



Contra
Costa
County

To: Board of Supervisors
From: LEGISLATION COMMITTEE
Date: March 15, 2016

Subject: "Oppose Unless Amended" position AB 45 (Mullins): Household Hazardous Waste, as amended

RECOMMENDATION(S):

ADOPT an "Oppose Unless Amended" position on AB 45 (Mullins), as amended: Household Hazardous Waste, a bill that would require the Department of Resources Recycling and Recovery to adopt one or more model ordinances for a comprehensive program for the collection of household hazardous waste, as recommended by the Legislation Committee.

FISCAL IMPACT:

According to the Assembly Appropriations Committee, this bill contains increased annual costs to CalRecycle in the range of \$200,000 to \$300,000 (special fund).

BACKGROUND:

At its February 8, 2016 meeting, the Legislation Committee considered the recommendation from CSAC and Conservation Programs Manager Deidra Dingman to recommend a position of "Oppose Unless Amended" to the Board of Supervisors on AB 45 (Mullins): Household Hazardous Waste. The Committee voted unanimously to forward the recommendation of a position of "Oppose Unless Amended" to the Board of Supervisors.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **03/15/2016** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Mary N. Piepho, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: March 15, 2016

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: L. DeLaney,
925-335-1097

cc:

BACKGROUND: (CONT'D)

AB 45 (Mullins) is a bill that is of concern to CSAC and the Urban Counties Caucus (UCC). CSAC has requested that counties consider taking action on this bill. The California Products Stewardship Council is also opposing this bill because they are concerned it will prevent local jurisdictions from enacting EPR-type pharmaceutical collection programs.

As amended on January 21st, AB 45 would now require Cal Recycle to develop one or more general household hazardous waste (HHW) model ordinances in consultation with affected industry and stakeholders; defines home generated pharmaceutical waste as HHW; allows for the creation of a nonprofit agency to make grants to local governments to assist with outreach and educations and other costs, and deems five million dollars as sufficient funding for these purposes. The bill would be repealed in 2019 if Cal Recycle determines that there is no nonprofit willing or able to meet parameters in the bill and deemed adequate by Cal Recycle. The bill also includes intent language that states that the role for manufacturers in the end-of-life management of their products should be based on the ability of manufactures and distributors to communicate with consumers.

CSAC opposes the role outlined for manufactures in this bill. They believe that industries that profit from these hard to manage products should have a significant stake in their proper management and disposal. The bill outlines the role for manufacturers as communicating with consumers and making grants to local governments. While an Extended Producer Responsibility (EPR) model may not be appropriate for all products, EPR is an excellent tool to employ for the producers of toxic and expensive-to-manage products, and those that pose additional health and safety risks such as sharps and pharmaceuticals. AB 45 also defines home generated pharmaceutical waste as HHW. We object to home generated pharmaceutical waste being included in the proposed comprehensive hazardous waste program, as neither our state nor federal regulating agencies currently regulate it as such.

Attached are a copy of the bill (*Attachment A*) and CSAC's letter to the author (*Attachment B*).

Status: 02/04/2016 To SENATE Committee on ENVIRONMENTAL QUALITY.

Bill Analysis:

SUMMARY: Requires the California Department of Resources Recycling and Recovery (CalRecycle) to adopt one or more model ordinances for a comprehensive program for the collection of household hazardous waste (HHW), and allows a local jurisdiction to adopt one of the model ordinances. Specifically, this bill:

- 1) Requires CalRecycle, in consultation with affected industries and stakeholders, to adopt one or more model ordinances for a comprehensive program for the collection of HHW for adoption by any local jurisdiction that provides for the residential collection and disposal of solid waste.
- 2) Requires CalRecycle, upon adoption of the model ordinance or ordinances, to notify the public by positing the ordinances on their Internet Web site.

