

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 260

(Senator West, *et al.*)

Education, Energy, and the Environment

Environment and Transportation and
 Economic Matters

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 July 1, 2024, 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. MDE must conduct a cost-benefit review of the program and submit a related report. Specified existing penalty provisions apply to violations of the bill. **The bill takes effect July 1, 2023.**

Fiscal Summary

State Effect: No effect in FY 2024. Special fund expenditures increase by \$62,900 in FY 2025, by \$57,100 in FY 2026, 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 2025.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
SF Revenue	\$0	\$62,900	\$57,100	-	-
SF Expenditure	\$0	\$62,900	\$57,100	-	-
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 2025. Minimal increase in local government expenditures for paint beginning in FY 2025. 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 and sustaining the program, and assessments may be used only to implement and sustain the program. 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, and that it demonstrates a net benefit compared to collection programs available to consumers in 2022, MDE must approve the program. MDE must list participating producers and brands on its website.

The plan must be revised or amended and submitted to MDE for approval (1) every five years, on MDE's request or (2) when MDE requires a change to the amount of the paint stewardship assessment.

Implementation of the Paint Stewardship Program

Within six months after plan approval, a producer or representative organization must implement its paint stewardship program. Beginning January 1, 2025, 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, 2025, 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 in each county in the State; (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 sustaining the program, and the total fees collected in each county in the State, as determined by the 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.

The producer or representative organization must also make certain information about the volume and type of postconsumer paint collected in the State available to each county in a manner that provides the county with sufficient time to include the information in its solid waste plan update that it provides to MDE pursuant to current law.

Cost-Benefit Review and Related Report

By December 1, 2027, MDE must review the costs and benefits of the program, comparing the Maryland program to paint stewardship programs and extended producer responsibility programs in other states and making any necessary recommendations for improvements to the Maryland program. MDE must submit a report of the findings of the review to the Governor and specified committees of the General Assembly.

Enforcement/Penalties

Existing civil and administrative penalty provisions under § 9-342 of the Environment Article apply to enforce violations of the bill. MDE must deposit any penalty collected pursuant to this provision 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 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.

Civil and Administrative Penalties under § 9-342 of the Environment Article

Section 9-342 of the Environment Article establishes a civil penalty of up to \$10,000 for a violation of applicable statute, and any related rules, regulations, orders, or permits. Each day is a separate violation.

In addition, MDE may impose an administrative penalty of up to \$10,000 for each violation, but not exceeding \$100,000 total. Each day is a separate violation. An administrative penalty must be assessed with consideration given to several specified factors.

Maryland's Recycling Act and The Office of Recycling

Maryland's recycling policy is guided by the Maryland Recycling Act, which sets mandatory recycling rates for State government and local jurisdictions, as well as a voluntary statewide waste diversion goal of 60% and a voluntary statewide recycling goal of 55% by 2020. Each county (including Baltimore City), must recycle at least 20% or 35% of the county's solid waste stream, depending on the county's population. Each county (including Baltimore City) must also prepare a recycling plan that addresses how the jurisdiction will achieve its mandatory recycling rate. The plan must be submitted to MDE's Office of Recycling for approval when the jurisdiction submits its water and sewerage plan at least every 10 years. At least every 2 years, each county must also submit a progress report to MDE, which must include any revision of or amendment to the county plan that has been adopted.

MDE's Office of Recycling submits annual reports, in coordination with the Maryland Environmental Service, to the Governor and the General Assembly on specified information related to recycling in Maryland. Beginning in 2009, MDE has combined the Maryland Waste Diversion Activities Report and the Solid Waste Managed in Maryland Report into one report, the Maryland Solid Waste Management and Diversion Report.

State Recycling Trust Fund

The State Recycling Trust Fund is a special fund that is used to carry out the purposes of MDE's Land Management Administration and to provide grants to (1) counties to develop and implement local recycling plans; (2) counties that have addressed methods for the separate collection and recycling of covered electronic devices; and (3) municipalities to be used to implement local covered electronics device recycling programs.

State Expenditures: Although the bill takes effect July 1, 2023, it is assumed that program implementation and coordination responsibilities for MDE begin July 1, 2024, when the first plan must be submitted for review. Accordingly, there is no effect in fiscal 2024.

MDE advises that it needs to hire one permanent environmental compliance specialist to implement the bill. However, the Department of Legislative Services (DLS) disagrees because (1) it is anticipated that most of the additional workload under the bill occurs in the first few years of implementation; (2) MDE likely only reviews one initial plan, one annual report, and one revised/amended plan every five years, as discussed further

below; and (3) MDE anticipates reviewing annual reports and program plans and conducting the required cost-benefit review with existing staff. Thus, DLS advises that the added responsibilities incurred by this legislation may be performed by a contractual employee instead.

Accordingly, special fund expenditures from the State Recycling Trust Fund increase by \$62,884 in fiscal 2025, which reflects a July 1, 2024 implementation date. 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	\$50,249
Operating Expenses	<u>12,635</u>
Total FY 2025 MDE Expenditures	\$62,844

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.

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 2027, it is anticipated that MDE 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 required reviews of proposed program plans 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, DLS assumes that it is likely that MDE reviews only one initial plan (in fiscal 2025), one annual report each year, and one revised/amended plan every five years. Thus, special fund expenditures from the State Recycling Trust Fund increase minimally for MDE to review the initial plan in fiscal 2025 and review the annual reports beginning in fiscal 2025.

State Agencies as Consumers of Paint

State expenditures (multiple fund types) increase beginning in fiscal 2025 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 by \$62,884 in fiscal 2025, by \$57,081 in fiscal 2026, and minimally annually thereafter.

The application of existing penalty provisions is not anticipated to materially affect special fund revenues.

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 2025.

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.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 143 and HB 18 of 2022; HB 127 of 2021; and HB 890 of 2020.

Designated Cross File: HB 255 (Delegate Boyce, *et al.*) - Environment and Transportation and Economic Matters.

Information Source(s): Baltimore City; Caroline, Howard, and Prince George's counties; Maryland Association of Counties; Northeast Maryland Waste Disposal Authority; Maryland Municipal League; Maryland Department of the Environment; Department of General Services; Department of Legislative Services

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