

**Department of Legislative Services**  
 Maryland General Assembly  
 2022 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 1226 (Delegate Hill)

Environment and Transportation and  
 Economic Matters

**Environment - Office of Recycling - Mattress Stewardship Program -  
 Establishment**

This bill requires a producer of mattresses sold at retail in the State, or a representative organization acting on behalf of a producer, to (1) by July 1, 2023, submit a plan for the establishment of the Mattress Stewardship Program to the Maryland Department of the Environment (MDE) for approval; (2) pay a plan review fee to MDE; (3) implement the program within one year of plan approval; (4) submit annual reports to MDE for review; and (5) pay annual report review fees to MDE. Among other things, the bill also establishes (1) a uniform mattress stewardship assessment for all mattresses sold in the State to cover program costs; (2) a prohibition on the sale of mattresses unless the producer or retailer is implementing an approved mattress stewardship program; and (3) a prohibition on the disposal of mattresses in landfills beginning January 1, 2027. MDE must adopt regulations.

**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$41,300 in FY 2023 only. Special fund expenditures increase by \$43,000 in FY 2024, by \$71,300 in FY 2025, by \$53,000 in FY 2026, and minimally thereafter; special fund revenues increase correspondingly. State expenditures (multiple fund types) increase as early as FY 2024 to purchase mattresses.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
SF Revenue	\$0	\$43,000	\$71,300	\$53,000	-
GF Expenditure	\$41,300	\$0	\$0	\$0	\$0
SF Expenditure	\$0	\$43,000	\$71,300	\$53,000	-
GF/SF Exp.	\$0	-	-	-	-
Net Effect	(\$41,300)	(-)	(-)	(-)	\$0

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

**Local Effect:** Local government expenditures increase as early as FY 2024 to purchase mattresses. Potential decrease in local waste management costs beginning in FY 2024. Local revenues are not directly affected.

**Small Business Effect:** Meaningful.

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## Analysis

### Bill Summary:

#### *Mattress Stewardship Program*

*Mattress Stewardship Program Plan Development and Related Assessment:* The Mattress Stewardship Program plan must meet a number of requirements, including that the plan must (1) identify the materials, entities, and responsible parties covered under the plan; (2) describe and provide for how the plan will meet numerous goals, action items, and other requirements for the operation of the program, as specified; (3) minimize public sector involvement in, and financial responsibility for, the management of mattress disposal, as specified; (4) provide for the convenient and available State collection of mattresses, as specified; and (5) establish specified performance goals.

The plan may identify a retailer as a postconsumer mattress collection site if the retailer volunteers and is in compliance with all applicable laws and regulations, and the site location is consistent with maintaining a cost-effective network of postconsumer mattress collection locations.

The plan must also establish a uniform mattress stewardship assessment for all mattresses sold in the State and a mechanism for producers to remit payment of 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 be used only for program implementation. The assessment must be evaluated by an MDE-designated independent financial auditor, as specified, and the cost of any work performed by an independent financial auditor must be funded by the program. When the program becomes profitable, as specified, the assessment fee must be phased out.

*Maryland Department of the Environment Plan Reviews and Plan Review Fees:* Each plan must be submitted to, approved by, and reevaluated every five years by MDE's Office of Recycling, and MDE may require a plan to be revised earlier if targets are not being met or circumstances change and the plan warrants a revision. MDE must also review the work product of the independent financial auditor. The producer or representative organization that submits a plan for approval must pay a plan review fee to MDE. Plan review fees are

deposited into the State Recycling Trust Fund to cover MDE's plan review costs and associated costs for compliance oversight of the program.

If MDE determines that the plan, including the assessment, complies with the bill's requirements, MDE must approve the program. MDE must list participating producers and brands on its website.

*Implementation of the Mattress Stewardship Program:* Within one year of plan approval, a producer or representative organization must implement its mattress stewardship program plan. Further, within one year after a producer or representative organization's plan is approved, a producer or retailer is prohibited from selling or offering to sell a brand of mattress to any person in the State unless the producer of the brand, or a representative organization to which the producer is a member, is implementing an approved mattress stewardship program.

The bill requires each producer, retailer, and distributor to add the mattress stewardship assessment (described above) to the cost/purchase price of all mattresses sold in the State to a retailer, distributor, and consumer in the State, respectively. Retailers and distributors must display the mattress stewardship assessment as a line item on the receipt for the purchase of the mattress.

