
MEMORANDUM

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To: Natural Resources Subcommittee

From: Paul Siebert, Legislative Fiscal Office
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Date: June 14, 2013

Subject: HB 2048-A
Work Session Recommendations

HB 2048-A relates to paint stewardship. The measure has an emergency clause and is effective on passage. The A Engrossed version of the bill contains a sunset date June 30, 2018.

The measure, the original staff measure summary, preliminary Joint Committee on Ways and Means staff measure summary, and fiscal impact statement are available on the Oregon Legislative Information System (OLIS). The measure history is also available on OLIS.

The measure has a \$50,000 revenue impact, which is assumed in SB 5520, the budget bill for the Department of Environmental Quality.

Amendment

There is a –A6 amendment to the measure removes the sunset on the program, making it permanent.

Motion #1: Move the –A6 amendment to HB 2048.

Measure to Full

LFO recommends the measure be moved to the full Committee on Joint Ways and Means.

Motion #1: Move HB 2048A to the full committee with a “do pass” recommendation, as ammended.

Assignment of Carriers

Full: _____

2nd Chamber: _____

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2048**

1 On page 1 of the printed A-engrossed bill, delete line 3 and insert “6, 7
2 and 9, chapter 777, Oregon Laws 2009; repealing sections 13 and 14, chapter
3 777, Oregon Laws 2009; and declaring an emergency.”.

4 Delete lines 5 through 24 and delete pages 2 through 8 and insert:
5

6 **“ARCHITECTURAL PAINT STEWARDSHIP PROGRAM**
7

8 **“SECTION 1.** Section 2, chapter 777, Oregon Laws 2009, is amended to
9 read:

10 **“Sec. 2.** As used in sections 1 to 10, **chapter 777, Oregon Laws 2009**
11 *[of this 2009 Act]*:

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

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

16 “(2) ‘Architectural paint stewardship assessment’ means the amount added
17 to the purchase price of architectural paint sold in this state *[necessary]* to
18 cover the cost of collecting, transporting and processing the post-consumer
19 architectural paint managed through a statewide architectural paint
20 stewardship *[pilot]* program.

21 **“(3) ‘Cost per gallon’ means the total cost to a stewardship organ-**
22 **ization, including the amounts held in unallocated reserve funds, of**

1 **an architectural paint stewardship program during a calendar year**
2 **divided by the total number of gallons of post-consumer architectural**
3 **paint collected during the same calendar year.**

4 “[3] (4) ‘Distributor’ means a company that has a contractual relation-
5 ship with one or more producers to market and sell architectural paint to
6 retailers in this state.

7 “[4] (5) ‘Energy recovery’ means recovery in which all or a part of the
8 solid waste materials of architectural paint are processed to use the heat
9 content or other forms of energy from the solid waste materials.

10 **“(6) ‘Environmentally sound management practices’ means policies**
11 **and practices that are to be implemented by a stewardship organiza-**
12 **tion, or by contractors working for a stewardship organization, to en-**
13 **sure compliance with all applicable laws related to the collection,**
14 **storage, transportation, reuse, recycling and disposal of post-consumer**
15 **architectural paint and that address:**

16 **“(a) Adequate record keeping;**

17 **“(b) The tracking and documentation of the fate of post-consumer**
18 **architectural paint within this state and outside this state; and**

19 **“(c) Adequate environmental liability coverage for professional**
20 **services and for the operations of contractors working for a**
21 **stewardship organization.**

22 **“(7)(a) ‘Permanent collection site’ means a collection site for post-**
23 **consumer architectural paint at a fixed location with regular hours**
24 **of operation.**

25 **“(b) ‘Permanent collection site’ does not mean collection events.**

26 “[5] (8) ‘Post-consumer architectural paint’ means architectural paint
27 not used and no longer wanted by its purchaser.

