
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 2440 (Irwin) - Responsible Battery Recycling Act of 2022

Version: June 8, 2022

Urgency: No

Hearing Date: August 1, 2022

Policy Vote: E.Q. 5 - 2, JUD. 9 - 1

Mandate: Yes

Consultant: Ashley Ames

Bill Summary: This bill would establish a stewardship program for the collection and recycling of certain batteries and battery-embedded products, as defined.

Fiscal Impact:

- The Department of Resources, Recycling, and Recovery (CalRecycle) estimates ongoing costs of \$967,000 in 2022-23 and approximately \$2.4 million annually thereafter (Covered Battery and Covered Battery-Embedded Product Recycling Fund) to establish a new extended producer responsibility program. These costs would be reimbursable from the stewardship organization.
- The Department of Toxic Substances Control (DTSC) estimates that its costs would be minor and absorbable in the first three years of implementation to provide consultative support to CalRecycle on regulatory development and adoption. In the latter half of 2024-25, DTSC anticipates needing one-half of a position at a cost of approximately \$70,000 (Covered Battery and Covered Battery-Embedded Product Recycling Fund) to review stewardship plans, although this estimate may increase depending on the number of stewardship plans that are submitted. Beginning in 2025-26, DTSC estimates that costs would 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. These costs would be reimbursable from the stewardship organization.

Background: Despite laws regulating the disposal of batteries, many end up in waste facilities and recycling centers, where they can ignite fires if damaged. According to CalRecycle's 2018 Waste Characterization Study, published May 2020, batteries, which include car, flashlight, small appliance, watch, and hearing aid batteries, represented 8,892 tons (0.0002%) of California's overall disposed waste stream.

Extended producer responsibility (EPR). EPR refers to a waste management strategy that makes the manufacturer of a product responsible for the products' entire life-cycle costs including its end-of-life costs associated with recycling or disposal. These costs have traditionally been borne by local governments (and ultimately tax payers) through municipal waste disposal programs. This traditional structure results in an "externality" or a situation where the costs of recycling or disposal are not paid by the buyer or seller of the product, but rather by a third party (such as tax payers). EPR shifts the costs of managing a product at its end of life from waste disposal programs to the manufacturer

of the product. By requiring manufacturers to cover end-of-life costs, these costs are incorporated or “internalized” into the total cost of the product when it is sold. Therefore, the price that consumers pay reflects the entire cost of the product—its production and disposal. This means that the people making and using the product cover all of its costs, rather than local governments and taxpayers covering a share of disposal costs. Moreover, manufacturers have a financial incentive to design products that are inexpensive to recycle. In California, EPR is already used for carpet, mattresses, and paint.

Mixed results for California EPR programs. To date, the Legislature has enacted four EPR programs of which CalRecycle has enforcement authority – paint, carpet, mattresses, and pharmaceutical and sharps waste – showing varying degrees of success. While CalRecycle does not appear to have oversight issues with the paint stewardship program, CalRecycle was subject to an audit for its oversight of the mattress recycling program. The carpet recycling program has encountered the most challenges of the EPR programs with the enforcement history of the carpet stewardship organization being extensive and complicated.

EPR checklist. Based on CalRecycle’s experience with the four EPR programs mentioned above, the department prepared an EPR “checklist” of program elements it considers critical to best achieve a successful EPR program. Of note on the checklist is the importance of clearly defining key terms, such as Producer, covered products, and responsible parties, as well as providing adequate funding to achieve program goals, oversight, and enforcement.

The checklist states that an EPR program *must* include the following tiered definition of Producer to ensure streamlined enforcement at the first point of entry into California, lower fiscal impacts to the State oversight agency, and provide a level playing field to all Producers:

1. The person who manufactures the covered product and who sells, offers for sale, or distributes the product in the state.
2. If there is no person who is the manufacturer of the product for the purpose of paragraph (a), the manufacturer of the covered product is the person who imports the product into the state for sale or distribution.
3. If there is no person who is the manufacturer for the purpose of paragraphs (a) and b), the manufacturer is the person who sells the product in the state.

California Rechargeable Battery Recycling Act. Most portable electronic devices use rechargeable batteries and millions of rechargeable batteries are sold in California each year. As of 2005, to help promote proper disposal of rechargeable batteries by the public, the Act requires retailers, excluding large chain supermarkets and persons who have less than one million dollars annually in gross sales, to have a mechanism to accept all rechargeable batteries from consumers for recycling. Sales of rechargeable batteries that are contained in, or packaged with, a battery-operated device are not subject to the Act; however, a retailer selling replacement batteries for such devices must comply.

Additionally, the Act requires DTSC to survey battery handling and recycling facilities and post on its website, by July 1 of each year, the estimated amount of each type of rechargeable batteries returned for recycling. DTSC relies on data voluntarily submitted

by the major California battery recyclers to estimate how many rechargeable batteries, by type (e.g., nickel-cadmium, nickel metal hydride, etc.), are collected in each calendar year.

