

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1117 (Delegate Hill, *et al.*)

Environment and Transportation and
 Economic Matters

Environment - Mattress Stewardship Program

The bill requires producers of mattresses sold at retail in the State, or a representative organization acting on behalf of the producers, to (1) submit, by July 1, 2017, a plan for the establishment of a Mattress Stewardship Program to the Maryland Department of the Environment (MDE) for approval; (2) pay a plan review fee to cover MDE’s plan review costs; and (3) implement the program by October 1, 2017. The bill (1) requires MDE to review and approve plans; (2) establishes a uniform mattress stewardship assessment for all mattresses sold in the State to cover program implementation costs; and (3) prohibits, beginning October 1, 2017, a producer or retailer from selling or offering to sell a brand of mattress unless the producer or its representative is implementing an approved Mattress Stewardship Program. The bill also establishes reporting requirements.

Fiscal Summary

State Effect: Special fund expenditures and revenues increase minimally for MDE in FY 2017 due to plan review costs and associated fees. Special fund expenditures increase by \$43,400 in FY 2018 for MDE compliance and enforcement; future year administrative expenditures are annualized and reflect ongoing costs through FY 2019, at which point MDE can implement the bill with existing resources. State expenditures (multiple fund types) increase minimally beginning in FY 2018 to pay mattress assessments in the purchase price of mattresses.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
SF Revenue	-	\$0	\$0	\$0	\$0
SF Expenditure	-	\$43,400	\$40,400	\$0	\$0
GF/SF Exp.	\$0	-	-	-	-
Net Effect	\$0	(\$43,400)	(\$40,400)	\$0	\$0

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

Local Effect: Potential decrease in waste management costs beginning in FY 2018 at local landfills due to diversion of discarded mattresses under the program. Minimal increase in local government expenditures beginning in FY 2018 to pay mattress assessments in the purchase price of mattresses. Local revenues are not materially affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Mattress Stewardship Program Plan Development

The plan must minimize public-sector involvement in the management of discarded mattresses and promote the recycling of discarded mattresses. The plan must also provide free, convenient, and accessible statewide collection of discarded mattresses. Among other things, participating producers and brands of mattresses covered by the program must be identified.

The plan must also establish a uniform mattress stewardship assessment for each mattress sold in the State and a mechanism for participating producers to remit the assessment to the representative organization to cover program costs. The total amount of the assessment may not exceed the costs of implementing the program, and assessments may only be used for program implementation.

MDE Plan Review

MDE must review the program plan and establish a plan review fee to cover MDE's plan review costs. Plan review fees are deposited in MDE's State Recycling Trust Fund. If MDE determines that the plan complies with the bill's requirements, MDE must approve the program. MDE also must list participating producers and brands on its website.

Implementation of the Mattress Stewardship Program

By October 1, 2017, a producer or representative organization must implement a Mattress Stewardship Program. Unless such a program is implemented by that date, a producer or retailer is prohibited from selling or offering to sell that brand of mattress to any person in the State.

The bill requires each producer to add the mattress stewardship assessment (described above) to the cost of all mattresses sold to retailers and distributors in the State. Each retailer or distributor must add the assessment to the purchase price of all mattresses sold in the State.

A participating producer or a representative organization must provide consumers with educational materials that include information about available end-of-life management options for mattresses offered through the program and information that notifies consumers about the assessment. A retailer may only order a mattress from a participating producer or producer's agent that is listed on MDE's website.

Immunity from Liability

A producer or representative organization that organizes the collection, transport, and processing of discarded mattresses in accordance with an approved program is immune from liability for any claim of a violation of antitrust, restraint of trade, or unfair trade practice arising from conduct undertaken in accordance with the program.

Reporting Requirements

Beginning December 1, 2017, and annually thereafter, a producer or representative organization must submit a report to MDE that includes, among other things, (1) a description of the methods used to collect, transport, and process discarded mattresses in the State; (2) the weight of mattresses collected under the program; (3) the weight of mattresses diverted to recycling facilities; (4) the weight of mattress materials recycled by weight of each of the commodities sold to secondary markets; (5) the weight of mattress materials sent for disposal to waste-to-energy facilities, landfills, or other disposal or processing facilities; (6) the total cost of implementing the program, as determined by an independent financial audit funded by the mattress stewardship assessment; and (7) samples of educational/public outreach materials. Specified information is confidential and not subject to public inspection. MDE is authorized to release summary data, as specified.

Current Law/Background:

Zero Waste Plan and Extended Producer Responsibility Systems in Maryland

MDE is currently working to eliminate the need for disposal of solid waste as part of its Zero Waste Plan. The Zero Waste Plan, released in December 2014, is one of MDE's major strategies to reduce emissions as required by the Greenhouse Gas Reduction Act of 2009 (Chapters 171 and 172). Executive Order 01.01.2015.01, which also addresses Maryland's zero waste goal, states that "Maryland shall endeavor to ensure that all waste

generated in the State is increasingly reduced and reused rather than discarded in a manner that adversely impacts our health and environment.” The executive order also requires MDE to provide local governments with information on alternatives to landfilling.

One of the specific initiatives under the Zero Waste Plan is to ensure that extended producer responsibility (EPR) systems are designed to encourage source reduction, including for mattresses and other difficult-to-manage materials. EPR programs shift the financial and/or physical responsibility for managing products at end of life to the producers of those products and away from local governments.

