annual report on the department's
250 Internet web site. Such report shall include: (1) The tonnage of
251 mattresses collected pursuant to the program from: (A) Municipal
252 transfer stations, (B) retailers, and (C) all other covered entities; (2) the
253 tonnage of mattresses diverted for recycling; (3) the weight of mattress
254 materials recycled, as indicated by the weight of each of the
255 commodities sold to secondary markets; (4) the weight of mattress
256 materials sent for disposal at each of the following: (A) Waste-to-
257 energy facilities, (B) landfills, and (C) any other facilities; (5) a
258 summary of the public education that supports the program; (6) an
259 evaluation of the effectiveness of methods and processes used to
260 achieve performance goals of the program; and (7) recommendations
261 for any changes to the program.

262 (k) Two years after the implementation of the program and every
263 three years thereafter, or upon the request of the Commissioner of
264 Energy and Environmental Protection but not more frequently than
265 once a year, the council shall cause an audit of the program to be
266 conducted by an auditor as described in subsection (h) of this section.
267 Such audit shall review the accuracy of the council's data concerning
268 the program and provide any other information requested by the
269 commissioner, consistent with the requirements of this section,
270 provided such request does not require the disclosure of any
271 proprietary information or trade or business secrets. Such audit shall
272 be paid for by the council. The council shall maintain all records
273 relating to the program for not less than three years.

274 Sec. 3. (NEW) (*Effective July 1, 2014*) Upon implementation of the
275 mattress stewardship program described in section 2 of this act, any
276 covered entity that participates in such program shall not charge for
277 the receipt of discarded mattresses that are discarded in this state
278 provided covered entities may charge a fee for providing the service of
279 collecting mattresses and may restrict the acceptance of mattresses by
280 number, source or physical condition.

281 Sec. 4. (NEW) (*Effective October 1, 2013*) Not later than three years
282 after the approval of the mattress stewardship plan pursuant to section
283 2 of this act, the Commissioner of Energy and Environmental
284 Protection shall submit a report, in accordance with section 11-4a of the
285 general statutes, to the joint standing committee of the General
286 Assembly having cognizance of matters relating to the environment.
287 Such report shall provide an evaluation of the mattress stewardship
288 program, establish a goal for the amount of discarded mattresses
289 managed under the program and a separate goal for the recycling of
290 such mattresses, taking into consideration technical and economic
291 feasibilities.

292 Sec. 5. (NEW) (*Effective October 1, 2013*) Each producer and the
293 council shall be immune from liability for any claim of a violation of
294 antitrust law or unfair trade practice, if such conduct is a violation of
295 antitrust law, to the extent such producer or council is exercising
296 authority pursuant to the provisions of sections 1 to 7, inclusive, of this
297 act.

298 Sec. 6. (NEW) (*Effective October 1, 2013*) (a) The Commissioner of
299 Energy and Environmental Protection may seek civil enforcement of
300 the provisions of sections 2 and 3 of this act pursuant to chapter 439 of
301 the general statutes.

302 (b) Whenever, in the judgment of the commissioner, any person has
303 engaged in or is about to engage in any act, practice or omission that
304 constitutes, or will constitute, a violation of any provision of section 2
305 or 3 of this act, the Attorney General may, at the request of the
306 commissioner, bring an action in the superior court for the judicial

307 district of New Britain for an order enjoining such act, practice or
 308 omission. Such order may require remedial measures and direct
 309 compliance with the provisions of section 2 or 3 of this act. Upon a
 310 showing by the commissioner that such person has engaged in or is
 311 about to engage in any such act, practice or omission, the court may
 312 issue a permanent or temporary injunction, restraining order or other
 313 order, as appropriate.

314 (c) Any action brought by the Attorney General pursuant to this
 315 section shall have precedence in the order of trial, as provided in
 316 section 52-191 of the general statutes.

