

A-Engrossed
House Bill 3037

Ordered by the House April 30
Including House Amendments dated April 30

Sponsored by COMMITTEE ON SUSTAINABILITY AND ECONOMIC DEVELOPMENT

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Creates pilot program for **architectural** paint stewardship. [*Directs manufacturers of paint to create program. Requires paint manufacturers to report to Director of Department of Environmental Quality.*]

Establishes Product Stewardship Fund. Continuously appropriates moneys in fund to Department of Environmental Quality for purpose of implementing pilot program.

Sunsetts [*January 2*] **June 30, 2014.**

Declaring emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to paint stewardship; appropriating money; and declaring an emergency.

3 The Legislative Assembly finds that an architectural paint stewardship pilot program would al-
4 low paint manufacturers to:

5 (1) Establish an environmentally sound and cost-effective architectural paint stewardship pro-
6 gram;

7 (2) Undertake responsibility for the development and implementation of strategies to reduce the
8 generation of post-consumer architectural paint;

9 (3) Promote the reuse of post-consumer architectural paint; and

10 (4) Collect, transport and process post-consumer architectural paint for end-of-product-life man-
11 agement.

12 **Be It Enacted by the People of the State of Oregon:**

13 **SECTION 1. Findings. The Legislative Assembly finds that it is in the best interest of this**
14 **state for architectural paint manufacturers to finance and manage an environmentally**
15 **sound, cost-effective architectural paint stewardship pilot program, undertaking responsibil-**
16 **ity for the development and implementation of strategies to reduce the generation of post-**
17 **consumer architectural paint, promote the reuse of post-consumer architectural paint and**
18 **collect, transport and process post-consumer architectural paint for end-of-product-life**
19 **management, including reuse, recycling, energy recovery and disposal.**

20 **SECTION 2. Definitions. As used in sections 1 to 10 of this 2009 Act:**

21 (1)(a) **"Architectural paint"** means interior and exterior architectural coatings sold in
22 containers of five gallons or less.

23 (b) **"Architectural paint"** does not mean industrial, original equipment or specialty
24 coatings.

25 (2) **"Architectural paint stewardship assessment"** means the amount added to the pur-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 chase price of architectural paint sold in this state necessary to cover the cost of collecting,
2 transporting and processing the post-consumer architectural paint managed through a
3 statewide architectural paint stewardship pilot program.

4 (3) "Distributor" means a company that has a contractual relationship with one or more
5 producers to market and sell architectural paint to retailers in this state.

6 (4) "Energy recovery" means recovery in which all or a part of the solid waste materials
7 of architectural paint are processed to use the heat content or other forms of energy from
8 the solid waste materials.

9 (5) "Post-consumer architectural paint" means architectural paint not used and no
10 longer wanted by its purchaser.

11 (6) "Producer" means a person that manufactures architectural paint that is sold or of-
12 fered for sale in this state.

13 (7)(a) "Recycling" means any process by which discarded products, components and by-
14 products are transformed into new usable or marketable materials in a manner in which the
15 products may lose their original composition.

16 (b) "Recycling" does not include energy recovery or energy generation by means of
17 combusting discarded products, components and by-products with or without other waste
18 products from post-consumer architectural paint.

19 (8) "Retailer" means any person that sells or offers for sale architectural paint at retail
20 in this state.

21 (9) "Reuse" means the return of a product into the economic stream for use in the same
22 kind of application intended for the use of the product, without a change in the product's
23 original composition.

24 (10) "Sell" or "sale" means any transfer of title for consideration, including remote sales
25 conducted through sales outlets, catalogs or the Internet or through any other similar elec-
26 tronic means.

27 (11) "Sound management practices" means policies to be implemented by a producer or
28 a stewardship organization to ensure compliance with all applicable laws and that address:

29 (a) Adequate record keeping;

30 (b) The tracking and documentation of the use, reuse or disposal of post-consumer ar-
31 chitectural paint within this state and outside this state; and

32 (c) Adequate environmental liability coverage for professional services and for the oper-
33 ations of contractors working for producers or a stewardship organization.

34 (12) "Stewardship organization" means a corporation, nonprofit organization or other le-
35 gal entity created by a producer or group of producers to implement the architectural paint
36 stewardship pilot program described in sections 1 to 10 of this 2009 Act.

