

HOUSE BILL REPORT

HB 1376

As Reported by House Committee On:
Environment

Title: An act relating to paint stewardship.

Brief Description: Concerning paint stewardship.

Sponsors: Representatives Peterson, Goodman, Tarleton, Gregerson, Ormsby, Bergquist and Stanford.

Brief History:

Committee Activity:

Environment: 1/26/17, 2/14/17 [DPS].

Brief Summary of Substitute Bill

- Requires producers of architectural paint to participate in a stewardship program approved by the Department of Ecology for managing 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 5 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Fey, Kagi and McBride.

Minority Report: Do not pass. Signed by 4 members: Representatives Taylor, Ranking Minority Member; Maycumber, Assistant Ranking Minority Member; Buys and Dye.

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 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, is 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 in the same manner as other dangerous wastes by meeting certain storage and handling requirements, and by recycling or disposing of paint at a facility specifically 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 (ECY) 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 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 as compliant on the ECY website prior to selling that producer's paint. 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 ECY by January 15, 2018. A stewardship organization must implement the program by July 1, 2018, or within three months of the plan's approval by the ECY, whichever comes later.

The plan the stewardship organization submits to the ECY 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. The materials developed by the paint stewardship program must include information regarding the disposition of paint and the cleaning of paint-soiled accessories in ways that reduce water quality impacts. The

stewardship organization must also work with local governments to publicly disseminate information regarding paint collection options offered through the stewardship program or through local solid and hazardous waste programs.

Paint Collection Requirements for Stewardship Programs.

A stewardship program plan must provide reasonably convenient and available statewide collection and must utilize existing solid waste services and facilities, including public and private waste collection services and 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. 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. Curbside services authorized for leftover paint collection under the program must be provided either by solid waste companies regulated by the UTC or by companies that operate under a contract with a city or town. The program must use geographic modeling to ensure that distribution of collection sites in rural and urban areas meets certain criteria, including requiring that collection service be provided within 15 miles of 90 percent of the state's population. Collection sites must be identified in the plan submitted for approval by the ECY and must be operational within the first year of the program.

Program Funding.

Paint producers are responsible for the funding of all of the stewardship program activities of the plan in which they participate, including collection, reuse, recycling, and transportation costs. The funding of a stewardship program must be based on a uniform assessment levied on the sales of architectural paint. The program must categorize the sizes of paint containers sold at retail, and establish a uniform assessment that applies to each category of container size.

The assessments added to sales of architectural paint must be remitted to the stewardship organization for purposes of implementing the stewardship program.

There are two possible mechanisms for remitting the paint assessment to the stewardship organization:

- the paint assessment must be added to the price of paint sold by producers to retailers or distributors and then remitted by the producer to the stewardship organization; or
- a retailer or distributor may voluntarily agree to directly remit the assessment to the stewardship organization for cans of paint sold by the retailer or distributor.

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 ECY recycling fee. The receipts associated with the per-can assessment on paint are exempted from the state business and occupation tax. 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 ECY 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. The stewardship organization may not retain fund balances between program years beyond a reserve equal to 10 percent of the program's expenditures in the preceding year, unless those excess funds are budgeted to increase or improve program services or reduce program costs or the amount of the assessment on paint sales.

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.

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

Program Oversight and Compliance Mechanisms.

The ECY 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 ECY 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 ECY must maintain a list of paint producers who are compliant with stewardship program participation requirements on its website. The ECY's costs in administering and enforcing the stewardship program must be paid via an annual fee by the stewardship organization or organizations. If there are multiple stewardship programs, they must equally divide the ECY's fee.

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

Reporting Requirements and Other Provisions.

Beginning in 2019, 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.

Valuable commercial information submitted to the ECY 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. Persons submitting information to the ECY must designate records or portions of records that are valuable commercial information. Records that are valuable commercial information submitted to the

ECY may not be disclosed without advanced notice to the submitter, although reports and aggregated or summary information is not subject to this notification requirement. If a person who submitted records does not obtain a superior court order protecting the records within 10 days of receiving notice of a request to release the records, the ECY may 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 ECY may adopt rules to implement, administer, and enforce the program.