A participating producer or a representative organization must provide consumers with educational materials regarding the program that include information about available end-of-life management options for mattresses offered through the program and information that notifies consumers about the assessment. Following the implementation of the program, a retailer complies with the bill's requirements if the mattress ordered was from a participating producer or producer's agent that is listed on MDE's website.

A postconsumer mattress collection site that is identified in the plan may not charge an additional fee for the disposal of mattresses when it is offered for disposal.

*Immunity from Liability:* A producer or representative organization that organizes the collection, transport, and processing of 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.

*Annual Reports, Maryland Department of the Environment Review, and Annual Report Review Fees:* Beginning March 1, 2025, or one year after plan approval, whichever is later, and annually thereafter, a producer or representative organization must submit a report to MDE, publish the report online, and pay a report review fee to MDE. The report review fees are deposited into the State Recycling Trust Fund and must cover MDE's costs associated with report review and program compliance oversight, as determined by MDE.

The annual reports must include (1) a description of the methods used to collect, transport, and process mattresses in the State; (2) the volume and type of mattresses collected in the State, sorted by type of collection site; (3) the volume and type of mattresses collected in the State, sorted by the method of disposition and by county, as specified; (4) the total cost of implementing and administering the program, as determined by an independent financial audit funded by the mattress stewardship assessment; (5) samples of educational materials provided to consumers, a summary of public education efforts, and an evaluation of the effectiveness of these methods; (6) an evaluation of the reason that certain mattresses were not recycled; (7) the total sale of mattresses sold to consumers in the previous year; (8) strategies to address discarded mattresses that are illegally dumped, including the potential utility of a disposal ban; (9) reports on research activities and pilot programs; (10) a discussion of changes in mattress design; and (11) any other required information. Specified information is confidential and not subject to public inspection. MDE is authorized to release summary data, as specified.

MDE's Office of Recycling must review each annual report and evaluate the total costs of the program, including all expenses and revenues, to determine whether the mattress stewardship assessment meets or exceeds the costs of the program. MDE must also determine whether the plan is being implemented according to the statutory requirements. MDE must approve the annual report if the report, including the mattress stewardship assessment, complies with the bill's requirements. The producer or representative organization must make the approved annual report available to the public.

If MDE determines that an annual report, including the mattress stewardship assessment, does not meet the bill's requirements, the producer or representative organization must submit a plan to MDE on how they will address the noncompliance in the upcoming year.

*Mattress Stewardship Advisory Board:* The bill establishes a Mattress Stewardship Advisory Board, the stated purpose of which is to advise on the proper implementation and sustainability of the Mattress Stewardship Program. The board must review and evaluate (1) the structure, financing, and other aspects of the program and (2) whether penalties should be established for violating program requirements. The board is required to consult with and advise producers and representative organizations as they prepare the required plan. By December 1, 2023, the board must report its findings and recommendations to the General Assembly.

*Additional Authorizations and Requirements for the Maryland Department of the Environment:* MDE is authorized to coordinate with departments, agencies, and other equivalent bodies in other states to further the bill's objectives. MDE must adopt measures to move the State toward a more equitable recycling and waste management system and to seek environmental justice for underserved communities, as specified. MDE must adopt regulations to enforce the bill's mattress stewardship program provisions.

*Relevant Definitions:* “Mattress” means a resilient material or combination of materials that is enclosed by a ticking, issued alone or in combination with other products, and is intended for or promoted for sleeping on. It includes box springs and any used or renovated materials, but does not include (1) an unattached mattress pad or topper, as specified; (2) a waterbed, an air mattress, or any other product that contains liquid- or gas-filled ticking and does not contain upholstery material between the ticking and the mattress core; (3) a carriage, basket, dressing table, stroller, playpen, infant carrier, lounge pad, crib bumper or mattress, bassinet mattress, or any other product manufactured for young children; (4) a sleeping bag, pillow, futon, sleeper sofa, or fold-out sofa bed; (5) a foundation; (6) a car bed; or (7) furniture that otherwise does not contain a detachable mattress. “Postconsumer mattress” means a mattress not used and no longer wanted by a purchaser. “Producer” means (1) a manufacturer of mattresses that sells, offers for sale, or distributes mattresses in the State under the producer’s own name or brand or (2) an individual who imports mattresses into the State to sell, offer to sell, or distribute in the State. “Producer” includes the owner of a mattress trademark or brand, A “representative organization” means a nonprofit organization created by producers to implement a mattress stewardship program.