- 3) Allows, after CalRecycle complies with the posting requirements in 2) above, a local jurisdiction that proposes to enact an ordinance governing the collection and diversion of HHW to adopt one of the model ordinances.
- 4) Requires CalRecycle to determine whether an appropriate nonprofit organization has been created and funded for the purpose of making grants to local governments to assist with both of the following activities:
 - a) Educate residents of communities on the existence of HHW disposal programs and how to use them; and,
 - b) Defray the cost of components of local government HHW programs.
- 5) Requires CalRecycle, in making the determination in 4) above, to consider the following:
 - a) If the nonprofit organization has, at the time of the determination, a minimum of \$5 million dedicated to grants to local governments for the purposes described in 4) above.
 - b) If the nonprofit organization will have sufficient funding to allocate grants to local governments throughout the state for five years;
 - c) If the composition of the nonprofit's board of directors is sufficiently diverse and experienced to appropriately consider grant applications that will positively impact efforts to improve the disposal of HHW; and,
 - d) If the nonprofit organization has appropriate criteria for considering grant applications.
- 6) Provides that this bill is applicable only to local jurisdictions that provide for the residential collection and disposal of solid waste.
- 7) Repeals the provisions of this bill on January 1, 2019, if CalRecycle does not make the determination that an appropriate nonprofit organization exists, as specified in 4) and 5) above, by December 31, 2018.
- 8) Defines the following terms:
 - a) "Comprehensive program for the collection of HHW" to mean a local program that may include, but is not limited to, the following components:
 - i) Utilization of locally sponsored collection sites;
 - ii) Scheduled and publicly advertised drop off days;
 - iii) Door-to-door collection programs;
 - iv) Mobile collection programs;
 - v) Dissemination of information about how consumers should dispose of the various types of HHW; and,
 - vi) Education programs to promote consumer understanding and use of the local components of a comprehensive program.
 - b) "HHW" includes, but is not limited to, the following:
 - i) Automotive products, including, but not limited to, antifreeze, batteries, brake fluid, motor oil, oil filters, fuels, wax, and polish;
 - ii) Garden chemicals, including, but not limited to, fertilizers, herbicides, insect spray, pesticides, and weed killers;

- iii) Household chemicals, including, but not limited to, ammonia, cleaners, strippers, and rust removers;
- iv) Paint products, including, but not limited to, paint, caulk, glue, stripper, thinner, and wood preservatives and stain;
- v) Consumer electronics, including, but not limited to, televisions, computers, laptops, monitors, keyboards, DVD and CD players, VCRs, MP3 players, cell phones, desktop printers, scanners, fax machines, computer mice, microwaves, and related cords;
- vi) Swimming pool chemicals, including, but not limited to, chlorine tablets and liquids, pool acids, and stabilizers;
- vii) Household batteries, defined as batteries that individually weigh two kilograms or less of mercury, alkaline, carbon-zinc, or nickel-cadmium, and any other batteries typically generated as household waste, including, but not limited to, batteries used to provide power for consumer electronic and personal goods often found in a household;
- viii) Fluorescent tubes and compact fluorescent lamps;
- ix) Mercury-containing items, including, but not limited to, thermometers, thermostats, and switches;
- x) Home-generated sharps waste, as defined in existing law; and,
- xi) Home-generated pharmaceutical waste, defined as a prescription or nonprescription drug, as specified, that is a waste generated by a household or households. "Home-generated pharmaceutical waste" shall not include drugs for which producers provide a take-back program as a part of a United States Food and Drug Administration managed risk evaluation and mitigation strategy pursuant to Section 355-1 of Title 21 of the United States Code, or waste generated by a business, corporation, limited partnership, or an entity involved in a wholesale transaction between a distributor and a retailer.

9) Makes a number of findings and declarations.

EXISTING LAW:

- 1) Requires cities and counties to prepare, adopt, and submit to CalRecycle an HHW Element plan which identifies a program for the safe collection, recycling, treatment, and disposal of hazardous wastes that are generated by households within the jurisdiction and provides a specific time frame for achieving these objectives.
- 2) Requires, under the California Integrated Waste Management Act of 1989, each city or county to divert 50% of solid waste from landfill disposal or transformation on and after January 1, 2000. Establishes a statewide policy goal that not less than 75% of solid waste be source reduced, recycled, or composted on and after January 1, 2020.
- 3) Requires CalRecycle and the Department of Toxic Substance Control (DTSC) to jointly maintain a database of all HHW collection events, facilities, and programs within the state and make that information available to the public upon request.
- 4) Requires the California Integrated Waste Management Board to coordinate with DTSC to develop and implement a public information program to provide uniform and consistent information on the proper disposal of hazardous substances found in and around homes, and to assist the efforts of counties required to provide HHW collection, recycling, and disposal programs.
- 5) Requires CalRecycle, upon appropriation by the Legislature, to distribute grants to cities, counties, or other local agencies with the responsibility for solid waste management, and for local programs to help prevent the disposal of hazardous wastes at disposal sites, which include but are not limited to programs that expand or implement HHW programs.