Mattresses pose practical challenges inherent to end-of-life management because they are bulky and not easily compacted, making transport and disposal inefficient. In addition, while mattresses are recyclable, the prevailing method of separating steel, foam, wood, and cotton involves a labor-intensive manual process. In Maryland, the burden of dealing with difficult materials, such as mattresses, has historically fallen on counties and municipalities that manage solid waste and recycling programs. Local governments have been successful in implementing recycling programs for some difficult materials, such as electronics. However, because local governments are limited in resources and geographic influence, they have limited ability to produce the kinds of upstream changes needed to reduce end-of-life management problems.

The Zero Waste Plan states that an estimated 20 million mattresses are discarded in the United States each year and that it is likely that less than 2% of these are recycled. The difficulties associated with recycling mattresses, as well as a widespread perception that handling used mattresses is an unsanitary practice, have resulted in a dearth of voluntary recycling programs among mattress retailers, producers, and even local governments.

Mattress Stewardship Programs in Other States

The Zero Waste Plan states that in 2013, California, Connecticut, and Rhode Island passed the first mattress EPR programs, which mandate manufacturer-developed recycling plans along with a per unit fee on the retail sale of each mattress. The plan further states that a similar program in Maryland could help to increase and fund the diversion of mattresses.

In California, Connecticut, and Rhode Island, producers fulfill their obligations through a program plan submitted and implemented by the Mattress Recycling Council (MRC), a nonprofit organization established by the mattress industry to develop and operate mattress recycling programs in those three states. According to its website, MRC contracts with third parties for the collection and recycling of discarded mattresses. These activities are funded through the recycling fee collected on the sale of mattresses and box springs to consumers. The mattress stewardship assessment in those states is as follows:

<u>State</u>	<u>Current Status of Program</u>	<u>Stewardship Assessment (per unit)</u>
CT	Program began May 1, 2015	\$9
CA	Collection of the assessment began December 30, 2015; revised plan approved January 31, 2016	11
RI	Revised plan approved in January 2016; program to start May 1, 2016	10

State Fiscal Effect:

MDE General Program Administration Costs

Special fund expenditures from the State Recycling Trust Fund increase by \$43,440 in fiscal 2018, which accounts for the program’s July 1, 2017 implementation date, and by \$40,352 in fiscal 2019. The fiscal 2018 estimate reflects the cost of hiring one contractual environmental compliance specialist within MDE to conduct compliance and enforcement activities, maintain the listing of compliant producers on its website, and accept and track annual reports. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses, including travel. The estimate does not include costs associated with MDE’s plan review, which are discussed below.

	<u>FY 2018</u>	<u>FY 2019</u>
New Contractual Position	1	
Salary and Fringe Benefits	\$37,369	\$38,638
Operating Expenses	<u>6,071</u>	<u>1,714</u>
Total MDE Expenditures	\$43,440	\$40,352

Although the bill’s effective date is October 1, 2016, it is assumed that the contractual staff is not hired until July 1, 2017, which is the deadline for plan submission and when program coordination responsibilities for MDE are anticipated to begin.

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenditures, including travel costs, through fiscal 2019. MDE advises that the contractual environmental compliance specialist is only needed to set up the program during the first two years that the program is operational. Beginning in fiscal 2020, MDE advises that it can implement the bill’s requirements with existing staff.

These estimates do not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

MDE Plan Review

MDE plans to use existing staff to conduct the required review of the proposed program plan. Further, although producers may participate individually or jointly through a representative organization, similar programs in other states are generally only carried out by a single representative organization (MRC) under a single program plan. As such, MDE assumes, and the Department of Legislative Services concurs, that it is likely that MDE reviews only one plan under the bill and receives only one plan review fee to cover its anticipated costs, which are minimal. Thus, special fund expenditures from the State Recycling Trust Fund increase minimally for MDE to review the proposed plan, and special fund revenues increase correspondingly from the plan review fee.

State Agencies as Consumers of Mattresses

State expenditures (multiple fund types) increase for any State agency that purchases mattresses, since the bill requires that an assessment be added to the purchase price of all mattresses sold in the State. As discussed above, and based on other state programs, this fee is likely no more than \$11 per mattress. Although the total number of mattresses purchased by State agencies is unknown, this analysis assumes that any increase in costs for State agencies to purchase mattresses is likely minimal.

Local Fiscal Effect: Waste management costs at local landfills may decrease as a result of the diversion of discarded mattresses under the program. Further, costs may decrease for local governments that currently collect mattresses to the extent that the bill creates additional collection opportunities other than through local collection programs.

In addition, as a consumer of mattresses, any local government agency that purchases mattresses must pay the mattress stewardship assessment established as a result of the bill. Thus, local government expenditures for the purchase of mattresses increase minimally.

Small Business Effect: The bill results in potentially significant additional operational responsibilities for producers, retailers, and distributors of mattresses in the State, as they are required to (1) add a mattress stewardship assessment to the cost of all mattresses sold and (2) account for those assessments and remit them to the representative organization. Producers and retailers must also (1) verify that all mattresses sold in the State are in compliance with an approved program; (2) pay for independent audits, as required by the bill; and (3) submit required reports. Several retailers affected by the bill are likely considered small businesses.

As a consumer of mattresses, small businesses that purchase mattresses incur additional costs to pay the mattresses stewardship assessment established by the bill. On the other hand, small businesses may benefit from having viable options for disposing of and managing end-of-life mattresses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Northeast Maryland Waste Disposal Authority, Mattress Recycling Council, Department of Legislative Services

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mel/lgc

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