

HOUSE BILL REPORT

HB 1579

As Reported by House Committee On:
Environment

Title: An act relating to paint stewardship.

Brief Description: Concerning paint stewardship.

Sponsors: Representatives Goodman, Warnick, McCoy, Fey, Liias, Farrell, Ryu, S. Hunt, Pollet and Moscoso.

Brief History:

Committee Activity:

Environment: 1/15/14, 2/5/14 [DPS].

Brief Summary of Substitute Bill

- Requires producers of architectural paint to participate in a stewardship program approved by the Department of Ecology to manage the end-of-life disposition of leftover paint.
- Prohibits retailers from selling the architectural paint of producers who do not participate in an approved stewardship program.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Fitzgibbon, Chair; Senn, Vice Chair; Farrell, Fey, Kagi, Morris, Ortiz-Self and Tharinger.

Minority Report: Do not pass. Signed by 5 members: Representatives Short, Ranking Minority Member; Pike, Assistant Ranking Minority Member; Harris, Nealey and Overstreet.

Staff: Jacob Lipson (786-7196).

Background:

Households and businesses use paints for a variety of purposes, including as a way to add color or preservative qualities to the interior and exterior of buildings. Paint may be

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characterized as either oil-based paints (also called solvent-based paints) or latex-based paints (also called acrylic or water-based paints), depending on the type of liquid solvent into which the paint's coloring pigments are dissolved. Options for the management of leftover architectural paints may include reuse, recycling, use as an energy source, or disposal through solid waste management streams.

Under waste management regulations in Washington, the collection and disposal requirements associated with leftover paint depend on the size of the entity generating the leftover waste. Households and certain small-quantity generators that generate less than 220 pounds of dangerous wastes per month are exempt from managing their leftover architectural paints as dangerous wastes. The dangerous wastes generated by households and small quantity generators are referred to as moderate risk wastes (MRW).

Household hazardous waste (HHW) and MRW facilities are collection sites that provide for the disposal of dangerous wastes from households, small businesses, or government generators. The HHW or MRW facilities, and similar mobile collection services, are operated under the solid waste management plans developed by local governments and are financed by rates charged for solid waste collection services. The HHW and MRW facilities may provide one option for small quantity generators and households to dispose of their leftover architectural paints. However, not all HHW or MRW collection locations and services are necessarily equipped to accept both oil and latex paints, due to the different handling requirements for each type of paint. In addition, some HHW or MRW facilities do not accept any liquid architectural paints for disposal. One permissible disposal option for leftover paint, where available, is voluntary collections coordinated by paint retailers or mobile facilities. A second permissible disposal option is disposal via local solid waste management collection streams. If the disposal is via local solid waste management collection streams, the household or small-quantity generator must dry and solidify the latex-based paint prior to disposal.

Businesses that generate volumes of dangerous waste that exceed exempt levels must manage their leftover oil-based paints and other dangerous wastes to meet heightened storage and handling requirements and must recycle or dispose of their oil-based paint and other dangerous wastes at a facility specially permitted to handle dangerous wastes. Nonexempt businesses may also need to manage leftover latex-based paints as dangerous wastes, depending on the contents of the latex paint.

Summary of Substitute Bill:

Manufacturer and Retailer Responsibilities.

Producers of architectural paint are required to participate in an approved stewardship plan. Producers that do not participate in an approved stewardship organization may not sell architectural paint in or into Washington. Architectural paint is defined as interior and exterior architectural paints sold in containers of five gallons or less.

Retailers may not sell the paint of noncompliant producers who do not participate in an approved stewardship organization and plan. Retailers must verify that a producer is listed

on the Department of Ecology (Department) website as a compliant producer prior to selling that producer's paint to consumers. Paint retailers may elect to serve as paint collection sites for the stewardship program, but are not required to do so. Architectural paint sold to consumers must be accompanied by information about the end-of-life paint management options offered by the stewardship program.

Paint Stewardship Program.

A stewardship organization representing producers is required to submit a stewardship program plan to the Department by January 1, 2015. A stewardship organization must implement the program by July 1, 2015, or within three months of the plan's approval by the Department, whichever comes later.

The plan the stewardship organization submits to the Department must include a description of the operations and management of the stewardship program, including:

- a list of the architectural paint producers and brands participating in the program;
- how the program will collect, transport, and manage the leftover architectural paints;
- the program's funding mechanism;
- the program's goals for reducing leftover architectural paint waste generation, promoting paint reuse and recycling and other aspects of end-of-life management of leftover paint; and
- the program's statewide system for collecting paint and the criteria used to select paint collection sites if retailers in the same geographic area want to serve as collection sites.

The stewardship program must collect leftover oil-based and latex-based architectural paints from households and small quantity generators, as well as latex-based paint from regulated generators. Under the stewardship program, architectural paints must be managed using both environmentally and economically sound practices, and must prioritize the following waste management options in descending order: paint reduction, reuse, recycling, energy recovery, and disposal. The stewardship program must also include a process for handling the canisters that contain the leftover paint, with an emphasis on recycling the canisters.

The stewardship program must develop and distribute informational materials to collection sites, and educational materials to consumers.

Paint Collection Requirements for Stewardship Programs.

A stewardship program plan must provide reasonably convenient and available statewide collection. Programs must also utilize existing solid waste collection, disposal and recycling systems, and fairly compensate service providers for collection, processing, transportation, and recycling costs associated with the program. Curbside collection services may be used in lieu of paint collection facilities by the stewardship program, so long as doing so provides at least equivalent convenience and access. The program must use geographic modeling to ensure that distribution of collection sites in rural and urban areas meets certain criteria, including the populations that will be served by those collection sites. The stewardship program's collection system must use paint retail stores and existing government-owned MRW infrastructure if it is cost-effective, feasible, and mutually agreeable to do so.

