



# House of Representatives

## File No. 755

General Assembly

January Session, 2013

**(Reprint of File No. 365)**

Substitute House Bill No. 6437  
As Amended by House Amendment  
Schedules "A" and "C"

Approved by the Legislative Commissioner  
May 6, 2013

### **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 to  
58 measure, on an annual basis, the performance of the mattress  
59 stewardship program, taking into consideration technical and  
60 economic feasibilities, in achieving continuous, meaningful  
61 improvement in improving the rate of mattress recycling in the state  
62 and any other specified goal of the program;

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

72 (16) "Recycling" means any process in which discarded mattresses,  
73 components and by-products may lose their original identity or form  
74 as they are transformed into new, usable or marketable materials.  
75 "Recycling" does not include the use of incineration for energy

76 recovery;

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

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

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

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

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

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

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

104 (24) "Upholstery material" means all material, loose or attached,  
105 between the ticking and the core of a mattress.

106       Sec. 2. (NEW) (*Effective October 1, 2013*) (a) On or before July 1, 2014,  
107 each producer, or such producer's designee, shall join the mattress  
108 recycling council and by said date such council shall submit a plan, for  
109 the Commissioner of Energy and Environmental Protection's approval,  
110 to establish a state-wide mattress stewardship program, as described  
111 in this subsection. Retailers may participate in said council. Such  
112 mattress stewardship program shall, to the extent it is technologically  
113 feasible and economically practical: (1) Minimize public sector  
114 involvement in the management of discarded mattresses; (2) provide  
115 for free, convenient and accessible state-wide opportunities for the  
116 receipt of discarded mattresses from any person in the state with a  
117 discarded mattress that was discarded in the state, including, but not  
118 limited to, participating covered entities that accumulate and segregate  
119 a minimum of fifty discarded mattresses for collection at one time and  
120 municipal transfer stations that discard a minimum of thirty  
121 mattresses at one time; (3) provide for free collection of discarded  
122 mattresses from municipal transfer stations that accumulate and  
123 segregate fewer than thirty mattresses, provided the transfer stations  
124 require such collection due to space or permit requirements; (4)  
125 provide for council-financed end-of-life management for discarded  
126 mattresses collected pursuant to subdivisions (2) and (3) of this  
127 subsection; (5) provide suitable storage containers at, or make other  
128 mutually agreeable storage and transport arrangements for, permitted  
129 municipal transfer stations for segregated, discarded mattresses, at no  
130 cost to such municipality, provided such municipal transfer station  
131 makes space available for such purpose and imposes no fee for  
132 placement of such storage container on the municipal transfer station's  
133 premises; (6) include a mattress stewardship fee that is sufficient to  
134 cover the costs of operating and administering the program; and (7)  
135 establish a financial incentive that provides for the payment of a  
136 monetary sum, established by the council, to any consumer who  
137 recycles a mattress in accordance with the requirements of the mattress  
138 stewardship program.

139       (b) The plan submitted pursuant to subsection (a) of this section

140 shall: (1) Identify each producer participating in the program; (2)  
141 describe the fee structure for the program; (3) establish performance  
142 goals for the first two years of the program; (4) identify proposed  
143 facilities to be used by the program; (5) detail how the program will  
144 promote the recycling of discarded mattresses; and (6) include a  
145 description of the public education program.

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

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

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

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

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

196 (2) Not later than October 1, 2016, the council shall submit updated  
197 performance goals to the commissioner that are based on the  
198 experience of the program during the first two years of the program.

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

205 (h) On or before July 1, 2014, and every two years thereafter, the  
206 council shall propose a mattress stewardship fee for all mattresses sold  
207 in this state except crib and bassinette mattresses. The council may  
208 propose a change to the mattress stewardship fee more frequently than  
209 once every two years if the council determines such change is needed  
210 to avoid funding shortfalls or excesses for the mattress stewardship  
211 program. Any proposed mattress stewardship fee shall be reviewed by  
212 an auditor to assure that such assessment does not exceed the cost to  
213 fund the mattress stewardship program described in subsection (a) of  
214 this section and to maintain financial reserves sufficient to operate said  
215 program over a multi-year period in a fiscally prudent and responsible  
216 manner. Not later than sixty days after the council proposes a mattress  
217 stewardship fee, the auditor shall render an opinion to the  
218 Commissioner of Energy and Environmental Protection as to whether  
219 the proposed mattress stewardship fee is reasonable to achieve the  
220 goals set forth in this section. If the auditor concludes that the mattress  
221 stewardship fee is reasonable, then the proposed fee shall go into  
222 effect. If the auditor concludes that the mattress stewardship fee is not  
223 reasonable, the auditor shall provide the council with written notice  
224 explaining the auditor's opinion. Not later than fourteen days after the  
225 council's receipt of the auditor's opinion, the council may either  
226 propose a new mattress stewardship fee or provide written comments  
227 on the auditor's opinion. If the auditor concludes that the fee is not  
228 reasonable, the Commissioner of Energy and Environmental  
229 Protection shall decide, based on the auditor's opinion and any  
230 comments provided by the council, whether to approve the proposed  
231 mattress stewardship fee. Such auditor shall be selected by the council.  
232 The cost of any work performed by such auditor pursuant to the  
233 provisions of this subsection and subsection (k) of this section shall be  
234 funded by the mattress stewardship fee described in this subsection.

