

SENATE BILL REPORT

SB 5424

As of March 3, 2013

Title: An act relating to paint stewardship.

Brief Description: Concerning paint stewardship.

Sponsors: Senators Chase, Benton, McAuliffe, Roach, Ranker, Nelson, Shin, Kohl-Welles and Kline.

Brief History:

Committee Activity: Energy, Environment & Telecommunications: 2/13/13, 2/14/13, 2/21/13 [DP-WM, DNP].

Ways & Means: 2/27/13.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Ericksen, Chair; Ranker, Ranking Member; Billig, Chase, Cleveland and Litzow.

Minority Report: Do not pass.

Signed by Senator Brown.

Staff: Diane Smith (786-7410)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Sherry McNamara (786-7402)

Background: Paints are mixtures of pigments for color, resins for binding power, and other additives to make paints easier to apply, faster-drying, or resistant to mold and mildew. These ingredients are dissolved in either water or organic solvents. Although solvent-based paints, also called oil-based, are much more hazardous than water-based paints, also called acrylic or latex, many water-based paints contain some solvents.

Oil-based paint can be used for fuel blending. Latex paint can be made into recycled content paint; PLP which is a raw material used in cement manufacture; or PWP which is a biomass fuel product. The can that holds paint is also recyclable. Some county household hazardous

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waste facilities will collect usable paint to combine and resell or give away to residents. Disposal of paint in the trash or down storm or sewer drains can contaminate drinking water and ocean water.

Summary of Bill: No architectural paint may be sold in Washington by a producer or paint retailer unless the producer or stewardship organization is implementing an approved paint stewardship program (Program) plan (Plan). By January 2015, the producer or organization must submit a Plan to the Department of Ecology (DOE) for the implementation of a Program. By July 1, 2015, or three months after approval of the Plan, whichever occurs later, the Plan must be implemented

A stewardship organization is a nonprofit corporation created by producers to implement the Program. The stewardship organization submits the Plan to DOE, after which DOE must approve or deny the Plan within 120 days. The Plan must meet certain requirements in order to be approved.

Among these requirements for DOE approval is a funding scheme by which producers remit to the stewardship organization the stewardship assessment for each container of paint the producer sells in this state. The Plan must establish a uniform stewardship assessment for all paint sold in this state. The assessment must be approved by DOE and any surplus put back into the Program. No fee may be charged at the time of collection of leftover paint. The proposed assessment must be reviewed by an independent auditor who must recommend an amount for the assessment to DOE. DOE approves the assessment based on the Plan and the auditor's report.

DOE must impose an annual administrative fee sufficient to cover DOE's full costs to administer and enforce the program. The first annual fee is collected from each stewardship organization by June 30, 2015. If more than one stewardship organization implements a Program in Washington, the fee is divided equally between them.

Other requirements for the Plan include a description of how the Program will provide for statewide collection. As a minimum, statewide permanent collection sites must be operational within the first year of the program and be located so that at least 90 percent of Washington residents have a permanent collection site within a 15-mile radius. For residents without a permanent collection location within a 15-mile radius, the Plan must provide at least one collection event once a year. In addition, one permanent collection site must be provided for every 30,000 people in each population center. The plan must establish performance goals, describe how the post-consumer paint will be managed following the state's waste management hierarchy, list the processors that will be used, and describe educational and outreach efforts.

A Program must use existing facilities as follows: government-owned moderate-risk waste infrastructure for determining collections sites, and retail paint stores for collection sites, however, retailers are not required to serve as leftover paint collection facilities.

DOE enforces the chapter by means of adoption of administrative rules. Penalties range from \$1,000 per day per violation to \$10,000 per day per violation. An account is created in

the state treasury in which to deposit all monies received from producers and stewardship organizations.

DOE must post a list of producers and brands that are covered by an approved plan on its website. Wholesalers and retailers must monitor this site.

