

CONCURRENCE IN SENATE AMENDMENTS

AB 1158 (Chu)

As Amended September 8, 2017

Majority vote

ASSEMBLY: 73-2 (May 24, 2017) SENATE: 30-10 (September 12, 2017)

Original Committee Reference: **NAT. RES.**

SUMMARY: Creates an advisory committee to make recommendations on carpet stewardship plans. Establishes a minimum carpet recycling rate of 24% by 2020 and requires CalRecycle to establish a minimum percentage beginning January 1, 2023.

The Senate amendments:

- 1) Establish a carpet recycling rate goal of 24% by January 1, 2020.
- 2) Require, on or before January 1, 2023, CalRecycle to establish a minimum carpet recycling rate.
- 3) Prohibit a carpet stewardship organization from expending funds from an assessment for any of the following purposes:
 - a) Penalties imposed by CalRecycle;
 - b) Costs associated with litigation against the state; or,
 - c) Engineered municipal solid waste conversion, use in cement kilns, and transformation, as defined.

EXISTING LAW establishes the Product Stewardship for Carpets Program, which:

- 1) Requires manufacturers of carpets sold in this state, individually or through a carpet stewardship organization, to submit a carpet stewardship plan to CalRecycle that includes specified elements.
- 2) Requires CalRecycle, within 60 days after receiving a plan, to review and determine whether the plan complies with the law's requirements and notify the submitter of its decision. Specifies that any plan not approved by March 31, 2012, is out of compliance until determined to be complete by CalRecycle.
- 3) Requires CalRecycle to post a notice on its website listing manufacturers that are in compliance with the bill's requirements. Requires a wholesaler or retailer that distributes or sells carpets to monitor the website to determine if the sale of a manufacturer's carpet is in compliance.
- 4) Requires the carpet stewardship organization to demonstrate to CalRecycle that it has achieved continuous meaningful improvement in the rates of recycling and diversion and other specified goals in order to be in compliance.

- 5) Provides for the imposition of administrative civil penalties upon a person who violates the bill and would provide that the manufacturer or carpet stewardship organization whose plan is not approved by CalRecycle by March 31, 2012, is subject to those penalties until the plan is approved.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, this bill has negligible state costs.

COMMENTS: California's carpet stewardship program was created by AB 2396 (Perez), Chapter 681, Statutes of 2010. As an extended producer responsibility (EPR) program, manufacturers (either individually or through their stewardship organization) are required to design and implement their own stewardship program. This means there is a stewardship organization that prepares and implements a plan to reach certain goals, finances and distributes funds to support the stewardship program, and reports to CalRecycle on their progress. CalRecycle's role in the carpet stewardship program is to review and approve plans, check progress, and support industry by providing oversight and enforcement to ensure a level playing field among carpet manufacturers. Other service providers participate in the management system as negotiated with the stewardship organization.

The stewardship plan is a critical part of the program; it defines a compliant program and communicates a course of action to stakeholders and the public. Stewardship organizations (or individual manufacturers that are not represented by a stewardship organization) are responsible for submitting the plans to CalRecycle for approval. Approved plans are posted on CalRecycle's website.

The Carpet America Recovery Effort (CARE), based in Georgia, is the carpet industry's stewardship organization. In keeping with AB 2396, CARE is directed to collect an assessment that is sufficient to meet, but not exceed, the anticipated cost of implementing the stewardship plan. In the approved California Carpet Stewardship Plan, the initial (\$0.05) per square yard assessment was approved to remain through 2016. On December 28, 2014, CARE submitted and CalRecycle approved an addendum to its approved plan. This addendum provided justification for additional program incentives and enhancements to help CARE achieve compliance. CARE also requested an increase in the assessment from \$0.05/square yard of carpet sold in California to \$0.10/square yard effective April 1, 2015. On November 30, 2015, CARE submitted an additional addendum to increase the assessment from \$0.10/square yard of carpet sold in California to \$0.20/square yard effective April 1, 2016. In October 2016, CARE submitted a revised plan to CalRecycle that included an increase in the assessment to \$0.25/square yard. CalRecycle disapproved that plan on December 23, 2016. The disapproval states that CARE is to continue operating under the previous plan until a new plan is approved by CalRecycle. On January 16, 2017, CalRecycle conditionally approved Addendum #3 of the plan, with specified modifications. The conditional approval includes increasing the assessment to \$0.25/square yard.

CalRecycle found that the plan, "taken as a whole, does not ensure continuous meaningful improvement in carpet recycling and diversion in 2017 and beyond." According to CalRecycle, the plan focuses on existing subsidies that have not demonstrated increased recycling rates; moreover, CARE intends to "scale back" subsidy guarantees going forward. The plan does not address the possibility of providing subsidies to points in the supply chain that may result in significant increases in recycling, such as installer subsidies to increase diversion and recycling,

funding for discounted drop-off fees, or subsidies for secondary manufacturers to use post-consumer nylon.

AB 2396 established administrative civil penalties of \$1,000 per day (\$10,000 for intentional, knowing, or negligent violations). In its disapproval of CARE's October 2016 plan, the director directed staff to delay enforcement action against carpet manufacturers, wholesalers, and retailers for 120 days, "provided the regulatory entity is participating in good faith in continuing to carry out the requirements of the law and CARE's existing plan."

CARE submitted a revised plan to CalRecycle on February 20th, which was considered at CalRecycle's public meeting on April 18th. The plan specifies that with the \$0.25/square yard assessment, it expects to collect \$23.7 million in 2017. The plan identifies \$1.7 million in reuse subsidy payments; \$7.1 million in recycling processor payments; \$11.1 million in manufacturer payments; just under \$1 million in specified grants; and, \$6.2 million in "program expenses," which includes \$764,142 for CARE salaries and staffing. On April 21st, CalRecycle disapproved CARE's plan based upon a finding that the plan does not comply with statutory requirements. Without an approved plan in place, all manufacturers that sell carpet in California are subject to penalties until they are covered by an approved plan. Additionally, wholesalers and retailers are subject to penalties for selling carpet from non-compliant manufacturers. In order to preserve the recycling infrastructure and avoid market disruptions, CalRecycle authorized manufacturers, wholesalers, and retailers to continue to operate without penalties for 60 days. The director of CalRecycle directed staff to develop a draft plan to help CARE comply with state requirements; the draft plan was discussed at CalRecycle's public meeting on May 16, 2017.

On March 10, 2017, CalRecycle began an enforcement proceeding against CARE for failing to meet the requirement that the carpet stewardship organization is required to achieve "continuous and meaningful improvement in the rates of recycling and diversion of postconsumer carpet subject to its stewardship plan and in meeting the other goals included in the organization's plan." In spite of the significant amount of money collected by CARE from California consumers, CalRecycle found that CARE did not meet these requirements in 2013, 2014, and 2015. After each finding, CalRecycle provided CARE with recommendations on adjustments to the plan that would result in meaningful improvement; however, CARE has not incorporated CalRecycle's suggestions in any subsequent plans. CalRecycle is seeking a total of \$3.285 million in penalties: \$182,500 for 2013; \$1.46 million for 2014; and, \$1.6425 million for 2015.

On June 20, 2017, CalRecycle considered and adopted the final Enforcement Plan. Manufacturers may choose to stay with CARE or choose to submit their own stewardship plan. By October 19, 2017, each carpet manufacturer, individually or through a stewardship organization, is required to submit a plan to CalRecycle in order to avoid penalties under the Enforcement Plan. Within 60 days of submittal, CalRecycle must approve or disapprove the plan(s).