28 **“(9) ‘Premium service’ means the curbside collection of post-**
29 **consumer architectural paint by local governments as defined in ORS**
30 **174.116, a collection service franchise holder under ORS 459A.085 or any**

1 **person authorized by a local government to provide collection service**
2 **as defined in ORS 459.005 (3), which is included in rates for the**
3 **curbside collection paid by the customers.**

4 “[6] (10) ‘Producer’ means a person that manufactures architectural
5 paint that is sold or offered for sale in this state.

6 “[7(a)] (11)(a) ‘Recycling’ means any process by which discarded pro-
7 ducts, components and by-products are transformed into new usable or
8 marketable materials in a manner in which the products may lose their ori-
9 ginal composition.

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

13 **“(12) ‘Recycling rate’ means the percentage of the total amount of**
14 **latex post-consumer architectural paint collected by a stewardship**
15 **organization in a calendar year that is recycled during the same cal-**
16 **endar year.**

17 “[8] (13) ‘Retailer’ means any person that sells or offers for sale archi-
18 tectural paint at retail in this state.

19 “[9] (14) ‘Reuse’ means the return of a product into the economic stream
20 for use in the same kind of application intended for the use of the product,
21 without a change in the product’s original composition **or packaging.**

22 “[10] (15) ‘Sell’ or ‘sale’ means any transfer of title for consideration,
23 including remote sales conducted through sales outlets, catalogs or the
24 Internet or through any other similar electronic means.

25 “[11) ‘Sound management practices’ means policies to be implemented by
26 a producer or a stewardship organization to ensure compliance with all ap-
27 plicable laws and that address:]

28 “[a) Adequate record keeping;]

29 “[b) The tracking and documentation of the use, reuse or disposal of post-
30 consumer architectural paint within this state and outside this state; and]

1 “[*(c) Adequate environmental liability coverage for professional services and*
2 *for the operations of contractors working for producers or a stewardship or-*
3 *ganization.*]

4 “[*(12)*] **(16)** ‘Stewardship organization’ means a corporation, nonprofit or-
5 ganization or other legal entity created by a producer or group of producers
6 to implement [*the*] **an** architectural paint stewardship [*pilot*] program **as** de-
7 scribed in sections 1 to 10 [*of this 2009 Act*], **chapter 777, Oregon Laws**
8 **2009.**

9 “**SECTION 2.** Section 3, chapter 777, Oregon Laws 2009, is amended to
10 read:

11 “**Sec. 3.** (1) A producer or retailer may not sell or offer for sale archi-
12 tectural paint to any person in this state unless the producer is participating
13 in [*a*] **an approved** statewide architectural paint stewardship [*pilot*] program
14 organized by a stewardship organization. A retailer is in compliance with
15 this [*section*] **subsection** if, on the date the architectural paint was ordered
16 from the producer or its agent, the website maintained by the Department
17 of Environmental Quality lists the producer, along with the producer’s
18 product brand, as participating in an **approved** architectural paint
19 stewardship [*pilot*] program.

20 “(2)(a) [*At the time of sale to a consumer, a producer or retailer*] **A**
21 **stewardship organization must provide retailers** selling or offering for
22 sale architectural paint [*must provide the consumer*] with information on
23 available [*end-of-product-life management options*] **collection opportunities**
24 **for post-consumer architectural paint** offered through [*an*] **the**
25 **organization’s** architectural paint stewardship [*pilot*] program.