#### *New Requirements for the Maryland Department of the Environment’s Office of Recycling*

In addition to reviewing plans and annual reports submitted in accordance with a mattress stewardship program, as described above, MDE’s Office of Recycling must provide to local communities (1) the most up-to-date information on local and national programs for recycling and reusing mattresses and (2) examples of mattress recycling programs that create jobs for specified individuals. The bill also expands an existing annual reporting requirement for the office to include the State’s progress in diverting mattresses from disposal in landfills and incinerators.

#### *Mattress Disposal Restrictions*

Beginning January 1, 2027, a person may not dispose of a mattress in a landfill. The bill also prohibits a person from burning or incinerating a mattress as an alternative means of disposal unless (1) the mattress is contaminated, as specified and (2) managing the mattress for reclamation, recycling, reuse, or disassembly presents an unacceptable health or safety risk to the workers or the general public.

#### **Current Law:**

##### *Solid Waste Infrastructure and Recycling in the State, Generally*

The solid waste infrastructure in Maryland consists of both permitted and nonpermitted facilities, and solid waste is managed through a combination of recycling, composting,

landfilling, energy recovery, and exporting for disposal or recycling. There are several examples of regional waste management partnerships in the State.

Maryland's recycling policy is guided by the Maryland Recycling Act, which sets mandatory recycling rates for State government and local jurisdictions, as well as a voluntary statewide waste diversion goal of 60% and a voluntary statewide recycling goal of 55% by 2020. Each county (including Baltimore City) must prepare a recycling plan that addresses how the jurisdiction will achieve its mandatory recycling rate. The plan must be submitted to MDE's Office of Recycling for approval when the jurisdiction submits its water and sewerage plan at least every 10 years. At least every 2 years, each county must also submit a progress report to MDE, which must include any revision of or amendment to the county plan that has been adopted.

### *The Office of Recycling*

MDE's Office of Recycling submits annual reports, in coordination with the Maryland Environmental Service (MES), to the Governor and the General Assembly on specified information related to recycling in Maryland. Beginning in 2009, MDE has combined the *Maryland Waste Diversion Activities Report* and the *Solid Waste Managed in Maryland Report* into one report, the *Maryland Solid Waste Management and Diversion Report*.

### *State Recycling Trust Fund*

The State Recycling Trust Fund is a special fund that is used to carry out the purposes of MDE's Land Management Administration and to provide grants to (1) counties to develop and implement local recycling plans; (2) counties that have addressed methods for the separate collection and recycling of covered electronic devices; and (3) municipalities to be used to implement local covered electronics device recycling programs.

### **State Expenditures:**

#### *Maryland Department of the Environment – General Program Administrative Costs*

General fund expenditures increase by \$41,285 in fiscal 2023, which accounts for the bill's October 1, 2022 effective date. Once fee revenue is available from the State Recycling Trust Fund to cover MDE's costs, general funds are no longer needed. Thus, special fund expenditures increase by \$42,975 in fiscal 2024, by \$71,298 in fiscal 2025, and by \$53,020 in fiscal 2026, as discussed below.

This estimate reflects the cost of hiring one contractual natural resources planner in fiscal 2023 and one additional contractual environmental compliance specialist in fiscal 2025. The natural resources planner is hired in fiscal 2023 to begin implementing the

bill by (1) conducting outreach, identifying affected producers, and designating the independent financial auditor; (2) developing and providing local communities with required information and examples of mattress recycling and reuse programs; (3) assisting to develop the regulations; (4) developing and adopting measures to improve equity and environmental justice related to mattress recycling; (5) reviewing the work product of the independent financial auditor; and (6) reviewing the initial mattress stewardship plan. The environmental compliance specialist is hired in fiscal 2025 to (1) conduct compliance oversight and enforcement activities; (2) assist with reviewing initial annual reports; and (3) generally oversee initial implementation of the program. The estimates include salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

	<u><b>FY 2023</b></u>	<u><b>FY 2025</b></u>
New Contractual Positions	1.0	1.0
Salaries and Fringe Benefits (Total)	\$33,942	\$56,921
Operating Expenses	<u>7,343</u>	<u>14,377</u>
<b>Total MDE Expenditures</b>	<b>\$41,285</b>	<b>\$71,298</b>

This estimate does 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.

