



House of Representatives

File No. 643

General Assembly

February Session, 2010

(Reprint of File No. 96)

Substitute House Bill No. 5122
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 26, 2010

AN ACT ESTABLISHING A PAINT STEWARDSHIP PROGRAM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) For purposes of this section
2 and section 2 of this act:

3 (1) "Architectural paint" means interior and exterior architectural
4 coatings sold in containers of five gallons or less. Architectural paint
5 does not include industrial, original equipment or specialty coatings.

6 (2) "Distributor" means a company that has a contractual
7 relationship with one or more producers to market and sell
8 architectural paint to retailers in this state.

9 (3) "Environmentally sound management practices" means
10 procedures for the collection, storage, transportation, reuse, recycling
11 and disposal of architectural paint, to be implemented by the
12 representative organization or such representative organization's
13 contracted partners to ensure compliance with all applicable federal,
14 state and local laws, regulations and ordinances and the protection of

15 human health and the environment. Environmentally sound
16 management practices include, but are not limited to, record keeping,
17 the tracking and documenting of the fate of post consumer paint in
18 and outside of this state, and environmental liability coverage for
19 professional services and for the operations of the contractors working
20 on behalf of the representative organization.

21 (4) "Energy recovery" means the process by which all or a portion of
22 solid waste materials are processed or combusted in order to utilize the
23 heat content or other forms of energy derived from such solid waste
24 materials.

25 (5) "Paint stewardship assessment" means the amount added to the
26 purchase price of architectural paint sold in this state that is necessary
27 to cover the cost of collecting, transporting and processing
28 postconsumer paint by the representative organization pursuant to the
29 paint stewardship program.

30 (6) "Postconsumer paint" means architectural paint that is not used
31 and that is no longer wanted by a purchaser of architectural paint.

32 (7) "Producer" means a manufacturer of architectural paint who
33 sells, offers for sale, distributes or contracts to distribute architectural
34 paint in this state.

35 (8) "Recycling" means any process by which discarded products,
36 components and by-products are transformed into new, usable or
37 marketable materials in a manner in which the original products may
38 lose their identity. Recycling does not include energy recovery.

39 (9) "Retailer" means any person that offers architectural paint for
40 sale at retail in this state.

41 (10) "Reuse" means the return of a product into the economic stream
42 for use in the same kind of application as the product was originally
43 intended to be used, without a change in the product's identity.

44 (11) "Commissioner" means the Commissioner of Environmental

45 Protection.

46 (12) "Sell" or "sale" means any transfer of title for consideration
47 including, but not limited to, remote sales conducted through sales
48 outlets, catalogues, or the Internet or any other similar electronic
49 means.

50 (13) "Representative organization" means the nonprofit organization
51 created by producers to implement the paint stewardship program
52 described in section 2 of this act.

53 (14) "Department" means the Department of Environmental
54 Protection.

55 Sec. 2. (NEW) (*Effective from passage*) (a) (1) On or before March 1,
56 2013, each producer of architectural paint sold at retail in this state
57 shall join the representative organization and such representative
58 organization shall submit a plan for the establishment of a paint
59 stewardship program described in this subdivision to the
60 commissioner for approval. Such paint stewardship program shall: (A)
61 Minimize public sector involvement in the management of
62 postconsumer paint by: (i) Reducing the generation of postconsumer
63 paint, (ii) promoting the reuse and recycling of postconsumer paint,
64 and (iii) negotiating and executing agreements to collect, transport,
65 reuse, recycle, burn for energy recovery and dispose of postconsumer
66 paint using environmentally sound management practices; (B) provide
67 for convenient and available state-wide collection of postconsumer
68 paint that, at a minimum, provides for collection rates and convenience
69 equal to, or greater than, the collection programs available to
70 consumers prior to such paint stewardship program; (C) propose a
71 paint stewardship assessment; and (D) include a funding mechanism
72 that requires each producer that participates in the representative
73 organization to remit to the representative organization payment of
74 the paint stewardship assessment for each container of architectural
75 paint such producer sells in this state.

76 (2) The plan submitted pursuant to subdivision (1) of this subsection

77 shall: (A) Identify each producer participating in the paint stewardship
78 program and the brands of architectural paint sold in this state covered
79 by the program; and (B) address the coordination of the paint
80 stewardship program with existing household hazardous waste
81 collection infrastructure, as much as is reasonably feasible and
82 mutually agreeable.