FISCAL EFFECT: According to the Assembly Appropriations Committee, this bill contains increased annual

costs to CalRecycle in the range of \$200,000 to \$300,000 (special fund).

COMMENTS:

1) Bill Summary. This bill requires CalRecycle, in consultation with affected industries, to adopt one or more model ordinances for a comprehensive program for the collection of HHW for adoption by a local jurisdiction that provides for the residential collection and disposal of solid waste. Local jurisdictions proposing to enact an ordinance to govern the collection and diversion of HHW may adopt one of the model ordinances after CalRecycle has posted the model ordinances on its Web site. Additionally, this bill requires CalRecycle to determine if an appropriate nonprofit organization has been created and funded to make grants to local governments for specified activities relating to HHW programs. This bill requires CalRecycle to consider a list of factors in making the determination about the nonprofit organization. The provisions of this bill will be repealed on January 1, 2019, if CalRecycle does not make the determination that an appropriate nonprofit organization exists by December 31, 2018. This bill is an author-sponsored measure.

2) Background on HHW. HHW is hazardous waste commonly generated by households and includes such ubiquitous items as batteries, pesticides, electronics, fluorescent lamps, used oil, solvents, and cleaners. If these products are handled or disposed of incorrectly, they can pose a threat to health and safety and the environment. When these products are discarded, they become "household hazardous waste." In California, it is illegal to dispose of HHW in the trash, down the drain, or by abandonment. HHW needs to be disposed of through a HHW program.

Cities and counties are required to prepare, adopt, and submit to CalRecycle, a HHW Management Element Plan, which identifies a program for the safe collection, recycling, treatment, and disposal of HHW. The Element Plan specifies how HHW generated within the jurisdiction must be collected, treated, and disposed. Each jurisdiction is required to prepare and implement plans to reduce and safely collect, recycle, treat, and dispose of HHW and provides a specific time frame for achieving these objectives. While there are many different approaches for the collection and management of HHW, all are permitted by DTSC and most are operated by local jurisdictions. Some private operators operate programs under contract with local jurisdictions, including curbside and door-to-door collection.

3) Author's Statement. According to the author, "State law has loosely regulated HHWs for approximately 25 years. AB 45 aims to coordinate with affected industries like local governments, producers of HHW products, and CalRecycle to adopt model ordinances for a comprehensive program for the collection of HHW. Local governments have the option to choose whether or not to use the model ordinances listed by CalRecycle. In addition, CalRecycle will determine whether or not an appropriate nonprofit organization has been created and funded for the purpose of making grants to local governments. This non-profit will be created to assist in educating residents about HHW disposal programs and how to use them. In addition, the Department will ensure that product manufacturers contribute a minimum of five million dollars to the non-profit for defraying the cost of components of local government HHW programs."

4) Related Legislation. AB 2371 (Mullin) of 2014, as heard by the Assembly Local Government Committee, would have required each jurisdiction, no later than January 1, 2016, to review its HHW Element to determine its effectiveness in the collection, recycling, treatment, and disposal of HHW, and would have required CalRecycle, on or before January 1, 2017, to submit a report to the Legislature that analyzes the effectiveness of the state's HHW management system. AB 2371 was later amended to deal with a different subject matter.

AB 1159 (Gordon) of 2015 would have established a limited-term product stewardship program for home-generated medical sharps and household batteries. AB 1159 was held in the Assembly Appropriations Committee.