26 “(b) **A retailer that sells or offers for sale architectural paint must**
27 **provide the information described in paragraph (a) of this subsection**
28 **to the consumer at the time of sale.**

29 “**SECTION 3.** Section 4, chapter 777, Oregon Laws 2009, is amended to
30 read:

1 **“Sec. 4. (1) [No later than March 1, 2010,] A stewardship organization**
2 **must submit a plan for a statewide architectural paint stewardship [pilot]**
3 **program to the Director of the Department of Environmental Quality for**
4 **approval under section 6 of this 2013 Act. The plan must address the**
5 **requirements set forth in subsections (2) and (4) of this section.**

6 “(2) The plan must:

7 “[(a) *Provide for convenient and available statewide collection of post-*
8 *consumer architectural paint in urban and rural areas of this state;*]

9 “[(b) *Identify each producer participating in the program and the brands*
10 *of architectural paint sold by each producer; and]*

11 **“(a) Specify educational and outreach activities and materials that**
12 **promote the architectural paint stewardship program. Educational and**
13 **outreach materials must include, but are not limited to, signage,**
14 **written materials and templates of materials for reproduction by**
15 **retailers to be provided to the consumer at the time of sale. The ma-**
16 **terials must:**

17 **“(A) Identify collection opportunities for post-consumer architec-**
18 **tural paint;**

19 **“(B) Explain the architectural paint stewardship assessment de-**
20 **scribed in this section; and**

21 **“(C) Promote:**

22 **“(i) A reduction in the generation of post-consumer architectural**
23 **paint; and**

24 **“(ii) The reuse, recovery and recycling of post-consumer architec-**
25 **tural paint.**

26 **“(b) Specify activities related to the establishment and maintenance**
27 **of a convenient system for the collection of post-consumer architec-**
28 **tural paint as described in section 4 of this 2013 Act.**

29 **“(c) Establish and provide for the development and implementation**
30 **of goals to reduce the generation of post-consumer architectural paint,**

1 including goals for:

2 “(A) Reducing the amount of post-consumer architectural paint
3 that is generated in this state;

4 “(B) Increasing the recycling rate for latex paint; and

5 “(C) Increasing public awareness of the architectural paint
6 stewardship program.

7 “(d) Promote the reuse of post-consumer architectural paint.

8 “(e) Undertake the responsibility of negotiating and executing con-
9 tracts to collect, transport, recycle and process post-consumer archi-
10 tectural paint for end-of-product-life management that includes
11 recycling, energy recovery and disposal.

12 “(f) Describe how the end-of-product-life management of post-
13 consumer architectural paint that is collected under the program will
14 use environmentally sound management practices that are consistent
15 with ORS 459.015 (2).

16 “(g) Reflect compliance by the stewardship organization with sec-
17 tion 3, chapter 777, Oregon Laws 2009.

18 “(3) The director may exempt a stewardship organization from one
19 or more of the activities specified in subsection (2) of this section if
20 the director determines that the activity is impracticable or is unlikely
21 to further the provisions of sections 1 to 10, chapter 777, Oregon Laws
22 2009.

23 “(4) In addition to the requirements specified in subsection (2) of
24 this section, the plan must also:

25 “(a) Identify each producer participating in the program.

26 “(b) Identify the participating brands of architectural paint sold in
27 this state.

28 “(c) Identify the processors that manage the post-consumer archi-
29 tectural paint that is collected under the program.

30 “(d) Identify the transporters of post-consumer architectural paint

1 **that is collected under the program.**

2 **“(e) Include an anticipated annual operating budget for the program**
3 **for the next four calendar years, beginning with the year in which the**
4 **plan is submitted to the director, as described in subsection (5) of this**
5 **section.**

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

22 **“(5) The budget required under subsection (4) of this section shall**
23 **include, but not be limited to, budget line items relating to:**

24 **“(a) The development and implementation of the educational and**
25 **outreach activities and materials required under subsection (2)(a) of**
26 **this section and the provision of information to retailers required un-**
27 **der section 3, chapter 777, Oregon Laws 2009;**

28 **“(b) The collection, transportation and processing of post-consumer**
29 **architectural paint as part of the program;**

30 **“(c) The administrative costs of the program to the stewardship**

1 **organization;**

2 **“(d) The anticipated amount of moneys that the stewardship or-**
3 **ganization will hold in unallocated reserve funds for the program;**