Collection sites must be identified in the plan submitted for approval by the Department and must be operational within the first year of the program.

Program Funding.

The funding of a stewardship program must be based on a uniform assessment levied on each can of architectural paint sold by producers to retailers and distributors. The program may not add an additional fee at the time of leftover paint collection. The per-can assessment on producers must be incorporated into the price of the paint when sold at retail. The assessment must be sufficient to recover, but not exceed, the stewardship program's costs. The per-can assessment on producer sales proposed in a stewardship organization's plan must be reviewed by an independent auditor, who must then recommend an amount to the Department for approval.

An account is created in the State Treasury to accept the receipts owed to the Department by stewardship organizations, and may only be used for administering and enforcing the program.

Program Oversight and Compliance Mechanisms.

The Department is responsible for reviewing the plan submitted by the stewardship organization within 120 days of receipt, and must approve the plan if it meets the requirements established in statute. Proposed stewardship plans and plan amendments must be made available for at least 30 days of public comment. The Department must also supervise the stewardship organization's implementation of the paint assessment, approve the amount of the paint assessment, and review the annual reports of stewardship organizations to ensure compliance with program requirements. The Department must maintain a list of paint producers who are compliant with stewardship program participation requirements on its website. The Department's costs in administering and enforcing the stewardship program must be paid by the stewardship organization or organizations.

A civil penalty of up to \$1,000 per day may be imposed by the Department for violations of the act, or up to \$10,000 per day for known, intentional, or negligent violations. Penalties imposed by the Department are appealable to the Pollution Control Hearings Board.

Reporting Requirements and Other Provisions.

Beginning in 2016, stewardship organizations must submit an annual report by October 15. The report, made publicly available online, must include descriptions of the program's paint management methods, the volumes of different types of paint collected by the program, and various costs associated with implementing the program, including an independent financial audit of the program.

Producers and stewardship organizations are granted immunity from state antitrust laws in establishing the stewardship program and in setting the value of the paint assessment.

The Paint Stewardship Program laws are deemed void if a federal paint recycling program is established.

Substitute Bill Compared to Original Bill:

The substitute bill adds a requirement for stewardship program plans to address how the program will utilize existing waste collection, disposal, and recycling infrastructure. The

stewardship program must also address how it will use and fairly compensate existing service providers for collection, processing, transportation, and recycling costs associated with their role in stewardship program operations. The substitute also explicitly allows paint stewardship programs to use curbside waste collection services in lieu of paint collection sites, if doing so provides at least an equivalent level of convenience and access. The substitute bill requires that public, private, and moderate risk waste collection services be used where cost effective and mutually agreeable, whereas the original bill included a requirement that doing so also be reasonably feasible.

The substitute bill adds a few elements to the paint stewardship organization's annual reporting requirements, which must include certain additional information on program costs, such as the per-capita and per-gallon costs of the stewardship program.

The substitute bill eliminates the exemption from public disclosure created under the Public Records Act for proprietary paint manufacturer or paint stewardship program information in the possession of the Department.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 5, 2014.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 15, relating to the jurisdiction of the pollution control hearings board, which takes effect June 30, 2019.

Staff Summary of Public Testimony:

(In support) This bill addresses the question of what to do with leftover house paint that otherwise goes unused and sits in garages. This bill has created strange bedfellows by generating support from both the paint industry and the environmental community. Paint is a small percent of the overall waste in the system, but creates a disproportionate cost for local governments to deal with under current waste management systems. Local governments are the primary collectors of solid waste, but many do not collect latex or other paints any longer because of the associated costs. This bill will decrease the amount of improper disposal of paint, which currently happens frequently because of the lack of local disposal options. Local governments need the support of a statewide paint collection system; this program will free up grant money for other waste-management priorities. Being a paint collection location can be a boon to businesses because it generates foot traffic. Oregon and other states have successfully established similar paint stewardship programs. This program includes a sustainable financing mechanism. Industries with hard-to-handle toxic products like paint should be responsible for dealing with the paint at the end of its life. The paint collected under this bill would be recycled or diverted for other uses like as a component of concrete. Either way, it has a smaller environmental footprint than it does if it is landfilled.

(With concerns) We would prefer a voluntary or national solution. We are in support of an approach that relied upon manufacturer responsibility, rather than a fee-based mechanism

charged to consumers. We have concerns about how the bill might impose up-front costs on retailers.

(Opposed) We are not convinced that the citizens of Washington will benefit from this bill. This bill adds a fee to the consumer, and doesn't include any financial contributions from the paint manufacturers. The state already has funds that it can spend on paint collection in the Model Toxics Control Act accounts. This bill, as drafted, does not appropriately take advantage of existing waste collection infrastructure. The investments of local governments and private waste haulers should be used before new waste collection infrastructure is developed. There should be a cost-benefit analysis of the economic and environmental sustainability of the proposed paint stewardship program. We have proposed amendments that would make the bill more palatable by requiring the program to take advantage of existing waste collection infrastructure and fairly compensate waste collectors.

Persons Testifying: (In support) Representative Goodman, prime sponsor; Rick Gilbert, Kitsap County Solid Waste; Terri Thomas, Thurston County Solid Waste; Laurie Davies, Department of Ecology; Marie Clark, American Coatings Association; Suellen Mele, Zero Waste Washington; and Erika Melroy, CleanScapes.

(With concerns) Mark Johnson, Washington Retail Association.

(Opposed) Vicki Christopherson, Washington Refuse and Recycling Association.

Persons Signed In To Testify But Not Testifying: None.