

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 332 (Delegate Lafferty, *et al.*)

Environment and Transportation and
 Economic Matters

Environment - Paint Stewardship Program

This bill requires a producer of architectural paint sold at retail in the State, or a representative organization acting on behalf of a producer, to (1) submit, by April 1, 2017, a plan for the establishment of a Paint Stewardship Program to the Maryland Department of the Environment (MDE) for approval; (2) pay a plan review fee to cover MDE’s costs; and (3) implement the program by October 1, 2017. The bill (1) requires MDE to review and approve plans; (2) establishes a uniform paint stewardship assessment for architectural paint sold in the State to cover program implementation costs; and (3) prohibits, beginning October 1, 2017, a producer or retailer from selling or offering to sell a brand of architectural paint unless the producer or its representative is implementing an approved paint stewardship program. The bill also establishes reporting requirements.

Fiscal Summary

State Effect: Special fund expenditures increase by \$15,800 in FY 2017 for MDE compliance and enforcement; plan review costs in FY 2017 (and associated special fund revenues from plan review fees) are anticipated to be minimal. Future year administrative expenditures are annualized and reflect ongoing costs through FY 2019. State expenditures (multiple fund types) increase minimally beginning in FY 2018 to pay paint stewardship assessments in the purchase price of paint.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
SF Revenue	-	\$0	\$0	\$0	\$0
SF Expenditure	\$15,800	\$39,200	\$30,300	\$0	\$0
GF/SF Exp.	\$0	-	-	-	-
Net Effect	(\$15,800)	(\$39,200)	(\$30,300)	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential decrease in waste management costs beginning in FY 2018 at local landfills due to diversion of architectural paint waste under the program. Minimal increase in local government expenditures beginning in FY 2018 to pay paint stewardship assessments in the purchase price of paint. Local revenues are not materially affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Paint Stewardship Program Plan Development

The Paint Stewardship Program plan must minimize public-sector involvement in the management of postconsumer paint by (1) reducing its generation; (2) promoting its reuse and recycling; and (3) negotiating and executing agreements to collect, transport, reuse, recycle, process for resource recovery, and dispose of postconsumer paint. The plan must also provide for convenient and available statewide collection of postconsumer architectural paint, as specified. Among other things, participating producers and brands of architectural paint covered by the program must be identified.

The plan also must establish a uniform paint stewardship assessment for each container of architectural paint sold in the State and a mechanism for participating producers to remit the assessment to the representative organization to cover program costs. The total amount of the assessment may not exceed the costs of implementing the program, and assessments may be used only for program implementation.

MDE Plan Review

MDE must review the program plan and establish a plan review fee to cover MDE's plan review costs. Plan review fees are deposited in MDE's State Recycling Trust Fund. If MDE determines that the plan complies with the bill's requirements, MDE must approve the program. MDE also must list participating producers and brands on its website.

Implementation of the Paint Stewardship Program

By October 1, 2017, a producer or representative organization must implement a Paint Stewardship Program. Unless such a program is implemented by that date, a producer or retailer is prohibited from selling or offering to sell that brand of architectural paint to any person in the State.

The bill requires each producer, retailer, and distributor to add the paint stewardship assessment (described above) to the cost of all architectural paint sold to a retailer, distributor, and a consumer in the State, respectively.

A participating producer or a representative organization must provide consumers with educational materials that include information about available end-of-life management options for architectural paint offered through the program and information that notifies consumers about the assessment. A retailer may only order architectural paint from a participating producer or producer's agent that is listed on MDE's website.

Immunity from Liability

A producer or representative organization that organizes the collection, transport, and processing of postconsumer paint in accordance with an approved program is immune from liability for any claim of a violation of antitrust, restraint of trade, or unfair trade practice arising from conduct undertaken in accordance with the program.

Reporting Requirements

Beginning December 1, 2017, and annually thereafter, a producer or representative organization must submit a report to MDE that includes (1) a description of the methods used to collect, transport, and process postconsumer paint in the State; (2) the volume of paint collected; (3) the volume and type of postconsumer paint collected by method of disposition, as specified; (4) the total cost of implementing the program, as determined by an independent financial audit funded by the paint stewardship assessment; and (5) samples of educational materials provided to consumers of architectural paint. Specified information is confidential and not subject to public inspection. MDE is authorized to release summary data, as specified.

Relevant Definitions

“Architectural paint” means interior and exterior architectural coatings sold in containers of five gallon or less. Industrial coatings, original equipment coatings, and specialty coatings are excluded. “Postconsumer paint” is unused architectural paint that is no longer wanted by the purchaser. A “distributor” is a company with a contractual relationship with one or more producers to market and sell architectural paint to retailers in the State. A “producer” is a manufacturer of architectural paint that sells, offers for sale, or distributes the paint in the State under the producers own name or brand. A “representative organization” is a nonprofit organization created by producers to implement the Paint Stewardship Program.

Current Law/Background: Household hazardous waste (HHW) is defined in Title 9 of the Environment Article of the Maryland Annotated Code as any waste material, including garbage or trash, derived from a household that would be listed as hazardous waste under the federal Resource Conservation and Recovery Act but for the fact that the waste is derived from a household. HHW may include agricultural chemicals, cleaning agents and solvents, paint, pesticides, and preservatives.

