Date of Hearing: May 11, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Chris Holden, Chair
AB 2440 (Irwin) – As Amended April 27, 2022

Policy Committee:	Environmental Safety and Toxic Materials	Vote:	7 - 1
	Natural Resources		9 - 0

Urgency: No State Mandated Local Program: Yes Reimbursable: No

SUMMARY:

This bill establishes the Responsible Battery Recycling Act of 2022 (Act), which establishes a stewardship program for the collection and recycling of covered batteries and covered battery-embedded products (covered products).

Specifically, this bill, among other things:

1) Requires, on or before January 1, 2025, the Department of Resources, Recycling and Recovery (CalRecycle), in consultation with the Department of Toxic Substances Control (DTSC), to adopt regulations to implement the requirements of this bill.

2) Requires a producer, no later than 90 days after the effective date of the Act, to provide CalRecycle with a list of covered products that the producer sells or offers for sale in the state, as specified.

3) Authorizes producers to establish one or more stewardship organizations, as specified, to develop and implement the program established by this bill. Prohibits a producer from selling, distributing, offering for sale or importing a covered product in or into the state unless the producer is in compliance with the Act.

4) Requires, within six months of the effective date of the regulations adopted by CalRecycle, a producer or stewardship organization to develop and submit to CalRecycle a stewardship plan for the collection, transportation, recycling and safe and proper management of covered products in the state, as specified.

5) Requires CalRecycle, on or before January 1, 2025, to establish an advisory body for covered product stewardship, as specified. Requires producers or stewardship organizations to consult with the advisory body when establishing or updating a stewardship plan as well as include the recommendations of the advisory body into stewardship plans, to the extent feasible.

6) Requires, at least 90 days before submitting a plan to CalRecycle, a producer or stewardship organization to submit its proposed plan to DTSC for its review, as specified; requires CalRecycle to review the stewardship plan for compliance with the Act and to approve, disapprove or conditionally approve the plan within 90 days of receipt of the plan; and requires, on or before December 31, 2025, a producer or a stewardship organization to have a complete plan approved by CalRecycle in order to be in compliance with the Act, and within

270 days of receiving approval of a plan from CalRecycle, a producer or stewardship organization to fully implement its stewardship program.

7) Requires retailers with five or more locations in the state to make all locations available as collection sites for covered products smaller than an unspecified weight.

8) Requires a producer or stewardship organization to prepare and submit to CalRecycle, with the submission of a proposed plan, a proposed stewardship program budget for the subsequent five years, as specified. Requires CalRecycle, within 90 days of receipt of a stewardship program budget, to approve, disapprove or conditionally approve a stewardship program budget.

9) Establishes the Covered Battery and Covered Battery-Embedded Product Recycling Fund (Fund), to be funded by the reimbursement provided by producers and stewardship organizations and to be used by CalRecycle and DTSC to implement and enforce the bill.

10) Requires producers and stewardship organizations to arrange for an independent audit annually, and requires CalRecycle to annually review the audit for compliance. Authorizes CalRecycle to conduct an audit, as necessary.

11) Requires a producer or stewardship organization to annually submit to CalRecycle, and make publicly available on its website, an annual report containing specified information on the stewardship program for the preceding calendar year. Requires CalRecycle to approve, disapprove or conditionally approve the report.

12) Requires CalRecycle, on or before July 1, 2027, and annually thereafter, to post on its website a list of producers that are in compliance with the Act. Prohibits, on and after the date a stewardship plan is approved by CalRecycle, a retailer or distributor from selling, distributing, offering for sale or importing a covered product in or into the state unless the producer of the covered product is listed on CalRecycle's website as being in compliance for the covered product.

13) Authorizes CalRecycle to impose administrative civil penalties, as specified, on a producer, stewardship organization, manufacturer, distributor, retailer, importer, recycler or collection site that is in violation of the Act.

14) Authorizes CalRecycle to revoke a stewardship plan, require resubmittal of a plan or remove a producer from the list of compliant producers if it determines that the producer or stewardship organization has not met a material requirement of the program.

13) Repeals, on January 1, 2027, the Rechargeable Battery Recycling Act of 2006 and the Cell Phone Recycling Act of 2004.

FISCAL EFFECT:

1) CalRecycle estimates that establishing and implementing this program will result in costs to CalRecycle of approximately $970,000 to fund five new positions in the first year, and ongoing annual costs of approximately $2.4 million to fund 14 new positions.

