

HOUSE AMENDMENTS TO HOUSE BILL 3037

By COMMITTEE ON SUSTAINABILITY AND ECONOMIC DEVELOPMENT

April 30

1 On page 1 of the printed bill, line 2, after “stewardship” insert “; appropriating money; and de-
2 claring an emergency”.

3 Delete lines 3 through 9 and insert:

4 “The Legislative Assembly finds that an architectural paint stewardship pilot program would
5 allow paint manufacturers to:

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

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

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

11 “(4) Collect, transport and process post-consumer architectural paint for end-of-product-life
12 management.”.

13 Delete lines 11 through 31 and delete page 2 and insert:

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

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

22 “(1)(a) ‘Architectural paint’ means interior and exterior architectural coatings sold in
23 containers of five gallons or less.

24 “(b) ‘Architectural paint’ does not mean industrial, original equipment or specialty
25 coatings.

26 “(2) ‘Architectural paint stewardship assessment’ means the amount added to the pur-
27 chase price of architectural paint sold in this state necessary to cover the cost of collecting,
28 transporting and processing the post-consumer architectural paint managed through a
29 statewide architectural paint stewardship pilot program.

30 “(3) ‘Distributor’ means a company that has a contractual relationship with one or more
31 producers to market and sell architectural paint to retailers in this state.

32 “(4) ‘Energy recovery’ means recovery in which all or a part of the solid waste materials
33 of architectural paint are processed to use the heat content or other forms of energy from
34 the solid waste materials.

35 “(5) ‘Post-consumer architectural paint’ means architectural paint not used and no

1 longer wanted by its purchaser.

2 “(6) ‘Producer’ means a person that manufactures architectural paint that is sold or of-
3 fered for sale in this state.

4 “(7)(a) ‘Recycling’ means any process by which discarded products, components and by-
5 products are transformed into new usable or marketable materials in a manner in which the
6 products may lose their original composition.

7 “(b) ‘Recycling’ does not include energy recovery or energy generation by means of
8 combusting discarded products, components and by-products with or without other waste
9 products from post-consumer architectural paint.

10 “(8) ‘Retailer’ means any person that sells or offers for sale architectural paint at retail
11 in this state.

12 “(9) ‘Reuse’ means the return of a product into the economic stream for use in the same
13 kind of application intended for the use of the product, without a change in the product’s
14 original composition.

15 “(10) ‘Sell’ or ‘sale’ means any transfer of title for consideration, including remote sales
16 conducted through sales outlets, catalogs or the Internet or through any other similar elec-
17 tronic means.

18 “(11) ‘Sound management practices’ means policies to be implemented by a producer or
19 a stewardship organization to ensure compliance with all applicable laws and that address:

20 “(a) Adequate record keeping;

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

23 “(c) Adequate environmental liability coverage for professional services and for the op-
24 erations of contractors working for producers or a stewardship organization.

25 “(12) ‘Stewardship organization’ means a corporation, nonprofit organization or other
26 legal entity created by a producer or group of producers to implement the architectural paint
27 stewardship pilot program described in sections 1 to 10 of this 2009 Act.

28 “SECTION 3. Participation in architectural paint stewardship pilot program. (1) A pro-
29 ducer or retailer may not sell or offer for sale architectural paint to any person in this state
30 unless the producer is participating in a statewide architectural paint stewardship pilot pro-
31 gram organized by a stewardship organization. A retailer is in compliance with this section
32 if, on the date the architectural paint was ordered from the producer or its agent, the
33 website maintained by the Department of Environmental Quality lists the producer, along
34 with the producer’s product brand, as participating in an architectural paint stewardship
35 pilot program.

36 “(2) At the time of sale to a consumer, a producer or retailer selling or offering for sale
37 architectural paint must provide the consumer with information on available end-of-
38 product-life management options offered through an architectural paint stewardship pilot
39 program.

40 “SECTION 4. Architectural paint stewardship pilot program. (1) No later than March 1,
41 2010, a stewardship organization must submit a plan for a statewide architectural paint
42 stewardship pilot program to the Director of the Department of Environmental Quality for
43 approval.

