

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 168 (Senator Conway)
 Education, Health, and Environmental Affairs

Maryland 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 January 1, 2018, a plan for the establishment of a Paint Stewardship Program to the Maryland Department of the Environment (MDE) for approval; (2) implement the program within three months of plan approval; (3) submit annual reports; and (4) pay plan and annual report review fees to cover MDE’s costs. The bill (1) requires MDE to review and approve plans and review reports; (2) establishes a uniform paint stewardship assessment for architectural paint sold in the State; and (3) prohibits, by a specified time, 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 takes effect July 1, 2017.

Fiscal Summary

State Effect: Special fund expenditures increase by \$44,700 in FY 2019 and by \$41,000 in FY 2020 for MDE compliance and enforcement; beginning in FY 2021, MDE can implement the bill with existing resources. Plan review costs in FY 2018 and future year annual report review costs beginning in FY 2020 (and associated special fund revenues from fees) are anticipated to be minimal. State expenditures (multiple fund types) increase minimally beginning in FY 2019 to pay paint stewardship assessments.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
SF Revenue	-	\$0	-	-	-
SF Expenditure	-	\$44,700	\$41,000	-	-
GF/SF Exp.	\$0	-	-	-	-
Net Effect	\$0	(\$44,700)	(\$41,000)	-	-

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

Local Effect: Potential decrease in waste management costs beginning in FY 2019 at local landfills due to the diversion of architectural paint waste under the program. Minimal increase in local government expenditures beginning in FY 2019 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 and Related Assessment

The Paint Stewardship Program plan must minimize public-sector involvement in, and financial responsibility for, 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

Within three months of plan approval, a producer or representative organization must implement its Paint Stewardship Program. Beginning July 1, 2018, or three months after plan approval, whichever is later, a producer or retailer is prohibited from selling or offering to sell a brand of architectural paint to any person in the State unless the producer

of that brand, or a representative organization to which the producer is a member, is implementing an approved paint stewardship program.

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. Following the implementation of a Paint Stewardship Program, 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.

Annual Reports, MDE Review, and Annual Report Review Fees

Beginning December 1, 2019, 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 and administering 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.

MDE must review each annual report and evaluate the total costs of the program, including all expenses and revenues, to determine whether the paint stewardship assessment meets or exceeds the costs of the program. MDE must also determine whether the plan is being implemented according to the statutory requirements.

MDE must determine and establish a fee that covers the department's annual report review costs. The producer or representative organization that submits an annual report is required to pay the annual report review fee, which is deposited into the State Recycling Trust Fund.

Relevant Definitions

“Architectural paint” means interior and exterior architectural coatings sold in containers of five gallons 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 producer’s 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 reports that 13 of Maryland’s 24 counties (including Baltimore City) provide for paint recycling.

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 and 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 ranges depending on the size of the container and by state as follows:

<u>Container Size</u>	<u>Stewardship Assessment (per container sold)</u>
½ pint or smaller	\$0
½ pint to less than 1 gallon	0.35-0.49
1 gallon	0.75-0.99
Larger than 1 gallon	1.60-1.99

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. According to its website, [PaintCare](#) manages the paint according to a policy of “highest, best use” with recycling being the highest goal. Ultimately, PaintCare estimates that only 1% to 4% of collected paint is sent to a landfill.

State Fiscal Effect:

MDE General Program Administration Costs

Special fund expenditures from the State Recycling Trust Fund increase by \$44,677 in fiscal 2019, which accounts for the program’s earliest possible implementation date of July 1, 2018. This estimate reflects the cost of hiring one contractual environmental compliance specialist to conduct compliance and enforcement activities and to maintain the listing of compliant producers on the website. 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 or annual report review, which are discussed below.

Contractual Position	1
Salary and Fringe Benefits	\$37,512
Operating Expenses	<u>7,165</u>
Total FY 2019 MDE Expenditures	\$44,677

MDE advises that the contractual environmental compliance specialist is only needed during the first two years that the program is operational. Although the bill’s effective date is July 1, 2017, it is assumed that the new staff is not hired until July 1, 2018, which is when program implementation and coordination responsibilities for MDE are anticipated to begin.

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenditures, including travel costs. Beginning in fiscal 2021, 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 and Report Review

MDE plans to use existing staff to conduct the required review of the proposed Paint Stewardship Program Plan and annual reports. 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 and one annual report under the bill and receives only one plan review fee and one annual report 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 in fiscal 2018 and to review the annual reports beginning in fiscal 2020. Special fund revenues increase correspondingly from the plan review fee (fiscal 2018) and annual report review fees (annually beginning in fiscal 2020).

State Agencies as Consumers of Paint

State expenditures (multiple fund types) increase beginning in fiscal 2019 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 \$1.99 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 Expenditures: 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 beginning in fiscal 2019.

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: SB 201 of 2016, a similar bill, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 332, received a hearing in the House Environment and Transportation Committee, but no further action was taken.

Cross File: None.

Information Source(s): Baltimore, Charles, and Frederick counties; cities of Frederick and Havre de Grace; Maryland Department of the Environment; PaintCare; Product Stewardship Institute; Department of Legislative Services

Fiscal Note History: First Reader - January 26, 2017
mm/lgc

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