4 **“(e) The administrative fees paid to the Department of Environ-**
5 **mental Quality under section 9, chapter 777, Oregon Laws 2009; and**

6 **“(f) Any additional budgetary information requested by the director**
7 **that is necessary for the director to approve the plan.**

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

11 *“(a) Implement an architectural paint stewardship pilot program described*
12 *in the plan;]*

13 *“(b) Provide for the development and implementation of strategies to reduce*
14 *the generation of post-consumer architectural paint; and]*

15 *“(c) Promote the reuse of post-consumer architectural paint and undertake*
16 *the responsibility of negotiating and executing contracts to collect, transport,*
17 *recycle and process post-consumer architectural paint for end-of-product-life*
18 *management that includes recycling, energy recovery and disposal using sound*
19 *management practices.]*

20 *“(4) A stewardship organization shall promote the architectural paint*
21 *stewardship pilot program and provide consumers with educational materials*
22 *describing collection opportunities for post-consumer architectural paint and*
23 *information promoting waste prevention, reuse and recycling. The educational*
24 *materials must also make consumers aware that funding for the operation of*
25 *the architectural paint stewardship pilot program has been added to the pur-*
26 *chase price of all architectural paint sold in this state.]*

27 **“SECTION 4. (1) The convenient system for the collection of post-**
28 **consumer architectural paint required under section 4 (2), chapter 777,**
29 **Oregon Laws 2009, must ensure that:**

30 **“(a) One permanent collection site exists for every 30,000 residents**

1 in this state.

2 “(b) Ninety-five percent of the residents in this state are within 15
3 miles of a permanent collection site.

4 “(c) For those geographically underserved areas where the popu-
5 lation is not within 15 miles of a permanent collection site, at least
6 one but no more than two collection events are held per year in each
7 geographically underserved area.

8 “(2) A stewardship organization is not required to comply with
9 subsection (1)(b) of this section for a given geographic area if the
10 stewardship organization is able to demonstrate that, after a good
11 faith effort:

12 “(a) The stewardship organization has been unable to identify an
13 appropriate local government as defined in ORS 174.116, collection
14 service franchise holder under ORS 459A.085, person who provides
15 collection service as defined in ORS 459.005 (3), or a retailer, in the
16 geographic area to coordinate with to establish a permanent collection
17 site; or

18 “(b) The stewardship organization cannot reach feasible, reasonable
19 and mutually agreeable terms with the appropriate local government,
20 collection service franchise holder, person who provides collection
21 service, or a retailer, in the geographic area for participation in the
22 program as a permanent collection site.

23 “(3) A stewardship organization shall make a good faith effort to
24 coordinate with the appropriate local government, collection service
25 franchise holder or person who provides collection service for the
26 promotion of and payment for a collection event under subsection
27 (1)(c) of this section. If, after a good faith effort, the stewardship or-
28 ganization is unable to coordinate with the appropriate local govern-
29 ment, collection service franchise holder or person who provides
30 collection service, the stewardship organization shall promote and pay

1 for the collection event.

2 “(4) A stewardship organization is not required to comply with
3 subsection (1)(c) of this section for a given geographic area if the Di-
4 rector of the Department of Environmental Quality agrees with the
5 stewardship organization that holding a collection event in that area
6 will not be practicable or effective.

7 “(5) For purposes of this section, a stewardship organization shall
8 renegotiate a contract for the establishment of a permanent collection
9 site once every two years unless another time frame is agreed to by
10 the contracting parties.