37 **SECTION 3. Participation in architectural paint stewardship pilot program.** (1) A pro-
38 ducer or retailer may not sell or offer for sale architectural paint to any person in this state
39 unless the producer is participating in a statewide architectural paint stewardship pilot pro-
40 gram organized by a stewardship organization. A retailer is in compliance with this section
41 if, on the date the architectural paint was ordered from the producer or its agent, the
42 website maintained by the Department of Environmental Quality lists the producer, along
43 with the producer's product brand, as participating in an architectural paint stewardship
44 pilot program.

45 (2) At the time of sale to a consumer, a producer or retailer selling or offering for sale

1 architectural paint must provide the consumer with information on available end-of-
2 product-life management options offered through an architectural paint stewardship pilot
3 program.

4 **SECTION 4. Architectural paint stewardship pilot program.** (1) No later than March 1,
5 2010, a stewardship organization must submit a plan for a statewide architectural paint
6 stewardship pilot program to the Director of the Department of Environmental Quality for
7 approval.

8 (2) The plan must:

9 (a) Provide for convenient and available statewide collection of post-consumer architec-
10 tural paint in urban and rural areas of this state;

11 (b) Identify each producer participating in the program and the brands of architectural
12 paint sold by each producer; and

13 (c) Include a funding mechanism whereby each architectural paint producer remits to the
14 stewardship organization payment of an architectural paint stewardship assessment for each
15 container of architectural paint the producer sells in this state. The architectural paint
16 stewardship assessment must be added to the cost of all architectural paint sold to Oregon
17 retailers and distributors, and each Oregon retailer or distributor shall add the assessment
18 to the purchase price of all architectural paint sold in this state. The architectural paint
19 stewardship assessment may not be described as an Oregon recycling fee at the point of re-
20 tail, and a fee may not be charged to the consumer at the point of collection of post-
21 consumer architectural paint. To ensure that the funding mechanism is equitable and
22 sustainable, a uniform architectural paint stewardship assessment must be established for
23 all architectural paint sold in this state. The architectural paint stewardship assessment
24 must be approved by the director as part of the plan and must be sufficient to recover, but
25 not exceed, the costs of the architectural paint stewardship pilot program.

26 (3) Beginning no later than July 1, 2010, or two months after the plan is approved under
27 subsection (1) of this section, whichever occurs first, the stewardship organization must:

28 (a) Implement an architectural paint stewardship pilot program described in the plan;

29 (b) Provide for the development and implementation of strategies to reduce the gener-
30 ation of post-consumer architectural paint; and

31 (c) Promote the reuse of post-consumer architectural paint and undertake the responsi-
32 bility of negotiating and executing contracts to collect, transport, recycle and process post-
33 consumer architectural paint for end-of-product-life management that includes recycling,
34 energy recovery and disposal using sound management practices.

35 (4) A stewardship organization shall promote the architectural paint stewardship pilot
36 program and provide consumers with educational materials describing collection opportu-
37 nities for post-consumer architectural paint and information promoting waste prevention,
38 reuse and recycling. The educational materials must also make consumers aware that fund-
39 ing for the operation of the architectural paint stewardship pilot program has been added to
40 the purchase price of all architectural paint sold in this state.

41 **SECTION 5. Conduct authorized.** (1) It is the intent of this section that a stewardship
42 organization operating an architectural paint stewardship pilot program pursuant to sections
43 1 to 10 of this 2009 Act, approved by the Department of Environmental Quality and subject
44 to the regulatory supervision of the department, is granted immunity from federal and state
45 antitrust laws for the limited purpose of establishing and operating an architectural paint

1 stewardship pilot program. The activities of the stewardship organization that comply with
2 the provisions of this section may not be considered to be in restraint of trade, a conspiracy
3 or combination or any other unlawful activity in violation of any provisions of ORS 646.705
4 to 646.826 or federal antitrust laws.

5 (2) The department shall actively supervise the conduct of the stewardship organization,
6 including but not limited to conduct related to payments made by architectural paint pro-
7 ducers to the stewardship organization for the architectural paint stewardship assessment
8 specified in section 4 of this 2009 Act. The department may require the stewardship organ-
9 ization to take whatever action the department considers necessary to:

10 (a) Ensure that the stewardship organization is engaging in conduct authorized under
11 this section;

12 (b) Ensure that the policies of this state are being fulfilled by an architectural paint
13 stewardship pilot program; and

14 (c) Enjoin conduct that is not authorized by the department or conduct that the depart-
15 ment finds does not advance the interests of this state in carrying out the architectural
16 paint stewardship pilot program.

17 (3) The Director of the Department of Environmental Quality may designate employees
18 of the department to carry out the responsibility of actively supervising the conduct of the
19 stewardship organization.

