

# HOUSE BILL REPORT

## ESHB 1571

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**As Passed House:**  
February 10, 2016

**Title:** An act relating to paint stewardship.

**Brief Description:** Concerning paint stewardship.

**Sponsors:** House Committee on Environment (originally sponsored by Representatives Peterson, Goodman, Fitzgibbon, McBride, Pollet, Robinson, Stanford, S. Hunt and Riccelli).

**Brief History:**

**Committee Activity:**

Environment: 2/5/15, 2/12/15 [DPS];  
Appropriations: 2/24/15, 2/27/15 [DPS(ENVI)].

**Floor Activity:**

Passed House: 3/5/15, 60-38.

**Floor Activity:**

Passed House: 2/10/16, 51-46.

**Brief Summary of Engrossed 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.

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### HOUSE COMMITTEE ON ENVIRONMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Farrell, Fey, Goodman and McBride.

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

**Staff:** Jacob Lipson (786-7196).

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*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.*

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Environment be substituted therefor and the substitute bill do pass. Signed by 18 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Carlyle, Cody, Hansen, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, Pettigrew, Sawyer, Senn, Springer, Sullivan, Tharinger, Walkinshaw and Hunter.

**Minority Report:** Do not pass. Signed by 14 members: Representatives Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Condotta, Dent, Haler, MacEwen, Magendanz, Schmick, Stokesbary, Taylor, Van Werven and G. Hunt.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Fagan.

**Staff:** Dan Jones (786-7118).

### **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 characterized as either oil-based paint (also called solvent-based paint) or latex-based paint (also called acrylic or water-based paint), depending on the type of liquid solvent that contains the paint's dissolved coloring pigments. 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, although not all HHW or MRW collection locations and services accept either or both types of paint.

Where HHW or MRW paint collection services are not available, one permissible disposal option for leftover paint, where available, are voluntary collections coordinated by paint retailers or mobile facilities. A second additional permissible disposal option is to dry and solidify latex-based paint prior to disposal via local solid waste management collection streams.

Businesses that generate volumes of dangerous waste that exceed exempt levels must manage their leftover oil-based paints like other dangerous wastes by meeting certain storage and handling requirements, and by recycling or disposal at a facility specially permitted to handle dangerous wastes. Business generators of nonexempt volumes of dangerous waste may also need to manage leftover latex-based paints as dangerous wastes, depending on the contents of the latex paint.

#### Other Relevant Program Context.

The Pollution Control Hearings Board (PCHB) is an appeals board with jurisdiction to hear appeals of certain decisions, orders, and penalties made by the Department of Ecology (Department) and several other state agencies. Parties aggrieved by a PCHB decision may obtain subsequent judicial review.

The Utilities and Transportation Commission (UTC) supervises and regulates private solid waste companies, including reviewing and approving their rates and fees. Cities and towns also sometimes provide solid waste collection services.

The Public Records Act requires state and local government agencies to make all public records available for public inspection and copying unless the records fall within a statutory exemption.

#### **Summary of Engrossed Substitute Bill:**

##### Manufacturer and Retailer Responsibilities.

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

Retailers may not sell the paint of producers who do not participate in an approved stewardship plan and fund a stewardship organization. Retailers must verify that a producer is listed on the 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 15, 2016. A stewardship organization must implement the program by July 1, 2016, 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;
- a process for managing the cans containing leftover paint;

- the program's funding mechanism;
- the program's goals, based on current or historical collection data, for paint waste reductions, reuse and recycling, and end-of-life management; and
- the program's statewide paint collection system.

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 public and private solid waste services and facilities. The program must fairly compensate service providers for their costs. The stewardship organization must renegotiate collection site contracts every two years, unless both parties agree otherwise. 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 requiring that collection service be provided within 15 miles of 90 percent of the state's population. The stewardship program's collection system must use public and private waste collection services, as well as existing paint retail stores as collection sites, if it is cost-effective and mutually agreeable to do so. Retail sites are not required to participate as collection sites. 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. Paint producers must cover all administrative and operational costs of the program. The paint assessment must be added to the price of paint sold to retailers, unless a retailer voluntarily agrees to directly remit the assessment to the stewardship organization for cans of paint sold by the retailer. The per-can assessment on producers must be added to the price of the paint sold at retail, but may not be described as a Department recycling fee. The receipts associated with the per-can assessment on paint are exempted from the state Business and Occupation tax.

The program may not add an additional fee at the time of leftover paint collection at a drop-off or take-back location; however, curbside collection services may charge an additional fee to cover their additional collection costs as provided by a contract with a city or as allowed under the UTC regulations. The assessment must be sufficient to recover, but not exceed, the stewardship program's costs. The per-can assessment 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. Surplus funds from the assessment must either be put back into program services or used to reduce the amount of the assessment in future years.

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 statutory requirements. 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 in an annual fee by the stewardship organization or organizations. If there are multiple stewardship programs, they must equally divide the Department's fee.

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

#### 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.

Proprietary information submitted to the Department is exempt from disclosure under the Public Records Act, although information that does not directly or indirectly identify an individual producer or stewardship organization may be disclosed. Valuable commercial information submitted to the Department may not be disclosed without advanced notice to the submitter. If the submitter obtains a superior court order protecting the records within 10 days of the notice, the Department may not release them. A superior court must protect the records if disclosure would result in private loss, including unfair competitive disadvantage.

