

SENATE BILL REPORT

SSB 5436

As Amended by House, April 6, 2011

Title: An act relating to the use of antifouling paints on recreational water vessels.

Brief Description: Regarding the use of antifouling paints on recreational water vessels.

Sponsors: Senate Committee on Natural Resources & Marine Waters (originally sponsored by Senators Ranker, Shin, Litzow, Swecker, Tom, Harper, Nelson, Hobbs, Fraser, Rockefeller, White, Kilmer, Conway and Kline).

Brief History:

Committee Activity: Natural Resources & Marine Waters: 1/26/11, 2/14/11 [DPS].

Passed Senate: 3/01/11, 46-3.

Passed House: 4/06/11, 62-32.

SENATE COMMITTEE ON NATURAL RESOURCES & MARINE WATERS

Majority Report: That Substitute Senate Bill No. 5436 be substituted therefor, and the substitute bill do pass.

Signed by Senators Ranker, Chair; Regala, Vice Chair; Morton, Ranking Minority Member; Fraser, Stevens and Swecker.

Staff: Sherry McNamara (786-7402)

Background: Aquatic antifouling paints are used on water vessel hulls to prevent the growth of aquatic organisms such as barnacles and algae. Most of these antifouling paints use copper to reduce the growth.

According to a 2007 study, the Department of Ecology has conducted research measuring copper concentrations in marinas and found the primary source of copper to be from the antifouling paints found on boat hulls. Research has shown copper to be highly toxic to aquatic life.

Summary of Substitute Bill: Recreational water vessels are defined as a vessel that is used primarily for pleasure or leased, rented, or chartered to a person for the pleasure of that person. It does not include a vessel that is subject to the United States Coast Guard inspection and engaged in commercial use or carries paying passengers.

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.

After January 1, 2017, new recreational water vessels with antifouling paint containing copper may not be sold in the state. After January 1, 2020, no antifouling paint containing more than 0.5 percent copper may be sold in Washington.

By January 1, 2017, DOE must survey the manufacturers of boat paints sold or offered for sale in Washington to determine the types of antifouling boat paints available, and then present the findings of the survey to the Legislature by January 1, 2018.

In consultation and cooperation with others, DOE must increase education efforts regarding recreational water vessel hull cleaning to reduce the spread of invasive species.

A civil fine is set for up to \$10,000 per day per violation.

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: PRO: Copper is a very significant toxicant for many aquatic species, including salmon. The Department of Ecology estimates that copper bottom paint represents about 10 percent of overall loading of copper in Puget Sound, which is concentrated in the marinas. The state has a program that will phase out copper in brake pads; it is now time to do the same with copper paint on boats. There are alternative paints and products available now that are effective and affordable. The timeframe for the phase out should take into account that even after the paint is banned, there will be several years delay before the vast majority of recreational vessels are using nontoxic paint. Boatyards are closing because of copper contamination; this bill is vitally important to our industry.

CON: We understand the need to protect the state's waters; in fact, it is our position that banning effective antifouling coatings containing copper may create a risk by increasing the potential for invasive species in the waters. Currently, there is no evidence that the copper levels resulting from boat hull coatings present any real harm to the fisheries in Washington. The studies to date show there are no high levels of copper found in the waters where salmon travel, as the problem exists in marinas. The greater risk is allowing an invasive species into the waters and spending millions of dollars to eradicate it. It is our recommendation that further studies are conducted before any final decision is made to ban an effective antifouling coating.

OTHER: There are amendments that we would like to offer to change the definition of recreational vessel to be consistent with the federal Clean Boating Act of 2008. The definition should include boats 65 feet or less. A three-year timeframe from January 1, 2012, to January 1, 2015, is sufficient time for the paint industry to adapt. There are already boatyards that are copper free.

Persons Testifying: PRO: George Harris, Northwest Marine Trade Association (NMTA); Michael Grayum, Puget Sound Partnership; Bridget Moran, Department of Natural Resources; Bruce Wishart, People for Puget Sound; Jim Brown, NMTA, YachtCare.

CON: Neal Blossom, American Coatings Association, American Chemet Corporation.

OTHER: Don Seeberger, DOE.

House Amendment(s):

- Modifies the definition of recreational water vessel to mean any vessel that is less than 65 feet in length;
- Changes the date prohibiting the sale of new recreational water vessels with copper antifouling paint from those manufactured on or after January 1, 2017, to January 1, 2018;
- Modifies the prohibition of the sale of copper antifouling paint to apply to copper antifouling paint intended for use on recreational water vessels;
- Requires DOE to be responsible for the enforcement of the chapter and requires the civil penalties collected to be deposited into the state Toxics Control Account;
- Allows DOE to establish a statewide advisory committee on or after January 1, 2016, to assist DOE in implementation;
- Requires DOE to study how antifouling paints affect marine organisms and water quality, in addition to the requirement to survey the manufacturers of antifouling paints;
- Allows DOE to adopt rules; and
- Adds a severability clause.