11 **“SECTION 5. (1) A stewardship organization must submit to the**
12 **Director of the Department of Environmental Quality for approval an**
13 **amendment to a plan or updated plan that has been approved by the**
14 **director under section 6 of this 2013 Act if, at any time:**

15 “(a) The stewardship organization makes a change to the architec-
16 tural paint stewardship assessment that was approved by the director
17 as part of the plan;

18 “(b) The stewardship organization makes a change to the types of
19 post-consumer architectural paint that will be collected by the
20 stewardship organization under the plan;

21 “(c) The stewardship organization makes a change to the goals that
22 were approved by the director as part of the plan; or

23 “(d) The director requests an amendment to the plan in order to
24 address a specific finding by the director that:

25 “(A) The administrative costs to the stewardship organization for
26 the architectural paint stewardship program equaled 20 percent or
27 more of the organization’s total annual budget for the program during
28 the prior calendar year;

29 “(B) The cost per gallon of the program during the prior calendar
30 year was 10 or more percent higher than the preceding calendar year;

1 “(C) The unallocated reserve funds held by the stewardship organ-
2 ization for the program during the prior calendar year equaled 35
3 percent or more of the total annual budget for the program during the
4 year;

5 “(D) The total volume, in gallons, of post-consumer architectural
6 paint collected as part of the program during the prior calendar year
7 was 10 or more percent lower than the preceding calendar year; or

8 “(E) The recycling rate for the program during the prior calendar
9 year was 10 or more percent lower than the preceding calendar year.

10 “(2) A stewardship organization must submit an amendment under
11 subsection (1) of this section within 120 days after the date of the
12 change by the stewardship organization or the date of the request by
13 the director.

14 “SECTION 6. (1) The Director of the Department of Environmental
15 Quality shall approve, deny or request additional information on a new
16 or updated plan or a plan amendment no later than 60 days after the
17 date the director receives the plan or amendment from the
18 stewardship organization.

19 “(2) If the director rejects, or requests additional information for,
20 the new plan, updated plan or amendment, the director must provide
21 the stewardship organization with the reasons in writing. The
22 stewardship organization shall have 60 days from the date that the
23 rejection or request for additional information is received to submit
24 to the director any additional information necessary for the approval
25 of the new plan, updated plan or amendment.

26 “(3) The director’s rejection of, or request for additional informa-
27 tion for, an updated plan or amendment submitted under this section
28 does not relieve the stewardship organization from continuing to im-
29 plement the architectural paint stewardship program in compliance
30 with the approved plan pending a final action by the director on the

1 updated plan or amendment.

2 “(4)(a) Beginning no later than two months after a new plan, up-
3 dated plan or amended plan is approved under this section, a
4 stewardship organization must implement an architectural paint
5 stewardship program as described in the new, updated or amended
6 plan.

7 “(b) A stewardship organization may enter into contracts with local
8 governments as defined in ORS 174.116, a collection service franchise
9 holder under ORS 459A.085 or any person who provides collection ser-
10 vice as defined in ORS 459.005 (3) in order to implement a program
11 under this subsection. In negotiating a contract with a local govern-
12 ment, collection service franchise holder or person who provides col-
13 lection service, terms of the contract may include, but are not limited
14 to:

15 “(A) The coverage of costs for accepting post-consumer architec-
16 tural paint and paint containers into the program through permanent
17 collection sites and collection events;

18 “(B) The processing of post-consumer architectural paint at the
19 permanent collection site; or

20 “(C) The transportation, recovery and disposal of post-consumer
21 architectural paint.

22 “(5) Nothing in this section shall be construed to limit the power
23 of a local government, a collection service franchise holder, or any
24 person authorized by a local government to provide collection service,
25 to offer premium service.

26 **SECTION 7.** If a stewardship organization makes any of the
27 changes described in this section to an architectural paint stewardship
28 program as provided for in a plan approved by the Director of the
29 Department of Environmental Quality under section 6 of this 2013 Act,
30 the organization shall notify the director in writing, within 30 days of

1 **the date of the change to the program, of:**

2 **“(1) A change in the location or the number of permanent collection**
3 **sites identified in the plan;**

4 **“(2) A change in the producers or brands of architectural paint sold**
5 **in this state that are participating in the program;**

6 **“(3) A change in the processors that manage the post-consumer**
7 **architectural paint collected by the stewardship organization under**
8 **the program; or**

