

SENATE BILL REPORT

SHB 1652

As Passed Senate, April 27, 2019

Title: An act relating to paint stewardship.

Brief Description: Concerning paint stewardship.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Peterson, DeBolt, Goodman, Fitzgibbon, Appleton, Ortiz-Self, Hudgins, Orwall, Jinkins, Sells, Tharinger, Kloba, Senn, Pollet, Stanford, Bergquist and Macri).

Brief History: Passed House: 4/25/19, 62-35.

Committee Activity: Ways & Means: 4/26/19 [DP, DNP].

Floor Activity:

Passed Senate: 4/27/19, 26-22.

Brief Summary of Bill

- Requires producers of architectural paint to participate in a stewardship program 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.
- Provides funding for paint stewardship programs by establishing a uniform, container size-based assessment to be added to the purchase price of architectural paint.
- Assigns responsibility to the Department of Ecology for the approval of paint stewardship plans and for other specified oversight and enforcement activities related to paint stewardship programs.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo and Pedersen.

Minority Report: Do not pass.

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.

Signed by Senators Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Rivers, Schoesler, Van De Wege, Wagoner, Warnick and Wilson, L..

Staff: Jan Odano (786-7486)

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 (also called solvent-based paint) or latex-based (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 one or both types of paint.

Where HHW or MRW paint collection services are not available, one permissible disposal option for leftover paint, is voluntary collections coordinated by paint retailers or mobile facilities, where available. 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 exceeding 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 issued by the Department of Ecology (Ecology) and several other state agencies. Parties aggrieved by a PCHB decision may obtain subsequent judicial review.

The Utilities and Transportation Commission 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 Bill: Paint Manufacturer and Retailer Responsibilities. Producers of interior or exterior architectural paint sold in containers of 5 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 participating in a paint stewardship organization prior to ordering paint from a producer or agent of a producer. Retailers are not required to serve as paint collection sites for the stewardship program. 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 Ecology by May 30, 2020, or within one year of the effective date of the act which creates the paint stewardship program. A stewardship organization must implement the program by November 30, 2020, or within six months of the stewardship plan's approval by Ecology, whichever comes later.

The plan a stewardship organization submits to Ecology 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, recycle, and process the leftover architectural paints for end-of-life management;
- a demonstration of sufficient funding to carry out the program described in the plan, including the program's funding mechanism and a proposed budget;
- a description of the program's educational outreach strategy;
- a description of how the paint will be managed using environmentally sound management practices; and
- a list of transporters and a list of potential processors to be used in the program.

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 that bring leftover paint to a collection site. 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, and energy recovery and disposal.

The stewardship program must develop and distribute informational materials to collection sites, including collection site procedural manuals, and educational materials to consumers, which may include signage, written materials, and advertising.

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, when cost-effective and mutually agreeable. Specific retail locations are not required to participate as collection sites. Curbside collection services may be used in lieu of paint collection sites by the stewardship program, so long as doing so provides convenient and reasonably equitable access. Curbside services authorized for leftover paint collection under the program must be provided either by solid waste companies regulated by the Utilities and Transportation Commission (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, and that there be one additional collection site for every 30,000 residents of an urbanized area or for every urban cluster of at least 30,000 residents. Collection sites must be identified in the plan submitted for approval by Ecology.

Program Funding. Paint producers are responsible for funding 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 an Ecology recycling fee. Ecology may not control or have spending authority over paint assessment funds, and the funds are not state funds. The receipts associated with the per-can assessment on paint are exempt 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 verify the amount added to each unit of paint is sufficient to cover the costs of the stewardship program. 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 the previous year's stewardship program operating expenditures, 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 collection site. A fee may not be charged at the time that unwanted paint is delivered or collected for management; 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.

An account is created in the state treasury to accept the receipts owed to Ecology by stewardship organizations and may only be used for administering and enforcing the program.

Program Oversight and Compliance Mechanisms. Ecology 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.

Ecology 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. Ecology must maintain a list of paint producers who are compliant with stewardship program participation requirements on its website. Ecology's costs in administering and enforcing the stewardship program must be paid via an annual fee by the stewardship organization or organizations. The total Ecology fees may not exceed 5 percent of the aggregate assessment added to the cost of all architectural paint.

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

Reporting Requirements and Other Provisions. Beginning in the first year of the program, stewardship organizations must submit an annual report by October 15th. 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 Ecology 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 Ecology must designate records or portions of records that are valuable commercial information. Records that are valuable commercial information submitted to Ecology 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 ten days of receiving notice of a request to release the records, Ecology 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.

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

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: This is an industry led and created product stewardship program. It was developed by the paint industry. There are no costs to the state. Fees are used to contract with transporters and to reimburse local governments for their costs to transport leftover paint. There are no requirements for paint retailers to collect leftover paint, but many already do and will, as they also make paint.

CON: This will require retailers to impose a tax or collect a tax on paint. It is estimated it will add \$1 per gallon of paint. There has been limited success in Oregon. There are no paint recycling facilities in Washington so a facility will need to be built for recycling paint or the paint will need to be shipped out of state. This will increase the carbon output.

Persons Testifying: PRO: Mike Burgess, American Coatings Association.

CON: Mark Johnson, Washington Retail.

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