317 Sec. 7. (NEW) (*Effective October 1, 2013*) In the event that another
 318 state implements a mattress recycling program, the council may
 319 collaborate with such state to conserve efforts and resources used in
 320 carrying out the mattress stewardship program, provided such
 321 collaboration is consistent with the requirements of sections 1 to 6,
 322 inclusive, of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	New section
Sec. 2	<i>October 1, 2013</i>	New section
Sec. 3	<i>July 1, 2014</i>	New section
Sec. 4	<i>October 1, 2013</i>	New section
Sec. 5	<i>October 1, 2013</i>	New section
Sec. 6	<i>October 1, 2013</i>	New section
Sec. 7	<i>October 1, 2013</i>	New section

ENV *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 14 \$	FY 15 \$
Department of Energy and Environmental Protection	GF - Potential Revenue Gain	Less than 50,000	Less than 50,000

Municipal Impact:

Municipalities	Effect	FY 14 \$	FY 15 \$
Various Municipalities	Potential Savings	Significant	Significant

Explanation

The bill, which establishes a mattress stewardship program, would result in a savings to various municipalities associated with the removal of mattresses from the municipal solid waste (MSW) stream. The extent of the savings depends on the number of mattresses a town disposes and the amount (if any) the town currently charges for mattress disposal.

Under the bill, towns that currently charge residents a mattress disposal fee (through curbside collection or at a transfer station) would realize a smaller savings than those towns that do not charge any direct fee for mattress disposal. Currently, at least 54 municipalities charge a direct fee for residents to dispose mattresses; and at least 38 towns pay for disposal through municipal taxes¹.

These costs are based on the Department of Environmental Protection (DEP) 2011 survey, "CT DEP Survey for Used Mattress

¹ CT DEP Survey for Used Mattress Management in Connecticut Final Report and Summary of Results, June 13, 2011.

Management in Connecticut Final Report and Summary of Results”, which estimated that the total number of mattresses collected by municipalities statewide is 88,050.²

Municipalities with direct fees are covering some portion of their costs for mattress disposal and may realize the least amount of savings under the bill. Fees for mattress disposal range from \$15 - \$45 per mattress.

Towns that group mattresses with their other bulky or oversized MSW items at an average rate of more than \$75 per ton (“tip fee”) would realize the most savings under the bill, as the tonnage of MSW that is subject to the tip fee would be reduced. The reduction in MSW tonnage subject to tip fees is unknown at this time.

Lastly, the bill may result in revenue to the Department of Energy and Environmental Protection (DEEP) to the extent the agency seeks civil enforcement. Any revenue gained under this authority is anticipated to be less than \$50,000 annually.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation, the number of mattresses diverted from the MSW stream, the current method an individual municipality utilizes for mattress collection, and any fines collected by DEEP from civil enforcement.

² The survey indicated that this figure was an “underestimation” because it did not capture all mattresses collected curbside.

OLR Bill Analysis**sHB 6437*****AN ACT CONCERNING A MATTRESS STEWARDSHIP PROGRAM.*****SUMMARY:**

This bill establishes a “mattress stewardship program” to manage discarded mattresses. It requires mattress producers to join a nonprofit mattress recycling council that they, or a trade association representing them, establish. It prohibits producers who fail to participate in the program from selling mattresses in Connecticut.

The council must develop a plan to, among other things, minimize public sector involvement in managing discarded mattresses. The plan must be submitted to the Department of Energy and Environmental Protection (DEEP) for approval. The program is funded through a fee on all mattresses sold in the state. The fee and any proposed change to it is reviewed by an auditor.

The bill allows the DEEP commissioner to civilly enforce the program’s requirements, establishes reporting requirements, and provides immunity to producers and the council from claims of antitrust or unfair trade practice violations under certain circumstances. It also allows the council to collaborate with another state which has a mattress recycling program.

Under the bill, the program’s preferred disposal method is recycling if it is technologically feasible and economically practical.

EFFECTIVE DATE: October 1, 2013, except the covered entity fee provision is effective July 1, 2014.

MATTRESS PRODUCERS

The bill applies to “producers” (manufacturers or renovators) of

mattresses sold, offered for sale, or distributed in Connecticut under the producer's own name or brand. It includes (1) the owner of a trademark or brand under which a mattress is sold, offered for sale, or distributed in the state and (2) any person who imports a mattress into the United States that is sold or offered for sale in Connecticut and manufactured or renovated by a person without a United States presence. The bill defines "renovator" as a person who alters discarded mattresses for resale to consumers by replacing the ticking (outermost fabric or material layer) or filling, adding filling, or replacing components. A "brand" is a name, symbol, word, or mark that attributes a mattress to its producer.