9 **“(4) A change in the transporters of the post-consumer architec-**
10 **tural paint collected by the stewardship organization under the pro-**
11 **gram.**

12 **“SECTION 8.** Section 6, chapter 777, Oregon Laws 2009, is amended to
13 read:

14 **“Sec. 6. (1)** No later than [*September 1, 2011, and by September 1 of each*
15 *subsequent*] **April 1 of each** year, a stewardship organization must submit
16 [*a*] **an annual** report to the Director of the Department of Environmental
17 Quality describing the **operation during the prior calendar year of an**
18 architectural paint stewardship [*pilot*] program approved by the director un-
19 der [*section 4 of this 2009 Act*] **section 6 of this 2013 Act.** At a minimum,
20 the report must contain:

21 **“[(1)] (a)** A description of the methods used to collect, transport, recycle
22 and process post-consumer architectural paint in this state;

23 **“[(2) *The volume and type of post-consumer architectural paint collected in***
24 ***all regions of this state;*]**

25 **“(b) A calculation of the total volume in gallons of post-consumer**
26 **architectural paint collected by the program, categorized by latex,**
27 **alkyd and any other type of paint;**

28 **“(c) For each permanent collection site and collection event under**
29 **the program:**

30 **(A) A calculation of the total volume in gallons of post-consumer**

1 **architectural paint collected at the site or event;**
2 **(B) The address or, if no address is available, the physical location**
3 **of the site or event; and**
4 **(C) A description of whether the site or event is:**
5 **(i) A permanent collection site located at a retailer;**
6 **(ii) A permanent collection site or collection event for the program**
7 **located within the local solid waste collection infrastructure; or**
8 **(iii) A collection event promoted and paid for by a stewardship or-**
9 **ganization;**
10 **“(d) An estimate of the total weight and disposition of all paint**
11 **containers collected by the program;**
12 **“[(3)] (e) The total volume of post-consumer architectural paint collected**
13 **[in this state] under the program, categorized by method of disposition,**
14 **including reuse, recycling, energy recovery and disposal;**
15 **“(f) The data, conversion factors and any changes from prior years**
16 **in the methodology used to complete the analysis required to comply**
17 **with paragraphs (b) to (e) of this subsection;**
18 **“[(4)] (g) An independent financial audit of the program;**
19 **“[(5)] (h) A description of program [costs] revenues and costs for the**
20 **prior year that follows the budget requirements provided in section 4,**
21 **chapter 777, Oregon Laws 2009, and that further describes:**
22 **“(A) The total cost of the program during the prior year calculated**
23 **as a per capita amount for each resident of this state;**
24 **“(B) The cost per gallon of the program during the prior year;**
25 **“(C) The use by the stewardship organization of any revenues from**
26 **the program during the past year that exceeded the total costs of the**
27 **program, including a description of the amount held by the**
28 **stewardship organization in unallocated reserve funds at the end of the**
29 **reporting period; and**
30 **“(D) If requested by the director, any additional budgetary infor-**

1 **mation necessary for the director to determine whether the**
2 **stewardship organization must amend the plan under section 5 (1)(d)**
3 **of this 2013 Act;**

4 **“(i) An updated budget for the next calendar year that follows the**
5 **budget requirements provided in section 4, chapter 777, Oregon Laws**
6 **2009;**

7 **“[(6)] (j) An evaluation of the operation of the program’s funding mech-**
8 **anism;**

9 **“[(7)] (k) Samples of educational and outreach materials provided to**
10 **consumers of architectural paint, an evaluation of the methods used to dis-**
11 **seminate those materials and an assessment of the effectiveness of the edu-**
12 **cation and outreach, including levels of waste prevention and reuse; [and]**

13 **“[(8) *An analysis of the environmental costs and benefits of collecting and***
14 ***recycling latex paint.*]**