According to DTSC's website, the following are approximate quantities of rechargeable batteries collected for recycling in California in 2020:

- 408,823 pounds of lithium ion batteries
- 252,969 pounds of nickel cadmium batteries
- 77,766 pounds of nickel metal hydride batteries
- 4,810,578 pounds of small sealed lead acid batteries

According to DTSC, accurately estimating the amount of rechargeable batteries collected for recycling in California can be difficult for the following reasons:

- Some battery handlers and recyclers do not track the state from which batteries are collected;
- Batteries contained in electronic devices that are recycled (such as cell phones and laptop computers) are not counted separately but may represent a significant portion of the total quantity;
- There may be duplicate data as some battery handlers collect batteries from other collection points; and
- California law does not require battery handlers or recyclers to report the number or weight of batteries collected for recycling.

The Cell Phone Recycling Act of 2004. Since 2006, the Cell Phone Recycling Act has required retailers to have in place, and promote, a system for accepting and collecting used cellular phones for reuse, recycling, or proper disposal, at no cost to the consumer. Consumers usually replace their cellular phones about every 18 months. Used cellular phones contain hazardous substances and should not be disposed of with regular household waste. Circuit boards in cellular phones contain arsenic, antimony, beryllium, cadmium, copper, lead, mercury, nickel, and zinc. The rechargeable batteries used with cellular phones contain cobalt, zinc, and copper.

Call2Recycle. Call2Recycle, a non-profit organization, is a voluntary, industry-run program that collects and recycles rechargeable and single-use batteries through collection sites located throughout the country. The types of batteries that are accepted vary between collection sites.

Household hazardous waste facilities. Batteries can also be taken to household hazardous waste facilities. DTSC provides a list of household hazardous waste facilities by city on its website. These facilities are typically run either directly by a local jurisdiction, or by an entity as a contractual agreement with a local jurisdiction, as a part of the jurisdiction's household hazardous waste management program. Access to a household hazardous waste facility differs throughout the state.

Proposed Law: This bill would establish a stewardship program for the collection and recycling of certain batteries and battery-embedded products, as defined. Specifically, this bill would:

1. Require, on or before January 1, 2025, CalRecycle, in consultation with the Department of Toxic Substances Control (DTSC), to adopt regulations to implement the requirements of this bill.
2. Require a producer, as defined, no later than 180 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. Authorize producers to establish one or more stewardship organizations, as specified, to develop and implement the program established by this bill. Prohibit 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. Require, within nine 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. Require the plan include a contingency plan in the event the stewardship plan expires, is disapproved, or is revoked, as specified.
5. Require 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. Require, 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. Requires, within 18 months of the effective date of the regulations adopted by CalRecycle, 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 24 months of that date, a producer or stewardship organization to fully implement its stewardship program.
7. Require 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. Require 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. Establish 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. Require producers and stewardship organizations to arrange for an independent audit annually, and require CalRecycle to annually review the audit for compliance. Authorize CalRecycle to conduct an audit, as necessary.

11. Require 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. Require 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. Prohibit, 24 months after the effective date of the regulations, 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, as specified.
13. Preempt all rules, regulations, codes, ordinances, or other laws adopted by a city, county, city and county, municipality, or a local agency on or after January 1, 2023, regarding stewardship programs for covered batteries, covered battery-embedded products, or both covered batteries and covered battery-embedded products.
14. Authorize 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.
15. Authorize 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.
16. Exempt certain actions taken by a stewardship organization or producer from the Cartwright Act, Business and Professions Code Section 16700 et seq., the Unfair Practices Act, Business and Professions Code Section 17000 et seq., and the Unfair Competition Law, Business and Professions Code Section 17200 et seq.
17. Repeal, on January 1, 2027, the Rechargeable Battery Recycling Act of 2006 and the Cell Phone Recycling Act of 2004.

Related Legislation:

SB 1215 (Newman, 2022) is substantially similar to this bill and is awaiting hearing in the Assembly Appropriations Committee.

SB 289 (Newman, 2021) would have enacted the Battery and Battery-Embedded Product Recycling and Fire Risk Reduction Act of 2021, which would have required the producers of batteries and battery-embedded products to establish a stewardship program for those products, with full implementation on or before June 30, 2025. This bill was held on the suspense file in this committee.

SB 244 (Archuleta, 2021) would have required CalRecycle, in consultation with DTSC, to develop guidance for the proper handling and disposal of lithium-ion batteries and would have required the Department of Forestry and Fire Protection to develop protocols and training for the detection, safe-handling, and suppression of fires started from discarded lithium-ion batteries in the waste-handling system to be adopted by solid waste enterprises. SB 244 was vetoed by the Governor.

AB 1509 (Mullin, Berman, 2019) would have established a Lithium-Ion Battery Recycling Program within CalRecycle that required manufacturers of lithium-ion batteries to provide convenient collection, transportation, and disposal of lithium-ion batteries. AB 1509 was held in the Senate Environmental Quality Committee.

Staff Comments: This committee heard and passed out SB 1215 (Newman), the Senate companion to this proposal, which is currently before the Assembly Appropriations Committee. Recent amendments address some stakeholder concerns, including establishing a minimum number of collection sites per county to ensure consumer convenience and incorporating flexibility to the program that would allow for the inclusion of evolving technology. Additionally, the proposal now contains contingency planning language, anti-trust provisions, extended compliance timeframes, and preempts local stewardship programs for covered batteries.

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