Under the bill, a "mattress" is any resilient material or combination of materials enclosed by a ticking, used alone or with other products, and intended or promoted for sleeping upon. It includes (1) ticking-covered structures used to support the mattress composed of a constructed frame, foam, or box spring (a "foundation") and (2) any renovated mattress. But it does not include any mattress pad, mattress topper, sleeping bag, pillow, car bed, carriage, basket, dressing table, stroller, playpen, infant carrier, lounge pad, crib bumper, and certain water beds, air mattresses, and upholstered furniture.

A "sale" is the transfer of title of a mattress for consideration, including through a sales outlet, catalog, or website or similar electronic means.

PROGRAM PURPOSES AND ESTABLISHMENT

By July 1, 2014, the bill requires producers to join the mattress recycling council. The council is a nonprofit organization to design, submit, and implement the mattress stewardship program. It is created by the producers or any trade association that represents the producers that account for the majority of U.S. mattress production.

By the same date, the mattress recycling council must submit a plan to establish a statewide mattress stewardship program to the DEEP commissioner for approval. The bill allows retailers to participate in

the council.

The bill requires the council's fee structure to cover but not exceed the costs of (1) developing the plan, (2) operating and administering the program, and (3) maintaining a sufficient financial reserve to operate the program in a fiscally prudent and responsible manner over a multi-year period.

The mattress stewardship program must (1) minimize public sector involvement in managing discarded mattresses and (2) include a mattress stewardship fee that is sufficient to cover the program's operating and administrative costs. It must also provide:

1. free, convenient, and accessible statewide opportunities for receiving discarded mattresses from any person with a mattress that was discarded in Connecticut, including (a) participating covered entities with at least 50 mattresses and (b) municipal transfer stations that discard at least 30 mattresses at a time;
2. free collection of discarded mattresses from municipal transfer stations that accumulate and segregate fewer than 30 mattresses and need collection due to space or permit requirements;
3. council-financed end-of-life management for collected discarded mattresses; and
4. suitable storage containers, or some other mutually agreed-to storage and transport arrangement, at permitted municipal transfer stations for segregated, discarded mattresses, at no cost if the transfer stations make space available and charge no fee.

The program must do these things to the extent they are technologically feasible and economically practical.

Under the bill, a "discarded mattress" is a mattress a consumer discarded, intends to discard, or abandoned.

PLAN COMPONENTS

The council's plan must:

1. identify each participating producer,
2. describe the program's fee structure,
3. establish "performance goals" for the program's first two years,
4. identify proposed facilities for the program,
5. detail the program's promotion of recycling discarded mattresses, and
6. describe its public education program.

Under the bill, a "performance goal" is a council-proposed metric approved by the DEEP commissioner to annually measure the program's performance. It must consider technical and economic feasibility of achieving continuous and meaningful improvement in (1) the state's mattress recycling rate and (2) any other specified goal.

PLAN APPROVAL AND IMPLEMENTATION

The bill requires the DEEP commissioner to approve the plan if it meets the bill's program and plan requirements. He must determine whether to approve the plan within 90 days after its submission. The commissioner must post the plan on DEEP's website and solicit public comments before deciding whether to approve it. The bill specifies that the solicitation is not conducted according to the Uniform Administrative Procedure Act.

If the plan is not approved, the commissioner must provide the council with a notice of determination describing the reasons for disapproval. The council must revise and resubmit the plan within 45 days after receiving the disapproval notice. The commissioner must review and either approve or disapprove the revised plan within 45 days after receiving it and provide a notice of determination to the council. The bill restricts resubmitting a revised plan for approval to no more than two occasions. It requires the commissioner to modify

and approve a submitted plan to make it conform with the program and plan requirements if the council fails to provide an acceptable plan.

The bill requires the council to implement the mattress stewardship program within (1) 120 days after plan approval or (2) 180 after a DEEP modified plan is approved.

CHANGES TO THE PLAN

The bill requires the council to submit proposed substantial changes to the program to the DEEP commissioner for approval. Under the bill, a “substantial change” is a (1) change in the processing facilities used for the collected mattresses or (2) material change to the system for collecting mattresses. The proposed substantial change is deemed approved unless the commissioner disapproves it within 90 days after receiving notice of the change.

The bill also requires the council to notify the commissioner of other material program changes on an ongoing basis and without resubmitting the plan for approval. These changes include a change in the council’s (1) composition, (2) officers, or (3) contact information.