15 **“(L) Documentation of compliance with the requirements of section**
16 **4 (2)(b), chapter 777, Oregon Laws 2009, and section 4 of this 2013 Act;**

17 **“(m) A description of the activities undertaken to achieve, and the**
18 **progress made toward achieving, the program goals as provided for in**
19 **the program plan; and**

20 **“(n) Notification to the director of any additional proposed changes**
21 **to the operation of the program for the following calendar year, or a**
22 **statement that the stewardship organization intends to continue to**
23 **implement the program in the manner approved by the director under**
24 **section 6 of this 2013 Act.**

25 **“(2) No later than June 15 of each year, the director shall meet with**
26 **interested stakeholders to review the annual reports submitted to the**
27 **director under this section. The director shall post to the website**
28 **maintained by the Department of Environmental Quality a copy of the**
29 **minutes of the meeting within 30 days of the date of the meeting.**

30 **“SECTION 9. Notwithstanding section 6 (1), chapter 777, Oregon**

1 **Laws 2009, a stewardship organization that submitted a plan for a**
2 **statewide architectural paint stewardship pilot program to the Direc-**
3 **tor of the Department of Environmental Quality before the effective**
4 **date of this 2013 Act shall submit to the director not later than April**
5 **1, 2014, a report for the period beginning July 1, 2013, and ending De-**
6 **cember 31, 2013, that fulfills all the requirements of section 6, chapter**
7 **777, Oregon Laws 2009.**

8 **“SECTION 10.** Section 9, chapter 777, Oregon Laws 2009, is amended to
9 read:

10 **“Sec. 9.** (1) The Department of Environmental Quality shall charge the
11 following fees to be paid by a stewardship organization for administering
12 sections 1 to 10 [*of this 2009 Act*], **chapter 777, Oregon Laws 2009:**

13 **“(a)** \$10,000 when the plan **or updated plan** specified in section 4 [*of this*
14 *2009 Act*], **chapter 777, Oregon Laws 2009,** is submitted to the
15 [*department*] **Director of the Department of Environmental Quality;** and

16 **“(b)** [*\$10,000*] **\$40,000** each year [*thereafter*] **that an approved architec-**
17 **tural paint stewardship program is implemented** for administrative costs
18 related to the [*architectural paint stewardship pilot*] program.

19 **“[(2)** *The department may establish a schedule of fees in lieu of the fees*
20 *specified in subsection (1) of this section that is based on an average of the*
21 *results of the financial audits described in section 6 of this 2009 Act and that*
22 *do not exceed 0.05 percent of the average architectural paint stewardship pilot*
23 *program costs reported in the financial audits.]*

24 **“[(3)] (2)** Fees collected by the department under this section shall be
25 deposited in the Product Stewardship Fund established under section 10 [*of*
26 *this 2009 Act*], **chapter 777, Oregon Laws 2009.**

27 **“SECTION 11.** Section 7, chapter 777, Oregon Laws 2009, as amended by
28 section 1, chapter 146, Oregon Laws 2011, is amended to read:

29 **“Sec. 7.** (1)(a) Except for the financial, cost, production or sales data and
30 records specified in paragraph (b) of this subsection, the Department of En-

1 vironmental Quality may not disclose any financial, cost, production or sales
2 data and records of a stewardship organization, or of a specific producer,
3 obtained by the department as part of the approval of a plan, **or updated**
4 **plan**, for a statewide architectural paint stewardship [*pilot*] program pursu-
5 ant to section 4, chapter 777, Oregon Laws 2009, or as part of an annual re-
6 port submitted pursuant to section 6, chapter 777, Oregon Laws 2009.