2) Minor and absorbable costs to DTSC in the first three years of implementation to provide consultative support to CalRecycle on regulatory development and adoption. In the latter half of Fiscal Year (FY) 2024-25, DTSC anticipates needing one-half of a position at a cost of approximately $70,000 to review stewardship plans, although this estimate may increase depending on the number of stewardship plans that are submitted. Beginning in FY 2025-26, DTSC's costs are expected to increase significantly to fund its inspection and enforcement activities at collection sites. DTSC notes that it cannot estimate its total inspection and enforcement costs at this time but that it plans to work closely with CalRecycle throughout its program development process, and as more information becomes available, will work with CalRecycle to identify DTSC's regulatory costs and work with producers and stewardship organizations on reimbursement for DTSC's costs.

3) This bill requires producers and stewardship organizations to reimburse CalRecycle and DTSC for their actual and reasonable regulatory costs to implement and enforce this bill. Initial start-up costs would be loaned from other funds, for example, the Integrated Waste Management Account for CalRecycle, and then would be reimbursed by the stewardship programs.

COMMENTS:

1) Purpose. According to the author:

> Many Californians don't realize that all batteries are hazardous waste; and that throwing batteries, and products embedded with batteries, in curbside waste bins poses a threat to recycling facilities and human life. With more of our everyday items running off of batteries, it is imperative that we take swift action to stamp out the risk of devastating fires at our waste facilities and safely allow recovery of the valuable minerals inside batteries. AB 2440 will establish a comprehensive program to address this crisis and protect our communities from battery fires.

2) Background.

a) Universal Waste. Universal wastes are hazardous wastes that are widely produced by households and many different types of businesses, including batteries. California's Universal Waste Rule allows individuals and businesses to transport, handle and recycle universal wastes in a manner that differs from the requirements for most hazardous wastes. The more relaxed requirements for managing universal wastes were adopted to ensure that they are managed safely and not disposed of in the trash.

b) Regulation of Batteries. State law prohibits the disposal of batteries in the trash or household recycling collection bins. Many types of batteries, regardless of size, exhibit hazardous characteristics and are considered hazardous waste when they are discarded. These batteries, sold individually, would be "covered batteries" under AB 2440. However, many batteries are sold within products, such as lithium-ion batteries, which are widely used in portable electronics like laptops and smartphones. Some of these products would be considered "covered battery-embedded products" under the bill if the battery is not designed to be removed from the product by the consumer. If batteries end up in the trash or a recycling bin, owners and operators of solid waste transfer stations,

municipal landfills and recycling centers who discover batteries are required to remove and manage the batteries separately, and these facilities in turn become the generators of the hazardous waste batteries and must comply with hazardous waste management regulations. Facilities that do not properly manage hazardous waste may be subject to regulatory enforcement and may be liable for monetary penalties. Depending on the type of battery and applicable management requirements, batteries must be sent to a facility permitted to accept hazardous waste batteries, universal wastes or spent lead acid batteries. Only facilities that have a DTSC permit or other type of authorization may accept hazardous waste batteries. Entities that do not have a DTSC permit may accept and store universal waste batteries and spent lead acid batteries if they operate according to the regulations specifically tailored for those types of batteries.

c) Extended Producer Responsibility. Product stewardship, also known as Extended Producer Responsibility (EPR), is a strategy to place a shared responsibility for end-of-life product management on the producers, and all entities involved in the product chain, instead of the general public. Product stewardship encourages product design changes that minimize a negative impact on human health and the environment at every stage of the product's lifecycle. This allows the costs of treatment and disposal to be incorporated into the total cost of a product. CalRecycle oversees several EPR programs in California, including for carpet materials management, paint product management, mattress product management and home-generated pharmaceutical waste and sharps waste.

d) Improving Collection of Batteries. Even though there are laws on the books to require the collection of some rechargeable batteries, recent information provided by DTSC suggests that the amount of each battery type collected is trending downward. As a result, these hazardous waste batteries are ending up in the solid waste stream where they pose health and safety hazards and can be damaged or crushed, resulting in fires in solid waste trucks and solid waste facilities. One materials recovery facility located in Richmond, California, experienced six fires over two years in 2020 and 2021. Another facility in San Carlos experienced 10 or more fires almost every year since 2017. In response, AB 2440 establishes an EPR program for batteries and battery-embedded products that will build on existing recycling infrastructure, in order to improve the collection and recycling of batteries and keep them out of the solid waste stream.

Given the scope and complexity of the bill, the author is continuing to engage in discussions with stakeholders on the specifics of the product stewardship program to ensure the program created by the bill is effective and enforceable.

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