83 (3) The commissioner may approve the plan for the establishment of
84 a paint stewardship program that meets the requirements of
85 subdivisions (1) and (2) of this subsection. Not later than two months
86 after submission of the plan pursuant to this subsection, the
87 commissioner shall make a determination whether or not to approve
88 the plan.

89 (4) Not later than two months after the date the plan is approved
90 pursuant to subdivision (3) of this subsection, the representative
91 organization shall implement the paint stewardship program.

92 (b) (1) On or before March 1, 2013, and every two years thereafter,
93 the representative organization shall propose a uniform paint
94 stewardship assessment for all architectural paint sold in this state.
95 Such proposed paint stewardship assessment shall be reviewed by an
96 independent auditor to assure that such assessment does not exceed
97 the costs of the paint stewardship program described in subsection (a)
98 of this section and such independent auditor shall recommend an
99 amount for such paint stewardship assessment to the department. The
100 department shall be responsible for the approval of such paint
101 stewardship assessment. Such independent auditor shall be selected by
102 the department and the department shall be responsible for the review
103 of the work product of such independent auditor, including, but not
104 limited to, the review of such auditor's assessment of the bid and
105 purchase procedures utilized by the representative organization to
106 implement such program. The department may terminate the services
107 of any such independent auditor. Not less than once every five years,
108 the department shall select a different independent auditor to perform
109 the duties described in this subdivision and subdivision (4) of

110 subsection (h) of this section. The cost of any work performed by such
111 independent auditor pursuant to the provisions of this subdivision and
112 subdivision (4) of subsection (h) of this section shall be funded by the
113 paint stewardship assessment.

114 (2) On and after the date of implementation of the paint stewardship
115 program pursuant to subdivision (4) of subsection (a) of this section,
116 the paint stewardship assessment, as established pursuant to
117 subdivision (1) of this subsection, shall be added to the cost of all
118 architectural paint sold to retailers and distributors in this state by each
119 producer. On and after such implementation date, each retailer or
120 distributor, as applicable, shall add the amount of such paint
121 stewardship assessment to the purchase price of all architectural paint
122 sold in this state.

123 (c) Any retailer may participate, on a voluntary basis, as a paint
124 collection point pursuant to such paint stewardship program and in
125 accordance with any applicable provision of law or regulation.

126 (d) Each producer and the representative organization shall be
127 immune from liability for any claim of a violation of antitrust law or
128 unfair trade practice if such conduct is a violation of antitrust law, to
129 the extent such producer or representative organization is exercising
130 authority pursuant to the provisions of this section.

131 (e) Not later than the implementation date of the paint stewardship
132 program, the department shall list the names of participating
133 producers and the brands of architectural paint covered by such paint
134 stewardship program on its web site.

135 (f) (1) On and after the implementation date of the paint
136 stewardship program, no producer, distributor or retailer shall sell or
137 offer for sale architectural paint to any person in this state if the
138 producer of such architectural paint is not a member of the
139 representative organization.

140 (2) No retailer or distributor shall be found to be in violation of the

141 provisions of subdivision (1) of this subsection if, on the date the
142 architectural paint was ordered from the producer or its agent, the
143 producer or the subject brand of architectural paint was listed on the
144 department's web site in accordance with the provisions of subsection
145 (e) of this section.

146 (3) The commissioner may seek civil enforcement of the provisions
147 of this subsection pursuant to chapter 439 of the general statutes.

148 (g) Producers or the representative organization shall provide
149 consumers with educational materials regarding the paint stewardship
150 assessment and paint stewardship program. Such materials shall
151 include, but not be limited to, information regarding available end-of-
152 life management options for architectural paint offered through the
153 paint stewardship program and information that notifies consumers
154 that a charge for the operation of such paint stewardship program is
155 included in the purchase price of all architectural paint sold in this
156 state.

