

SENATE BILL REPORT

ESHB 1571

As of February 26, 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: Passed House: 3/05/15, 60-38; 2/10/16, 51-46.

Committee Activity: Energy, Environment & Telecommunications: 3/17/15, 2/23/16.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Staff: Jeff Olsen (786-7428)

Background: Interior and exterior paints, or architectural paint, are typically produced as either oil-based paint or latex-based paint. 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.

Household hazardous waste (HHW) collection sites provide for the disposal of dangerous wastes from households, small businesses, or government generators. The HHW 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 facilities may provide one option for small quantity generators and households to dispose of their leftover architectural paints, although not all HHW collection locations accept either or both types of paint.

According to the Paint Product Stewardship Institute, several states have implemented paint product stewardship programs for the management of leftover paint including Oregon and California.

Summary of Bill: Producers of architectural paint sold in containers of five gallons or less must 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

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paint in or into Washington. Retailers may not sell the paint of producers who do not participate in an approved stewardship plan. Retailers must verify that a producer is listed on the Department of Ecology's (Department's) website as a compliant producer prior to selling that producer's paint to consumers. Architectural paint sold to consumers must be accompanied by information about the end-of-life paint management options offered by the stewardship program.

A stewardship organization representing producers must 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 the following:

- 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 reduction, 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: source 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.

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. 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 requirement 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. Paint retailers may elect to serve as paint collection sites for the stewardship program, but are not required to do so.

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 exempt 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 Utilities and Transportation Commission 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. 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.

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. 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 Pollution Control Hearings Board.

Stewardship organizations must submit an annual report to the Department beginning October 15, 2016. The report must include descriptions of the program's paint management methods, the volumes of different types of paint collected, and costs associated with implementing the program. Proprietary information submitted to the Department is exempt from disclosure under the Public Records Act. 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.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: Testimony From 2015 Regular Session. PRO: This is an industry-supported proposal that is a win for all of the stakeholders, and is good for business and the environment. Consumers need convenient

options to dispose of leftover paint, and the product can be properly managed and recycled rather than sent to the landfill. Recycled paint provides an affordable product for consumers, such as Habitat for Humanity. The program is funded by an assessment and there is no general fund impact. The assessment in Oregon is \$0.75 per gallon, or \$1.60 for a five-gallon container. Several other states have successfully implemented paint product stewardship programs, including Oregon, California, Connecticut, Vermont, Rhode Island, Minnesota, Maine, and Colorado.

Not all local hazardous waste sites accept latex paints, and in Kitsap County the handling of latex paint results in a significant portion of the volume and cost for the facility. The bill would save counties money that could be used for collection of other hazardous materials. The proposal also allows for curbside collection, which has proven to be a popular option in California.

CON: A national solution is preferred over a state-by-state approach. Washington State does not have a paint recycling facility to handle leftover paint. The proposal does not follow the same guidelines that were used for the recycling of electronic products. The bill would cost consumers approximately \$7.7 million per year.

Persons Testifying on Original Bill: Persons Testifying From 2015 Regular Session. PRO: Representative Peterson, prime sponsor; Marie Clarke, American Coatings Assn.; Roy Weedman, PaintCare; Steve Dearborn, Miller Paint Co.; Kim Kiminski, Waste Management; Rick Gilbert, Kitsap County; Craig Lorch, Total Reclaim; Dustin Wilson, Flying Colors Painting Co., owner; Suellen Mele, Zero Waste WA; Mark Bronson, citizen.

CON: Mark Johnson, WA Retail Assn.

Persons Signed in to Testify But Not Testifying: No one.

Staff Summary of Public Testimony: PRO: The bill provides multiple wins for small businesses, paint stores, manufacturers, local governments, citizens, and the environment by establishing a way for the public to recycle their paint. Paint is the number one product coming in to local hazardous waste facilities. The fee to operate the recycling program is passed down through the purchase of the paint. In other states the model is working well for retailers, consumers, contractors, and others. Retailers are able to educate customers about the recycling option, and the recycled paint can be repurposed and resold. Oregon recovers approximately 600,000 gallons of paint per year, and has processed nearly 4 million gallons since its inception. Recycling paint reduces the amount of material going to the landfill. Not all local hazardous waste facilities have convenient options for the public to bring in their unwanted paint, and some facilities do not have sufficient capacity. The time has come for Washington to begin recycling paint, and this bill provides for the responsible management of waste.

CON: The bill does not take the correct approach, and it should be changed to resemble Washington's electronics product recycling model. That model is a producer responsibility approach where the costs to recycle are embedded in the cost of the product. With a producer responsibility model retailers are not required to track and handle recycling costs. Retailers would prefer a national approach, rather than a state-by-state program.

Persons Testifying: PRO: Representative Peterson, prime sponsor; Senator Chase; Alison Keane, American Coatings Association; Steve Dearborn, Miller Paint; Roy Weedman, PaintCare; Kevin Kelly, Recology CleanScapes; Rick Gilbert, Kitsap County.

CON: Mark Johnson, Washington Retail Association.

Persons Signed In To Testify But Not Testifying: No one.