Immunity is provided from state antitrust, restraint of trade, and unfair trade practices laws for the limited purpose of establishing and operating a Program.

Beginning October 15, the first year or partial year of operations and annually thereafter, the producer or stewardship organization must submit a report to DOE for use by DOE in its annual plan review. Proprietary information in the report is exempt from public disclosure.

The Act is void if a national system is established by federal law. The authority of the Washington Utilities and Transportation Commission to regulate collection of solid waste is not changed or limited. The authority of a city or town to provide the service itself or by contract is not limited or changed.

The decisions made by DOE are appealed to the Pollution Control Hearings Board.

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 (Energy, Environment & Telecommunications):

PRO: This bill is an example of the golden rule between generations. It is another step toward producer responsibility for used products and helps applicators as well as our consumers and the environment. The up-front money comes from industry, while the consumer finances the program in the end. The retail program is well accepted by customers and store managers. Paint, including latex paint, is a toxic and hard-to-handle product. Many local governments do not take paint anymore for this reason, with statewide latex paint collections being down 44 percent since 2007. The bill will increase latex paint collection by 205 percent within the first three years' operation. Passage of this bill would save Kitsap county \$125,000 per year, while saving all local governments \$1.2 million per year. It would free up state grant money that now subsidizes household hazardous waste programs. The product stewardship organization pays fees sufficient to cover DOE's cost to implement this bill. Collection sites will be expanded increasing the estimated gallons of available paint collected by 87 percent.

CON: Paint is neither toxic nor hard to handle. The best option for handling paint is in place now using local infrastructure. This bill is expensive for consumers and leaves a large percentage of paint going to landfills as it does in Oregon.

Persons Testifying (Energy, Environment & Telecommunications): PRO: Senator Chase, prime sponsor; Laurie Davies, DOE; Rick Gilbert, Kitsap County; Suellen Mele, Zero Waste WA; John Knox, BJ's Paint 'N Place; Steve Dearborn, Miller Paint; Chester Baldwin, Pacific NW Paint Counsel; Jim Quinn, Portland Metro.

CON: Vicki Christophersen, WA Refuse and Recycling Assn.

Signed In, Unable to Testify & Submitted Written Testimony: Terry Thomas, Thurston County Solid Waste.

Staff Summary of Public Testimony (Ways & Means): PRO: The general public should not be subsidizing the waste stream of a particular product. The producers and manufacturers of the product should be responsible and pay for the waste stream. The bill makes the industry step up and take responsibility for implementing this program. It is right for the environment and it meets customers' needs in a cost-effective way. Of the residents in this state, 60 percent live in counties that do not take latex paint because it is toxic and hard to handle. The response to customers who want to recycle their paint is to take it home and let it dry out; that is not customer service. Product stewardship makes sense because the industry affected by it supports it. Throwing away a recyclable product does not make sense. Everyone is paying for the recycling. There are counties who are not able to pay for the cost of collection. This bill ties the product with the product management. If you buy the paint, you pay for the disposal. This bill provides wide ranging benefits, including convenience and cost effectiveness. DOE supports the concept of producer responsibility for products that are difficult to manage and toxic waste; paint is both. This bill will increase the opportunities for individuals to recycle their paint and reduces the burden on local government to provide and pay for the recycling.

CON: The experience in Oregon with this program has demonstrated that the dollars do not add up; it is an expensive program and not effective. The recycling infrastructure is in place and available; this stewardship program is not needed.

OTHER: The main concern with the bill is that we are frontloading the costs of recycling of this product.

Persons Testifying (Ways & Means): PRO: Senator Chase, prime sponsor; Terri Thomas, Thurston County Solid Waste; Rick Gilbert, Kitsap County; Steve Dearborn, Miller Paint Co.; Megan Warfield, DOE.

CON: Vicki Christopherson, WA Refuse and Recycling Assn.; Jerry Smedes, Basin Disposal, Inc., Emerald Services.

OTHER: Mark Johnson, WA Retail Assn.