157 (h) On or before August 15, 2014, and annually thereafter, the
158 representative organization shall submit a report to the Commissioner
159 of Environmental Protection that details the paint stewardship
160 program. Such report shall include, but not be limited to: (1) A
161 description of the methods used to collect, transport and process
162 postconsumer paint in this state; (2) the volume of postconsumer paint
163 collected in this state; (3) the volume and type of postconsumer paint
164 collected in this state by method of disposition, including reuse,
165 recycling and other methods of processing; (4) the total cost of
166 implementing the program, as determined by an independent financial
167 audit, as performed by the independent auditor described in
168 subdivision (1) of subsection (b) of this section and funded by the paint
169 stewardship assessment; (5) an evaluation of the operation of the
170 program's funding mechanism; and (6) samples of educational
171 materials provided to consumers of architectural paint and an
172 evaluation of the methods used to disseminate such materials.

173 (i) Not later than January 15, 2015, and biennially thereafter, the
174 Commissioner of Environmental Protection shall submit, in accordance
175 with section 11-4a of the general statutes, a report to the joint standing
176 committee of the General Assembly having cognizance of matters
177 relating to the environment that describes the results of the paint
178 stewardship program and recommends modifications to improve the
179 functioning and efficiency of such program, as necessary.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact:

Municipalities	Effect	FY 11 \$	FY 12 \$
Various Municipalities	Savings	See Below	See Below

Explanation

The bill requires that certain paint manufacturers establish and implement a postconsumer paint recycling program by September 1, 2011. Currently, municipalities are responsible for the disposal of oil-based paint through household hazardous waste (HHW) collections (approximately 155 of the state's municipalities participate in HHW programs). It is estimated that municipalities who operate HHW programs collectively spend over \$500,000 annually to dispose of oil-based paint.

Since the disposal of oil-based paint would be covered by the manufacturer recycling program under the bill's provisions, those municipalities operating HHW programs may collectively realize savings of over \$500,000 annually. Individual savings would vary by municipality, depending on HHW costs and the amount of oil-based paint recycled.

House "A" requires that producers participate in a representative organization, and delays the deadline for establishing the program which does not result in a fiscal impact.

The Out Years

The annualized ongoing fiscal impact identified above would

continue into the future subject to inflation and the amount of oil-based paint recycled.

OLR Bill Analysis**sHB 5122 (as amended by House "A")******AN ACT ESTABLISHING A PAINT STEWARDSHIP PROGRAM.*****SUMMARY:**

This bill creates a "paint stewardship" program for the management of unwanted architectural paint in the state. It defines "architectural paint" as interior and exterior architectural coatings sold in containers of five gallons or less, but does not include industrial, original equipment, or specialty coatings. The program is funded through an assessment on each container of such paint sold in the state.

Under the bill, paint manufacturers are responsible for managing the program through the establishment of and participation in a paint stewardship representative organization. This organization must develop a plan that minimizes public sector involvement in management of unused paint and submit it to the Department of Environmental Protection (DEP) for approval.

The bill provides immunity from claims of antitrust violations to producers and the representative organization under certain conditions.

Under the bill, consumers must be provided with information about the program. It also establishes reporting requirements related to the program.

*House Amendment "A" replaces the original bill (File 96) with several changes including a requirement that producers participate in a representative organization and a delay, from September 1, 2011 to March 1, 2013, of the deadline for establishing the program.

EFFECTIVE DATE: Upon passage

DEFINITIONS

The bill defines “producer” as a manufacturer of architectural paint who sells, offers for sale, distributes, or contracts to distribute architectural paint in the state. “Sell” or “sale” means any transfer of title for consideration, including remote sales through sales outlets, catalogues, or the Internet or any other similar electronic means.

It defines “representative organization” as the nonprofit organization created by producers to implement the bill’s paint stewardship program.

“Recycling” means any process by which discarded products, components, and by-products are transformed into new, useable, or marketable materials in a manner in which the original products may lose their identity. It does not include energy recovery.

“Postconsumer paint” means architectural paint that is not used and is no longer wanted by the purchaser.

“Environmentally sound management practices” means procedures for the collection, storage, transportation, reuse, recycling, and disposal of architectural paint, implemented by the representative organization or its contracted partners to ensure compliance with all applicable federal, state, and local laws, regulations, and ordinances and the protection of human health and the environment. This includes record keeping, tracking and documenting the fate of postconsumer paint in and outside of Connecticut, and environmental liability coverage for professional services and for the operations of contractors working for the representative organization.

