

HOUSE BILL REPORT

HB 1785

As Reported by House Committee On:
Environment

Title: An act relating to limiting the use of certain antifouling paints.

Brief Description: Phasing out the use of copper-based antifouling paints.

Sponsors: Representatives Upthegrove and Hudgins.

Brief History:

Committee Activity:

Environment: 2/15/11, 2/17/11 [DPS].

Brief Summary of Substitute Bill

- Prohibits the sale of new recreational water vessels with antifouling paint containing copper beginning January 1, 2017.
- Prohibits the sale of antifouling paint containing more than 0.5 percent copper beginning January 1, 2024.
- Prohibits the sale of new or used recreational water vessels with antifouling paint containing copper beginning January 1, 2027.
- Requires the Department of Ecology to study antifouling paint and provide a report to the Legislature.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Upthegrove, Chair; Rolfes, Vice Chair; Fitzgibbon, Jacks, Jinkins, Morris, Moscoso, Takko and Tharinger.

Minority Report: Do not pass. Signed by 6 members: Representatives Short, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Crouse, Nealey, Pearson and Taylor.

Staff: Courtney Barnes (786-7194).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Metal-based antifouling paints are designed to control the growth of organisms such as algae and barnacles on boats. This growth, known as fouling, creates friction that can decrease a boat's speed and fuel efficiency. Most antifouling hull paints contain a copper biocide. Copper-based antifouling paints are designed to leach copper slowly into the water immediately surrounding a boat's hull.

Paint stripping and painting activities are potential sources of pollution from boatyards. Under the Clean Water Act, National Pollutant Discharge Elimination System (NPDES) permits that are issued to boatyards by the Department of Ecology (DOE) contain effluent limitations that restrict the volume and concentration of heavy metals and other pollutants, including copper, that are discharged.

Summary of Substitute Bill:

The Legislature intends to phase out the use of copper-based antifouling paints used on recreational water vessels.

Timelines.

Beginning January 1, 2017, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale any new recreational water vessel with antifouling paint containing copper. A recreational water vessel is a watercraft intended for use on the water for recreational purposes that is 65 feet in length or less and includes chartered recreational watercraft.

Beginning January 1, 2024, no antifouling paint containing more than 0.5 percent copper may be offered for sale in Washington.

Beginning January 1, 2027, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale any new or used recreational water vessel with antifouling paint containing copper.

Penalties.

The DOE is required to issue one warning letter to a manufacturer, wholesaler, retailer, or distributor that sells or offers for sale a recreational water vessel with antifouling paint in violation of the bill. Once a warning letter has been issued, the DOE is not required to provide warning letters for subsequent violations by that manufacturer, wholesaler, retailer, or distributor. The DOE may collect a civil penalty of up to \$10,000 per violation.

A recreational water vessel manufacturer, wholesaler, retailer, or distributor that sells a recreational water vessel with antifouling paint in violation of the bill must notify the registered owner of the recreational water vessel, if any, and must replace the non-compliant antifouling paint with an alternative antifouling paint. The DOE may issue civil penalties of up to \$100,000 for failing to notify the registered owner.

All penalties collected by the DOE must be deposited in the State Toxics Control Account.

Antifouling Paint Study.

The DOE must review available scientific studies and other relevant information to determine how antifouling paints and alternative antifouling paints are affecting marine organisms and water quality. The DOE must report its findings to the Legislature by December 31, 2016.

The Director of the DOE may establish and maintain a statewide advisory committee to assist the DOE in implementing the requirements of the bill. The advisory committee may also provide assistance with the DOE's antifouling paint study.

Substitute Bill Compared to Original Bill:

The substitute bill adds a prohibition on the sale of certain antifouling paint containing copper after January 1, 2014. The original bill established the antifouling paint review panel to study antifouling paint and provide a report to the Legislature. The substitute bill removes the provisions establishing the antifouling paint review panel. Under the substitute bill, the DOE must study antifouling paint and provide a report to the Legislature. The substitute bill allows the DOE to establish a statewide advisory committee to assist with the implementation of the bill. The substitute bill modifies the intent section and adds a definition.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 17, 2011.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Copper paint is highly toxic to aquatic life, especially salmon. The bill will help protect water quality and marine life. There are alternatives to copper-based antifouling paints that are effective and non-toxic. The bill requires the use of alternatives, and the timelines are reasonable. Some boatyards already prohibit the use of copper-based antifouling paints. The bill will help boatyards comply with their NPDES permits.

The time is right to make the change and move away from copper-based paint. The bill should be amended to phase out the use of copper paint. The timelines to phase out the application of copper paint on recreational water vessels should be shortened.

(With concerns) Prior to banning products, the science must justify the need for the ban. If the science does not support a need for the ban, a ban should not be supported. The bill

establishes the antifouling paint review panel prior to the phase out. This provision is very important and should be taken seriously.

(Opposed) None.

Persons Testifying: (In support) Kathy Fletcher, People for Puget Sound; Chris Wilke, Puget Sound Keeper Alliance; and George Harris, Northwest Marine Trade Association.

(With concerns) John Woodring, American Coatings Association.

Persons Signed In To Testify But Not Testifying: None.