

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 143 (Senator West)
 Education, Health, and Environmental Affairs

Maryland Paint Stewardship

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, 2023, 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 MDE; (3) implement the program within six months after plan approval; (4) submit annual reports for MDE review; and (5) pay annual report review fees to MDE. The bill establishes (1) a uniform paint stewardship assessment for architectural paint sold in the State to cover program costs and (2) a prohibition on the sale of architectural paint unless the producer or its representative is implementing an approved paint stewardship program. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: Special fund expenditures increase by \$57,100 in FY 2024, by \$49,800 in FY 2025, and minimally in other years; special fund revenues increase correspondingly from plan review and annual report review fees. Minimal increase in State expenditures (multiple funds) for paint beginning in FY 2024.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
SF Revenue	-	\$57,100	\$49,800	-	-
SF Expenditure	-	57,100	49,800	-	-
GF/SF Exp.	\$0	-	-	-	-
Net Effect	0	(-)	(-)	(-)	(-)

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

Local Effect: Potential decrease in local waste management costs beginning in FY 2024. Minimal increase in local government expenditures for paint beginning in FY 2024. 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 paint, as specified.

A retailer may be identified as a postconsumer paint collection site if the retailer volunteers, is in compliance with all applicable laws and regulations, and the site location is consistent with maintaining a cost-effective network of postconsumer paint collection locations.

The plan also must establish a uniform paint stewardship assessment for all architectural paint sold in the State and a mechanism for participating producers to remit payment of 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. The assessment must be evaluated by an MDE-designated independent financial auditor, as specified, and the costs of any work performed by an independent financial auditor must be funded by the program.

Maryland Department of the Environment Plan Review

MDE must (1) review the program plan and the work product of the independent financial auditor and (2) establish a plan review fee to cover MDE's plan review costs, including associated costs for program compliance oversight, as determined by MDE. Plan review fees are deposited in MDE's State Recycling Trust Fund. The bill makes conforming changes to provisions governing the State Recycling Trust Fund.

If MDE determines that the plan, including the assessment, complies with the bill's requirements, MDE must approve the program. MDE must list participating producers and brands on its website.

Implementation of the Paint Stewardship Program

Within six months after plan approval, a producer or representative organization must implement its paint stewardship program. Beginning October 1, 2023, or six 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 consumer in the State, respectively.

A participating producer or a representative organization must provide consumers with educational materials regarding the program 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 the program, a retailer may only order architectural paint from a participating producer or producer's agent that is listed on MDE's website.

A postconsumer paint collection site that is identified in the plan may not charge an additional fee for the disposal of paint when it is offered for disposal.

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, Maryland Department of the Environment Review, and Annual Report Review Fees

Beginning April 1, 2024, 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 and by county, 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 approve the annual report

if the report, including the paint stewardship assessment, complies with the bill's requirements. The producer or representative organization must make the approved annual report available to the public.

The producer or representative organization that submits an annual report is required to pay an annual report review fee to MDE. Annual report review fees are deposited in MDE's State Recycling Trust Fund. The report review fee must cover MDE's costs of reviewing the annual reports, including associated costs for program compliance oversight, as determined by MDE. The bill makes conforming changes to provisions governing 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 a paint stewardship program.

Current Law: 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.

State Expenditures:

Maryland Department of the Environment General Program Administration Costs

Special fund expenditures from the State Recycling Trust Fund increase by \$57,086 in fiscal 2024, which accounts for the program’s earliest possible implementation date of July 1, 2023. 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 MDE’s 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	1.0
Salary and Fringe Benefits	\$43,272
Operating Expenses	<u>13,814</u>
Total FY 2024 MDE Expenditures	\$57,086

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 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, 2022, it is assumed that the new staff is not hired until July 1, 2023, which is when program implementation and coordination responsibilities for MDE are anticipated to begin.

Future year expenditures reflect a salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses, including travel. Beginning in fiscal 2026, MDE advises that it can implement the bill’s requirements with existing budgeted resources and that the contractual employee is no longer necessary.

Maryland Department of the Environment Plan and Report Review

MDE plans to use existing staff to conduct the required review of the proposed program plan and the 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 (in fiscal 2023) and one annual report each year. Thus, special fund expenditures from the State Recycling Trust Fund increase minimally

for MDE to review the proposed plan in fiscal 2023 and to review the annual reports beginning in fiscal 2024.

State Agencies as Consumers of Paint

State expenditures (multiple fund types) increase beginning in fiscal 2024 for any State agency that purchases paint as a result of the assessment established under the bill. Based on similar programs in other states, 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.

State Revenues: MDE is required to set the plan review fee at a level to cover MDE's plan review and program compliance oversight costs. Similarly, the annual report review fee must cover MDE's costs to review the annual reports and for program compliance oversight. Thus, this analysis assumes that MDE's costs to implement the bill (as described above) are fully offset by plan review and annual report review fees. Accordingly, special fund revenues increase minimally in fiscal 2023, by \$57,086 in fiscal 2024, by \$49,815 in fiscal 2025, and minimally annually thereafter.

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. PaintCare reports that since the cost of managing postconsumer paint is passed on to everyone who purchases the paint, costs for paint management for local governments are reduced.

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 2024.

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 and (2) submit required reports. On the other hand, retailers who volunteer to act as postconsumer paint collection sites may benefit if they are able to attract additional customers to their stores as a result. 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: HB 127 of 2021 passed the House and passed second reading in the Senate but was recommitted to the Senate Education, Health, and Environmental Affairs Committee. HB 890 of 2020 passed the House with amendments and was referred to the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Similar legislation was also introduced in the 2017 session.

Designated Cross File: HB 18 (Delegate Boyce) - Environment and Transportation and Economic Matters.

Information Source(s): Garrett and Montgomery counties; Northeast Maryland Waste Disposal Authority; Maryland Municipal League; Maryland Department of the Environment; Department of General Services; PaintCare; Department of Legislative Services

Fiscal Note History: First Reader - January 23, 2022
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