235 (i) On and after the implementation of the mattress stewardship  
236 program, the mattress stewardship fee, established pursuant to  
237 subsection (a) of this section and described in subsection (h) of this  
238 section, shall be added to the cost of all mattresses sold to retailers and

239 distributors in this state by each producer. On and after such  
240 implementation date, each retailer or distributor, as applicable, shall  
241 add the amount of such fee to the purchase price of all mattresses sold  
242 in this state. In each transaction described above, the fee shall appear  
243 on the invoice and shall be accompanied by a brief description of the  
244 fee. The council may, subject to the commissioner's approval, establish  
245 an alternative, practicable means of collecting or remitting such fee.  
246 Any producer who fails to participate in such program shall not sell  
247 mattresses in this state.

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

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

273 proprietary information or trade or business secrets. Such audit shall  
274 be paid for by the council. The council shall maintain all records  
275 relating to the program for not less than three years.

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

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

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

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

304 (b) Whenever, in the judgment of the commissioner, any person has

305 engaged in or is about to engage in any act, practice or omission that  
 306 constitutes, or will constitute, a violation of any provision of section 2  
 307 or 3 of this act, the Attorney General may, at the request of the  
 308 commissioner, bring an action in the superior court for the judicial  
 309 district of New Britain for an order enjoining such act, practice or  
 310 omission. Such order may require remedial measures and direct  
 311 compliance with the provisions of section 2 or 3 of this act. Upon a  
 312 showing by the commissioner that such person has engaged in or is  
 313 about to engage in any such act, practice or omission, the court may  
 314 issue a permanent or temporary injunction, restraining order or other  
 315 order, as appropriate.

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

319 Sec. 7. (NEW) (*Effective October 1, 2013*) In the event that another  
 320 state implements a mattress recycling program, the council may  
 321 collaborate with such state to conserve efforts and resources used in  
 322 carrying out the mattress stewardship program, provided such  
 323 collaboration is consistent with the requirements of sections 1 to 6,  
 324 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

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:**

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

#### **Municipal Impact:**

<b>Municipalities</b>	<b>Effect</b>	<b>FY 14 \$</b>	<b>FY 15 \$</b>
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 taxes<sup>1</sup>.

These costs are based on the Department of Environmental

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

Protection (DEP) 2011 survey, "CT DEP Survey for Used Mattress Management in Connecticut Final Report and Summary of Results", which estimated that the total number of mattresses collected by municipalities statewide is 88,050.<sup>2</sup>

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.

House "A" makes minor alterations to provisions regarding the performance goals of the mattress recycling council which do not result in a fiscal impact to the state or municipalities.

House "C" establishes a financial incentive for consumers who recycle mattresses. This is also not anticipated to result in a fiscal impact to the state or municipalities.

### ***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

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<sup>2</sup> The survey indicated that this figure was an "underestimation" because it did not capture all mattresses collected curbside.

DEEP from civil enforcement.

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**OLR Bill Analysis****sHB 6437 (as amended by House "A" and "C")\******AN ACT CONCERNING A MATTRESS STEWARDSHIP PROGRAM.*****SUMMARY:**

This bill establishes a mattress stewardship program to manage discarded mattresses. It requires mattress producers, or their designees, 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.

\*House Amendment "A" removes the requirement that the DEEP commissioner approve the program's performance goals.

\*House Amendment "C" allows for producer's designees to join the recycling council and requires the program to establish a financial incentive for consumers who recycle mattresses according to the program's requirements 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, or 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, or their designees, 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. The bill allows retailers to participate in the council.

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 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, (2) include a mattress stewardship fee that is sufficient to cover the program's operating and administrative costs, and (3) establish a financial incentive that provides for payment of a monetary sum set by the council to consumers who recycle mattresses according to the program's requirements. 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 (see below) 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 plans to promote recycling of discarded mattresses, and
6. describe its public education program.

Under the bill, a “performance goal” is a council-proposed metric 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 days 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 a continual 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 updated performance goals based on the program's experience during its first two years.

### **FUNDING**

By July 1, 2014 and biennially thereafter, 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 bill's 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 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) number of discarded mattresses managed by the program and (2) recycling of such mattresses, considering 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)

Judiciary Committee

Joint Favorable

Yea 33 Nay 9 (04/24/2013)