Future year expenditures reflect full salaries with annual increases and employee turnover, annual increases in ongoing operating expenses, termination of the natural resources planner in fiscal 2025, and termination of the environmental compliance specialist at the end of fiscal 2026.

*Maryland Department of the Environment – Plan and Report Review*

MDE plans to use existing staff to conduct the required out-year plan reevaluations every five years as well as the annual reports. 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 (the Mattress Recycling Council) under a single program plan. As such, MDE assumes, and the Department of Legislative Services (DLS) concurs, that it is likely that MDE reviews only one plan (in fiscal 2024) and one annual report each year. It is assumed that the contractual employees discussed above review the initial plans and annual reports; those costs are included in the estimates above. Thus, special fund expenditures from the State Recycling Trust Fund increase minimally for MDE to review the annual reports beyond fiscal 2026.

## *State Agencies as Consumers and Producers of Mattresses*

State expenditures (multiple fund types) increase as early as fiscal 2024 for any State agency that purchases mattresses as a result of the assessment established under the bill. The overall impact depends on the number of mattresses purchased by State agencies annually, which is unknown. However, based on similar programs in other states, the fee is likely no more than \$16 per mattress.

The Department of Public Safety and Correctional Services advises that the Maryland Correctional Enterprise (MCE) manufactures mattresses and anticipates that costs increase under the bill. DLS concurs but does not have sufficient information to determine any potential impact on MCE. DLS notes that since there is a single representative organization in other states that have implemented similar programs, it is unlikely that MCE will need to independently develop a mattress stewardship plan. Any potential impact on MCE has not been accounted for in this analysis.

**State Revenues:** MDE is required to set the plan review fee at a level to cover MDE's plan review and program compliance oversight costs. Similarly, the annual report review fee must cover MDE's costs to review the annual reports and for program compliance oversight. Thus, this analysis assumes that MDE's costs to implement the bill (as described above) are fully offset by plan review and annual report review fees beginning in fiscal 2024 (when the initial plan must be submitted for review). Accordingly, special fund revenues to the State Recycling Trust Fund increase by \$42,975 in fiscal 2024, by \$71,298 in fiscal 2025, by \$53,020 in fiscal 2026, and by a minimal amount annually thereafter.

**Local Expenditures:** Waste management costs at landfills may decrease as a result of the diversion of mattresses under the mattress stewardship program. According to MES, mattresses are undesirable for landfill disposal and currently difficult to recycle because of lack of viable recycling options. Further, costs may decrease for local governments that currently collect mattresses and choose to participate in a producer's stewardship program instead.

In addition, as a consumer of mattresses, any local government agency that purchases mattresses must pay the mattress stewardship assessment established under the bill. Thus, beginning as early as fiscal 2024, local expenditures for the purchase of mattresses increase.

**Small Business Effect:** The bill results in potentially significant additional operational responsibilities for producers and retailers 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 and (2) submit required reports. On the other hand, retailers who volunteer to act as mattress collection sites may benefit if they are able to attract additional customers to their stores as a result. Several retailers affected by the bill are likely considered small businesses. As consumers, small businesses that purchase mattresses incur additional costs to pay the mattress 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.

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### **Additional Information**

**Prior Introductions:** HB 1146 of 2021, a bill with similar provisions, received a hearing in the House Environment and Transportation Committee, but no further action was taken. HB 502 of 2019, another bill with similar provisions, passed the House and received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Similar legislation was also introduced during the 2018 session.

**Designated Cross File:** None.

**Information Source(s):** Maryland Environmental Service; Kent, Washington, and Worcester counties; Maryland Association of Counties; Northeast Maryland Waste Disposal Authority; City of Salisbury; Maryland Municipal League; towns of Bel Air and Leonardtown; Baltimore City Community College; University System of Maryland; Morgan State University; Maryland Department of the Environment; Maryland Department of Health; Department of Juvenile Services; Department of Public Safety and Correctional Services; Mattress Recycling Council; Department of Legislative Services

**Fiscal Note History:** First Reader - March 8, 2022  
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