Substitute Bill Compared to Original Bill:

Except for the annual administration fee paid by the stewardship organization to the Department of Ecology (ECY), the ECY does not control or have spending authority related to paint assessment fees collected by the stewardship organization. The funds received by the stewardship organization are not state funds and are not capable of being transferred for other state purposes. The stewardship organization may not retain fund balances between program years beyond a reserve equal to 10 percent of the program's expenditures in the preceding year, unless those excess funds are budgeted to increase or improve program services or reduce program costs or the amount of the assessment on paint sales. The consumer educational materials developed by the paint stewardship program must include information regarding the disposition of paint and the cleaning of paint-soiled accessories in ways that reduce water quality impacts. The stewardship organization must also work with local governments to publicly disseminate information regarding paint collection options offered through the stewardship program or through local solid and hazardous waste programs. The deadline for the ECY to post on its website an initial list of paint producers and brands participating in an approved product stewardship program is delayed from July 1, 2017, until July 1, 2018. Curbside services authorized for leftover paint collection under the program must be provided either by solid waste companies regulated by the UTC or by companies that operate under a contract with a city or town.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 18, relating to the Pollution Control Hearings Board to hear penalties, which takes effect on June 30, 2019.

Staff Summary of Public Testimony:

(In support) The paint industry is committed to finding a way to deal with the issue of managing leftover consumer paints, and would prefer to have a stewardship program designed in a way that is acceptable to the industry rather than having a different solution imposed upon it. The paint stewardship program contemplated by this bill has been implemented successfully in several other states and for several years, and is continuing to be administered more efficiently as lessons are learned in those other states. The program has recently raised the per-can paint fee charged in other states, but forecasts a long-term reduction in the fee. Paint manufacturers have an incentive to keep the per-can fee low because it ultimately makes the cost of paint more expensive. The fees charged in Oregon are lower on a per-gallon basis for 5-gallon paint containers, in recognition of the fact that contractors more frequently purchase this size of paint, and tend to produce less leftover paint than non-professional paint purchasers. This bill ensures that different paint manufacturers remain on an even and competitive playing field against one another, and that responsible companies don't shoulder the entire burden for leftover paint disposal. The bill also protects paint manufacturers against violating anti-trust laws when communicating to establish the per-can paint recycling fee. The ECY will provide oversight for the stewardship program, and will charge a limited administrative fee that allows the state to recover its costs for overseeing the program. This program will relieve a significant cost burden imposed on local governments that offer paint disposal services, and will make leftover paint disposal convenient in counties that currently do not offer any viable leftover paint solution options because such programs have been too expensive for local governments to continue to operate. It is wasteful and unrealistic to expect that household paint consumers will dry out leftover paint prior to disposing of it in the garbage. Oil-based paints are also unlikely to be disposed of appropriately, since they cannot be solidified and landfilled. Most of the paint collected by the program is recycled into new paint for sale, and keeps leftover paint out of the landfill. Paint contains small amounts of Polychlorinated Biphenyls (PCBs), and the paint recycling program will keep PCBs out of waterways where the state has already spent millions of dollars to invest in clean water infrastructure.

(Opposed) Washington has some of the nation's highest recycling rates, and a paint collection program can be most efficiently implemented if it uses the existing waste collection infrastructure. Costs for solid waste collection services regulated by the UTC are fairly spread across the ratepayer base, and end up being the most cost-effective option for paint consumers. Counties should be directed to put paint collection in the local government solid waste management plans. People are more likely to use the most convenient waste-disposal option and will not go to great lengths to properly dispose of items; as a result, a program that relies on collection sites is not going to be used by people who would be inconvenienced by having to drive somewhere in their car to dispose of their paint. Curbside paint collection services could be more effective at collecting greater volumes of leftover paint from people's homes. Product stewardship programs have not proved as financially sustainable as they were initially predicted to be, and undermine the efficiency of the existing waste-collection systems. Consumer education and market forces should be used to incentivize appropriate paint disposal. Failing those options, if a stewardship program is established, it should be funded by manufacturers based on their market share and with the cost of the stewardship program embedded in the price of paint, rather than on a collection fee charged to consumers. The fee collection mechanisms place administrative and financial burdens on retailers of paint. Administratively, it makes sense to involve only the few dozen paint manufacturers

who would need to be part of the program anyway, rather than to involve thousands of paint retailers for the remittance of per-can fees.

Persons Testifying: (In support) Representative Peterson, prime sponsor; Marie Clarke, American Coatings Association; Steve Dearborn, Miller Paint; Marjaneh Zarrehparvar, PaintCare; and Neil Beaver, The Lands Council.

(Opposed) Vicki Christopherson, Washington Refuse and Recycling Association; Mark Johnson, Washington Retail Association; and Rick Gilbert, Kitsap County Waste Division.

Persons Signed In To Testify But Not Testifying: None.