5) Policy Considerations. The Legislature may wish to consider the following:

a) Nonprofit Organization. This bill is contingent on a determination made by CalRecycle on whether an appropriate nonprofit organization has been created and funded for the purpose of making grants to local

governments. Under this bill, CalRecycle is required to consider a list of factors in making this determination, which includes whether the nonprofit organization has \$5 million and if the nonprofit organization has sufficient funding to allocate to local governments for five years. The Legislature may wish to consider that, while CalRecycle must consider certain factors, there are no requirements in this bill to require that a specified amount of funding is distributed.

The California State Association of Counties (CSAC), opposed unless amended, argues that "there is a lack of criteria, specific qualifications, or process as to how these non-profits would operate. The bill arbitrarily identifies the amount of five million dollars as a sufficient amount for grants to local governments. HHW management is a very expensive process as those toxic products require very specific handling. We question how this number was deemed sufficient."

In a letter to the author, the Advanced Medical Technology Association, Biotechnology Industry Organization, Consumer Healthcare Products Association, and the Pharmaceutical Research and Manufacturers of America state "the undersigned associations commit that following the enactment of AB 45 in a form that our member companies believe will ensure a strong commitment by local government to a comprehensive state-wide approach to disposal of (HHW), we will facilitate the establishment and funding of an appropriate non-profit entity dedicated to providing education to California consumers about the appropriate handling and disposal of our industries' products. This entity, which we propose to be funded by the industry participants represented by the signatories of this letter, as well as other impacted groups, would be funded at the amount of \$5 million over a 5-year period."

b) Current Programs and Definitions. The Legislature may wish to consider how current programs and definitions pertaining to the management of HHW will interact with the provisions in this bill.

i) Grant Funding. CSAC states, "CalRecycle currently runs a HHW grant program. There are no findings in the bill indicating why such a move could, or would be an improvement over the current system."

ii) HHW Element Plan. According to CSAC, "jurisdictions across the state have developed comprehensive ordinances to collect and manage HHW, each tailored to the needs of their respective community. We question the need for a general HHW model ordinance when locals are required to have them in place already. In addition, there is little guidance within the legislation to indicate the types of ordinances that might be developed."

iii) Definitions. CSAC argues that "the bill includes a new, broader definition of HHW, which includes home-generated pharmaceutical waste, such as prescription or non-prescription drugs. This would ban the disposal of these drugs without a comprehensive plan in place to collect this material. We believe that a specific collection model is necessary for these types of materials, as a typical local collection event, or curbside program is not appropriate for dangerous substances. CSAC supports a product stewardship model for pharmaceutical waste, which incentivizes the industries that profit from these products to have a significant stake in their proper management and disposal."

iv) Shared Responsibility. Product Stewardship and Extended Producer Responsibility (EPR) refers to a policy model that includes manufacturers in the end-of-life management for products that they produce. The California Product Stewardship Council states that EPR is a strategy to place a shared responsibility for end-of-life product management on all entities involved in the product chain, instead of the local governments and taxpayers, while encouraging product design changes that minimize a negative impact on human health and the environment at every stage of a product's lifecycle."

CSAC argues that "the role of industry, or other stakeholder participation outlined in the bill lacks critical detail."

6) Arguments in Support. Supporters argue that industry is considering approaches that would support consumer education and local governments in the implementation of comprehensive programs with the goal to increase compliance with the State's goals of diverting HHW from the waste stream. Supporters believe such approaches complement this bill's intent to build on the residential collection system to ensure consumer convenience and enhance participation rates without mandates on local governments.

7) Arguments in Opposition. Santa Barbara County, in opposition, states "We believe that retailers and manufacturers should participate in the end-of-life management of the products they put on the market. We are disappointed that AB 45 moves away from this shared responsibility approach and instead continues to make local jurisdictions solely responsible for collecting HHW. The recent amendments mention a non-profit organization that will provide grants to jurisdictions for HHW programs, but we are not clear how this non-profit organization will be formed or how the funds will be generated."

CONSEQUENCE OF NEGATIVE ACTION:

Contra Costa County would not have a position on the bill.

ATTACHMENTS

Attachment A - AB 45 bill text

Attachment B - CSAC Letter