By October 1, 2016, the council must submit to the commissioner for his approval updated performance goals based on the program’s experience during its first two years.

FUNDING

By July 1, 2014 and biennially afterward, the council must propose a mattress stewardship fee for all mattresses sold in Connecticut except crib and bassinette mattresses. The bill authorizes the council to propose a fee change more often if necessary to avoid a funding shortfall or excess.

The bill requires a proposed fee to be reviewed by an auditor to assure that it does not exceed the costs of (1) the program and (2) maintaining sufficient financial reserves to operate the program in a fiscally prudent and responsible manner over a multi-year period. It

requires the council to select the auditor. The cost of the auditor's work is funded by the stewardship fee.

Within 60 days after the council proposes the fee, the auditor must give an opinion to the DEEP commissioner on the reasonableness of the fee to achieve the program's goals. If the auditor concludes the fee is reasonable, the proposed fee goes into effect. But if the fee is unreasonable, the auditor must notify the council in writing explaining his or her opinion. Within 14 days after receiving the notice, the council may (1) propose a new fee or (2) provide written comments on the opinion. The commissioner must then determine if the proposed fee should be approved based on the auditor's opinion and comments from the council.

Beginning on the program's implementation date, the fee must be added to the cost of all mattresses sold by producers to retailers and distributors in Connecticut. Each retailer and distributor must add the fee amount to the purchase price of all mattresses sold in the state. The fee, and a brief description of it, must appear on each invoice.

The bill authorizes the council to establish an alternative, practicable way of collecting or remitting the fee if DEEP approves.

PROGRAM AUDIT

Two years after program implementation, and then every three years, the council must pay for a program audit. The audit must (1) review the accuracy of the council's program data and (2) provide any other information requested by the DEEP commissioner but not any proprietary information or trade or business secrets. The bill allows the commissioner to request an audit no more than once per year.

The bill requires the council to maintain all program records for at least three years.

MATTRESS COLLECTION FEES

When the program is implemented, any participating "covered entity" is prohibited from charging for the receipt of mattresses

discarded in Connecticut, but allowed to charge a fee for the service of collecting mattresses. It allows them to refuse mattresses by number, source, or physical condition.

Under the bill, a “covered entity” is an entity that possesses a mattress discarded in Connecticut. It includes a political subdivision of the state; mattress retailer; permitted transfer station; military base; commercial or nonprofit lodging establishment; or waste-to-energy, health care, education, or correctional facility. It excludes renovators, refurbishers, and people who only transport discarded mattresses.

CIVIL PENALTIES

The bill authorizes the DEEP commissioner to enforce the program’s requirements under his existing authority.

It allows the commissioner to ask the attorney general to bring an action for injunctive relief in New Britain Superior Court if he believes that a person has engaged in, or is about to engage in, any act, practice, or omission that violates the program’s requirements. It permits the court to issue a permanent or temporary injunction, restraining order, or other appropriate order, including taking remedial measures and directing compliance.

The bill requires that such actions by the attorney general take precedence over other actions in the order of trial.

LIABILITY PROTECTION

Under the bill, to the extent a producer or the council is exercising authority according to the bills’ provisions, it is immune from liability for any antitrust or unfair trade practice claim based on a violation of antitrust law.

REPORTS

Annually by October 15, the council must submit a report to the DEEP commissioner on a form he prescribes. DEEP must post the report on its website. The report must include the:

1. tonnage of mattresses collected from municipal transfer stations, retailers, and all other covered entities;
2. tonnage of mattresses diverted for recycling;
3. weight of mattress materials recycled, by the weight of each commodity sold to secondary markets; and
4. weight of mattress materials sent for disposal to waste-to-energy facilities, landfills, and other facilities.

It must also include (1) a summary of the program’s public education efforts, (2) an evaluation of methods and processes used to achieve program performance goals, and (3) recommendations for program changes.

Within three years after the plan’s approval, the commissioner must submit a report to the Environment Committee that evaluates the program. The report also must establish goals for the (1) amount of discarded mattresses managed by the program and (2) recycling of such mattresses, which must consider technical and economic feasibility.

INTERSTATE COLLABORATION

The bill allows the council to collaborate with another state that implements a mattress recycling program to conserve efforts and resources, but the collaboration must be consistent with the bill’s requirements.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 23 Nay 5 (03/18/2013)