44 “(2) The plan must:

45 “(a) Provide for convenient and available statewide collection of post-consumer archi-

1 tectural paint in urban and rural areas of this state;

2 “(b) Identify each producer participating in the program and the brands of architectural
3 paint sold by each producer; and

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

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

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

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

22 “(c) Promote the reuse of post-consumer architectural paint and undertake the respon-
23 sibility of negotiating and executing contracts to collect, transport, recycle and process
24 post-consumer architectural paint for end-of-product-life management that includes recycl-
25 ing, energy recovery and disposal using sound management practices.

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

32 “SECTION 5. Conduct authorized. (1) It is the intent of this section that a stewardship
33 organization operating an architectural paint stewardship pilot program pursuant to sections
34 1 to 10 of this 2009 Act, approved by the Department of Environmental Quality and subject
35 to the regulatory supervision of the department, is granted immunity from federal and state
36 antitrust laws for the limited purpose of establishing and operating an architectural paint
37 stewardship pilot program. The activities of the stewardship organization that comply with
38 the provisions of this section may not be considered to be in restraint of trade, a conspiracy
39 or combination or any other unlawful activity in violation of any provisions of ORS 646.705
40 to 646.826 or federal antitrust laws.

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

1 “(a) Ensure that the stewardship organization is engaging in conduct authorized under
2 this section;

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

5 “(c) Enjoin conduct that is not authorized by the department or conduct that the de-
6 partment finds does not advance the interests of this state in carrying out the architectural
7 paint stewardship pilot program.

8 “(3) The Director of the Department of Environmental Quality may designate employees
9 of the department to carry out the responsibility of actively supervising the conduct of the
10 stewardship organization.

11 “(4) The Environmental Quality Commission may adopt rules to carry out the purposes
12 of this section.

13 “SECTION 6. Reports. No later than September 1, 2011, and by September 1 of each
14 subsequent year, a stewardship organization must submit a report to the Director of the
15 Department of Environmental Quality describing the architectural paint stewardship pilot
16 program approved by the director under section 4 of this 2009 Act. At a minimum, the report
17 must contain:

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

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

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

24 “(4) An independent financial audit of the program;

25 “(5) A description of program costs;

26 “(6) An evaluation of the operation of the program’s funding mechanism;

27 “(7) Samples of educational materials provided to consumers of architectural paint, an
28 evaluation of the methods used to disseminate those materials and an assessment of the ef-
29 fectiveness of the education and outreach, including levels of waste prevention and reuse;
30 and

31 “(8) An analysis of the environmental costs and benefits of collecting and recycling latex
32 paint.

33 “SECTION 7. Data disclosure. The Department of Environmental Quality may not dis-
34 close data reported by a stewardship organization under section 6 of this 2009 Act. The de-
35 partment may disclose information contained in the records obtained by the department
36 under section 6 of this 2009 Act in aggregate form.

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

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

43 “SECTION 9. Administrative fees. (1) The Department of Environmental Quality shall
44 charge the following fees to be paid by a stewardship organization for administering sections
45 1 to 10 of this 2009 Act:

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

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

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

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

11 “SECTION 10. Product Stewardship Fund. The Product Stewardship Fund is established,
12 separate and distinct from the General Fund. Fees collected by the Department of Environ-
13 mental Quality under section 9 of this 2009 Act shall be deposited in the State Treasury to
14 the credit of the Product Stewardship Fund. Interest earned by the Product Stewardship
15 Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the
16 Department of Environmental Quality and may be used only to pay the costs of implementing
17 the provisions of sections 1 to 10 of this 2009 Act.

18 “SECTION 11. Report to Legislative Assembly. No later than October 1, 2011, the Direc-
19 tor of the Department of Environmental Quality shall submit a report to the Legislative
20 Assembly describing the results of the architectural paint stewardship pilot program and
21 recommending whether the program should be made permanent and any modifications nec-
22 essary to improve its functioning and efficiency. The report must include an accounting of
23 the administrative fees paid by the producers to the Department of Environmental Quality
24 under section 9 of this 2009 Act.

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

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

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

31 “SECTION 15. Effective date. This 2009 Act being necessary for the immediate preserva-
32 tion of the public peace, health and safety, an emergency is declared to exist, and this 2009
33 Act takes effect on its passage.”.