According to MDE, Maryland does not regulate HHW as hazardous waste, and federal law allows for the disposal of HHW in household trash. However, due to the potential for HHW to cause physical injury, contaminate septic tanks or wastewater treatment systems, and present hazards to children and pets, MDE recommends the proper recycling and disposal of HHW materials at local HHW collection programs.

MDE reports that several Maryland counties have programs in place to collect HHW such as mercury, paint, paint thinner, pesticides, herbicides, batteries, and to a lesser extent, medications. However, some counties collect HHW only once each year. MDE reported in its 2014 *Maryland Solid Waste Management and Diversion Report* that 13 of Maryland’s 24 counties (including Baltimore City) provide for paint recycling.

According to MDE, eight states and the District of Columbia have passed paint stewardship legislation (California, Colorado, Connecticut, Maine, Minnesota, Oregon, Rhode Island, and Vermont) and all of those states (except the District of Columbia) are currently administering stewardship programs. This bill is similar to the legislation that has been enacted in other states.

In the states that have a paint stewardship program in place, producers fulfill their obligations through a program plan submitted and implemented by PaintCare, a nonprofit representative organization. The paint stewardship assessment in all states is as follows:

Container Size	Stewardship Assessment (per container sold)
½ pint or smaller	\$0
½ pint to less than 1 gallon	0.35
1 gallon	0.75
Larger than 1 gallon	1.60

PaintCare estimates that 10% of all paint sold in a given year becomes “postconsumer” (unused and unwanted). In states that have a paint stewardship program, collection occurs through a combination of retailer sites, local government-operated collection sites (e.g., household hazardous waste collection sites), and special collection events. PaintCare also collects paint directly from certain large generators. Retailer and local government participation in the program is voluntary.

State Fiscal Effect:

MDE General Program Administration Costs

Special fund expenditures from the State Recycling Trust Fund increase by \$15,785 in fiscal 2017, which accounts for the program’s April 1, 2017 start-date. This estimate reflects the cost of hiring one contractual environmental compliance specialist to conduct compliance and enforcement activities, maintain the listing of compliant producers on the website, and accept and track annual reports. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses, including travel. The estimate does not include costs associated with MDE’s plan review, which are discussed below.

	<u>FY 2017</u>	<u>FY 2018</u>
Contractual Position	1	
Salary and Fringe Benefits	\$9,999	\$37,369
Operating Expenses	<u>5,789</u>	<u>1,808</u>
Total FY 2017 MDE Expenditures	\$15,785	\$39,177

MDE advises that the contractual environmental compliance specialist is only needed to set up the program during the first two years that the program is operational. Although the bill’s effective date is October 1, 2016, it is assumed that new staff is not hired until April 1, 2017, which is the deadline for plan submission and when program coordination responsibilities for MDE are anticipated to begin.

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenditures, including travel costs. Beginning in fiscal 2020, MDE assumes it can implement the bill’s requirements with existing budgeted resources and staff and that the contractual employee is no longer necessary.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

MDE Plan Review

MDE plans to use existing staff to conduct the required review of the proposed Paint Stewardship Program Plan. Further, although producers may participate individually or jointly through a representative organization, similar programs in other states are generally only carried out by a single representative organization (PaintCare) under a single program plan. As such, MDE assumes, and the Department of Legislative Services concurs, that it is likely that MDE reviews only one plan under the bill and receives only one plan review

fee to cover its anticipated costs, which are minimal. Thus, special fund expenditures from the State Recycling Trust Fund increase minimally for MDE to review the proposed plan, and special fund revenues increase correspondingly from the plan review fee.

State Agencies as Consumers of Paint

State expenditures (multiple fund types) increase for any State agency that purchases paint as a result of the assessment established under the bill. As discussed above, and based on other state programs, this fee is likely no more than \$1.60 per container of paint. Although the total amount of paint purchased by the State is unknown, this analysis assumes that any increase in costs for State agencies to purchase paint is likely minimal.

Local Fiscal Effect: Waste management costs at local landfills may decrease as a result of the diversion of architectural paint waste under the Paint Stewardship Program. Further, costs may decrease for local governments that currently collect paint and choose to participate in a producer's stewardship program instead. For example, PaintCare reports that the majority of local governments surveyed under the California program saved money on paint management as a result of the Paint Stewardship Program and that the HHW programs in that state report cost savings ranging from \$2,750 to \$800,000 per year.

In addition, as a consumer of paint, any local government agency that purchases paint must pay the paint stewardship assessment established as a result of the bill. Thus, local government expenditures for the purchase of paint increase minimally.

Small Business Effect: The bill results in potentially significant additional operational responsibilities for producers, retailers, and distributors of architectural paint in the State, as they are required to (1) add a paint stewardship assessment to the cost of all architectural paint sold and (2) account for those assessments and remit them to the representative organization. Producers and retailers must also (1) verify that all architectural paint sold in the State is in compliance with an approved program; (2) pay for independent audits, as required by the bill; and (3) submit required reports. Several retailers affected by the bill are likely considered small businesses.

As a consumer of paint, small businesses that purchase paint incur additional costs to pay the paint stewardship assessment established by the bill. On the other hand, small businesses may benefit from having viable options for disposing of and managing end-of-life paint.

Additional Information

Prior Introductions: None.

Cross File: SB 201 (Senator Conway) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of the Environment, PaintCare,
Department of Legislative Services

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