20 (4) The Environmental Quality Commission may adopt rules to carry out the purposes
21 of this section.

22 **SECTION 6. Reports.** No later than September 1, 2011, and by September 1 of each sub-
23 sequent year, a stewardship organization must submit a report to the Director of the De-
24 partment of Environmental Quality describing the architectural paint stewardship pilot
25 program approved by the director under section 4 of this 2009 Act. At a minimum, the report
26 must contain:

27 (1) A description of the methods used to collect, transport, recycle and process post-
28 consumer architectural paint in this state;

29 (2) The volume and type of post-consumer architectural paint collected in all regions of
30 this state;

31 (3) The volume of post-consumer architectural paint collected in this state by method of
32 disposition, including reuse, recycling, energy recovery and disposal;

33 (4) An independent financial audit of the program;

34 (5) A description of program costs;

35 (6) An evaluation of the operation of the program's funding mechanism;

36 (7) Samples of educational materials provided to consumers of architectural paint, an
37 evaluation of the methods used to disseminate those materials and an assessment of the ef-
38 fectiveness of the education and outreach, including levels of waste prevention and reuse;
39 and

40 (8) An analysis of the environmental costs and benefits of collecting and recycling latex
41 paint.

42 **SECTION 7. Data disclosure.** The Department of Environmental Quality may not disclose
43 data reported by a stewardship organization under section 6 of this 2009 Act. The department
44 may disclose information contained in the records obtained by the department under section
45 6 of this 2009 Act in aggregate form.

1 **SECTION 8. Orders and actions.** (1) In accordance with the applicable provisions of ORS
2 chapter 183 relating to contested case proceedings, the Department of Environmental Quality
3 may issue an order requiring compliance with the provisions of sections 1 to 10 of this 2009
4 Act.

5 (2) The department may bring an action against any producer or stewardship organiza-
6 tion in violation of the provisions of sections 1 to 10 of this 2009 Act.

7 **SECTION 9. Administrative fees.** (1) The Department of Environmental Quality shall
8 charge the following fees to be paid by a stewardship organization for administering sections
9 1 to 10 of this 2009 Act:

10 (a) \$10,000 when the plan specified in section 4 of this 2009 Act is submitted to the de-
11 partment; and

12 (b) \$10,000 each year thereafter for administrative costs related to the architectural paint
13 stewardship pilot program.

14 (2) The department may establish a schedule of fees in lieu of the fees specified in sub-
15 section (1) of this section that is based on an average of the results of the financial audits
16 described in section 6 of this 2009 Act and that do not exceed 0.05 percent of the average
17 architectural paint stewardship pilot program costs reported in the financial audits.

18 (3) Fees collected by the department under this section shall be deposited in the Product
19 Stewardship Fund established under section 10 of this 2009 Act.

20 **SECTION 10. Product Stewardship Fund.** The Product Stewardship Fund is established,
21 separate and distinct from the General Fund. Fees collected by the Department of Envi-
22 ronmental Quality under section 9 of this 2009 Act shall be deposited in the State Treasury
23 to the credit of the Product Stewardship Fund. Interest earned by the Product Stewardship
24 Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the
25 Department of Environmental Quality and may be used only to pay the costs of implementing
26 the provisions of sections 1 to 10 of this 2009 Act.

27 **SECTION 11. Report to Legislative Assembly.** No later than October 1, 2011, the Director
28 of the Department of Environmental Quality shall submit a report to the Legislative As-
29 sembly describing the results of the architectural paint stewardship pilot program and re-
30 commending whether the program should be made permanent and any modifications
31 necessary to improve its functioning and efficiency. The report must include an accounting
32 of the administrative fees paid by the producers to the Department of Environmental Quality
33 under section 9 of this 2009 Act.

34 **SECTION 12. Section captions.** The section captions used in this 2009 Act are provided
35 only for the convenience of the reader and do not become part of the statutory law of this
36 state or express any legislative intent in the enactment of this 2009 Act.

37 **SECTION 13. Repeal.** Sections 1 to 10 of this 2009 Act are repealed on June 30, 2014.

38 **SECTION 14. Transfer.** Any moneys remaining in the Product Stewardship Fund on June
39 30, 2014, are transferred to the General Fund.

40 **SECTION 15. Effective date.** This 2009 Act being necessary for the immediate preserva-
41 tion of the public peace, health and safety, an emergency is declared to exist, and this 2009
42 Act takes effect on its passage.