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

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

The Department may adopt rules to implement, administer, and enforce the program.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 18, relating to the jurisdiction of the pollution control hearings board, which takes effect June 30, 2019.

**Staff Summary of Public Testimony (Environment):**

(In support) This bill provides a solution for what to do with all of the leftover paint that everyone keeps around their house. This bill is a continuation of discussions by stakeholder based on previous legislative efforts. The paint industry supports this bill. When paint retailers act as leftover paint collection sites, it provides a way of getting customers in the door and successfully differentiates participating companies within a competitive marketplace. The paint stewardship program is successful in other states and the program proposed by this bill is well-aligned with those program's requirements to reduce confusion for retailers and manufacturers operating in multiple states. Paint collection process is simple to administer under the paint stewardship program, and is a superior and more convenient option for customers than alternatives like trying to mix the paint with kitty litter or dry it. If this bill were to pass, businesses in Washington would evaluate whether to become recycled paint processors, which would create jobs. Recycled and reused paint is a product that customers are eager to purchase, helping to avoid sending millions of gallons of paint waste to the landfill. This program will increase paint recycling, and reduce illegal disposal of paint. This bill will reduce pressures on local government hazardous waste management systems, many of which no longer accept leftover paint because of the high associated costs. It is a good idea to use the existing waste collection infrastructure as this bill does, including using convenient curbside collection services. The requirement that paint collection locations be located within a short distance of population centers ensures that collection options will be convenient for paint customers. While a stewardship program model that requires program costs to be internalized by manufacturers is preferable, this is a good approach because it increases the chance that a paint program will be able to begin operating soon. The incremental costs of the assessment will not be a significant financial burden for housepainters or other paint users, and many paint customers are looking for better disposal options.

(Neutral) The references to paint collectors should be clarified to mean certificated waste haulers. The references to the geographical systems used to identify the populations that must be served by the program should also be clarified.

(Opposed) This bill is not the right approach to reduce paint waste. Consumer education and marketplace incentives would be better approaches to protect the environment. A national regulation is easier for retailers to abide by than a state-by-state program, which is onerous on both retailers and the consumers who must pay per-can fees. This creates administrative difficulties and costs for multi-state retailers, who sometimes pay up-front paint fees and then never re-coup their up-front costs from manufacturers if the paint is sold in a different state.

A producer-responsibility model for product stewardship programs is preferable because it embeds the fee in the price of paint.

**Staff Summary of Public Testimony (Appropriations):**

(In support) This is an industry-based solution suggested by the paint industry, and is a great partnership between the business, government, and environmental communities. This bill would allow consumers to responsibly get rid of spare cans of paint that may be lying around the house. There is an environmental benefit from this bill, because latex-based and oil-based paints are both hazardous materials that are difficult to get rid of in this state.

Many counties that used to have hazardous waste material disposal no longer do because of budget cuts. Many Washington programs no longer collect latex paint, and this program would reverse that trend and provide residents more locations to dispose of paint by providing retail take-back centers.

Paint dominates local hazardous waste collections, whether the program accepts latex paint or not. This legislation would save counties tens of thousands of dollars a year in transportation, management, and supply costs, allowing the money to be used to make improvements to local waste collection. The paint collected would be recycled rather than put in a landfill.

The paint industry is supportive of the Department of Ecology's limited role in the program. The costs identified in the fiscal note will be covered by the assessment, and there will be no General Fund impact. The costs per can are set in the program plan, but typical costs in other states have been 35 cents for a quart, 75 cents for a gallon, and \$1.60 for a five-gallon can.

(Opposed) This bill is the wrong approach to achieving a clean and safe environment. This bill would have retailers paying an estimated \$7.7 million in 2017. The retailer does not recoup the cost of the assessment until they sell the can of paint to a consumer. This, in essence, requires retailers to prepay for the paint recycling program, which would be similar to requiring a retailer to prepay their sales tax before they sold the product. We would support the model adopted by the Legislature eight years ago for the electronic waste program, which charges retailers after the product is recycled, not before.

**Persons Testifying (Environment):** (In support) Representative Peterson, prime sponsor; Mike Burgess, American Coatings Association; Roy Weedman, Paint Care; Steve Dearborn, Miller Paint Company; Kim Kaminski, Waste Management of Washington; Kevin Kelly, Recology Cleanscades; Craig Lorch, Total Reclaim; Al Salvi, Department of Ecology; Rick Gilbert, Kitsap County; Suellen Mele, Zero Waste Washington; and Dustin Wilson, Flying Colors Painting Company.

(Neutral) Michael Transue, Waste Connections.

(Opposed) Mark Johnson, Washington Retail Association.

**Persons Testifying (Appropriations):** (In support) Representative Peterson, prime sponsor; Mike Burgess, American Coatings Association; Rick Gilbert, Kitsap County; and Al Salvi, Department of Ecology.

(Opposed) Mark Johnson, Washington Retail Association.

**Persons Signed In To Testify But Not Testifying (Environment):** None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.