PAINT STEWARDSHIP PROGRAM

Program Establishment and Purposes

By March 1, 2013, the bill requires each producer of architectural paint sold at retail in Connecticut to join the representative organization which in turn must submit a plan for the establishment of

a paint stewardship program to the Department of Environmental Protection (DEP) commissioner for approval. The program must minimize public sector involvement in managing postconsumer paint by (1) reducing its generation; (2) promoting its reuse and recycling; and (3) negotiating and executing agreements to collect, transport, reuse, recycle, burn for energy recovery, and dispose of postconsumer paint using environmentally sound management practices.

The paint stewardship program must also (1) provide for convenient and available statewide collection of postconsumer paint that at least provides for collection rates and convenience equivalent to the collection programs currently available to consumers; (2) propose a paint stewardship assessment (see below); and (3) include a funding mechanism that requires each producer participating in the representative organization to remit to the organization payment of the assessment for each container of architectural paint the producer sells in Connecticut.

Plan Elements; DEP Approval

The representative organization's plan must identify each producer participating in the stewardship program and the brands of architectural paint sold in the state covered by the program. It must also address the coordination of the paint stewardship program with existing household hazardous waste collection infrastructure, as is reasonably feasible and mutually agreeable.

Under the bill, the DEP commissioner may approve the plan if it meets the requirements listed above. The commissioner must determine whether to approve the plan within two months of its submission. The representative organization must implement the paint stewardship program within two months of DEP's approval.

By the time of program implementation, DEP must list on its website the names of participating producers and the brands of paint covered by the program.

UNIFORM PAINT STEWARDSHIP ASSESSMENT

By March 1, 2013 and every two years afterward, the bill requires the representative organization to propose a uniform assessment for all architectural paint sold in the state. The proposed assessment must be reviewed by an independent auditor to assure that it does not exceed the costs of the paint stewardship program. The auditor must recommend an assessment amount to DEP and the department is responsible for approving it. This assessment becomes part of the cost of all architectural paint that manufacturers sell to state retailers and distributors.

DEP must select the auditor and is responsible for reviewing the auditor's work, including the auditor's assessment of the bid and purchase procedures used by the representative organization to implement the program. DEP can terminate the auditor's services. The bill requires DEP to select a different auditor at least once every five years. The paint stewardship program assessment funds the cost of the auditor.

Under the bill, the assessment must be added to the cost of all architectural paint sold to retailers and distributors in the state by each producer beginning on the date of the program's implementation. Once implementation begins, each retailer or distributor must add the amount of the assessment to the purchase price of all architectural paint sold in Connecticut.

Once the program is implemented, a producer, distributor, or retailer may not sell or offer for sale architectural paint in the state if the producer is not a member of the representative organization. A retailer or distributor is not considered to have violated this provision if, on the date the paint was ordered from the producer or its agent, the producer or the brand of paint was listed on DEP's website according to the bill's provisions. DEP may seek civil enforcement of these provisions.

PAINT COLLECTION POINT

Under the bill, any retailer may voluntarily participate as a paint collection point under the program and according to applicable law and regulation.

CONSUMER INFORMATION

The bill requires producers or the representative organization to give consumers educational materials on the program and assessment. This must include information (1) notifying the consumer that a charge to operate the program is included in the paint's purchase price and (2) concerning available end-of-life management options for architectural paint offered through the stewardship program.

LIABILITY PROTECTION

Under the bill, to the extent the producer or organization is exercising authority according to the bill's provisions, it is immune from liability for any claims of antitrust law violation or unfair trade practice if such conduct is a violation of antitrust law.

REPORTS

By August 15, 2014 and annually afterward, the bill requires the representative organization to report to DEP on the program. The report must include:

1. a description of the methods used to collect, transport, and process postconsumer paint in the state;
2. the volume and type of paint collected by method of disposition, including reuse, recycling, and other processing methods;
3. the total cost of implementing the program, as determined by an independent financial audit by the independent auditor and funded by the paint stewardship assessment;
4. an evaluation of the program's funding mechanism; and
5. samples of educational materials provided to consumers and an

evaluation of the methods used to disseminate them.

By January 15, 2015 and biennially afterward, DEP must submit a report to the Environment Committee on program results and any recommendations for improving it.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 26 Nay 3 (03/05/2010)

Judiciary Committee

Joint Favorable

Yea 36 Nay 1 (04/14/2010)