7 “(b) If the Department of Environmental Quality determines that disclo-
8 sure is necessary for the public to adequately understand the derivation of
9 the architectural paint stewardship assessment described in section 4, chap-
10 ter 777, Oregon Laws 2009, the level of the services or associated costs that
11 are anticipated under the assessment or the services or associated costs that
12 are delivered under the assessment, the department may disclose, in aggre-
13 gate form, information contained in the financial, cost, production or sales
14 data and records related to the level of service and associated costs for the
15 following services offered by the statewide architectural paint stewardship
16 [*pilot*] program:

17 “(A) Collection, reuse, transportation, recycling, energy recovery, disposal
18 and other processing of waste paint;

19 “(B) Waste reduction efforts;

20 “(C) Education and promotion; and

21 “(D) Administration.

22 “(2) The Department of Environmental Quality may not disclose the
23 names of brands by specific producers obtained by the department as part
24 of the approval of a plan for a statewide architectural paint stewardship
25 [*pilot*] program pursuant to section 4, chapter 777, Oregon Laws 2009. The
26 department may disclose separate lists indicating participating producers and
27 participating brands of the statewide architectural paint stewardship [*pilot*]
28 program.

29 “(3) Nothing in this section shall impose additional reporting obligations
30 on a stewardship organization beyond those specified in sections 1 to 10,

1 chapter 777, Oregon Laws 2009.

2 **“SECTION 12. No later than June 1 of each year, the Director of**
3 **the Department of Environmental Quality shall publish an estimate**
4 **of the total volume, in gallons, of post-consumer architectural paint**
5 **collected in each wasteshed or metropolitan service district as part of**
6 **an architectural paint stewardship program during the prior calendar**
7 **year. For each wasteshed or metropolitan service district, the director**
8 **shall also publish, stated as a percentage, the portion of the total**
9 **volume in gallons of post-consumer architectural paint collected under**
10 **the program at each of the following:**

11 **“(1) Permanent collection sites located at a retailer;**

12 **“(2) Permanent collection sites and collection events for the pro-**
13 **gram located within the local solid waste collection infrastructure; and**

14 **“(3) Collection events promoted and paid for by a stewardship or-**
15 **ganization.**

16

17 **“PENALTIES**

18

19 **“SECTION 13. ORS 459.995 is amended to read:**

20 **“459.995. (1) Except as provided in subsection (2) of this section, in addi-**
21 **tion to any other penalty provided by law:**

22 **“(a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to**
23 **459.405, 459.705 to 459.790, 459A.005 to 459A.620, 459A.310 to 459A.335,**
24 **459A.675 to 459A.685 or 646A.080, or any rule or order of the Environmental**
25 **Quality Commission pertaining to the disposal, collection, storage or reuse**
26 **or recycling of solid wastes, as defined by ORS 459.005, or any rule or order**
27 **pertaining to the disposal, storage or transportation of waste tires, as defined**
28 **by ORS 459.705, or any rule or order pertaining to the sale of novelty items**
29 **that contain encapsulated liquid mercury, [shall incur] incurs a civil penalty**
30 **not to exceed \$25,000 [a] per day for each day of the violation.**

1 “(b) Any person who violates the provisions of ORS 459.420 to 459.426
2 [*shall incur*] **incurs** a civil penalty not to exceed \$500 for each violation.
3 Each battery that is disposed of improperly [*shall be*] **is** a separate violation.
4 Each day an establishment fails to post the notice required under ORS
5 459.426 [*shall be*] **is** a separate violation.

6 “(c) For each day a city, county or metropolitan service district fails to
7 provide the opportunity to recycle as required under ORS 459A.005, the city,
8 county or metropolitan service district [*shall incur*] **incurs** a civil penalty
9 not to exceed \$500 for each violation.

10 “(d) Any person who violates the provisions of ORS 459.247 (1)(f) [*shall*
11 *incur*] **incurs** a civil penalty not to exceed \$500 for each violation. Each
12 covered electronic device that is disposed of improperly [*shall be*] **is** a sepa-
13 rate violation.

14 “(e) **Any retailer that violates the provisions of section 3 (2)(b),**
15 **chapter 777, Oregon Laws 2009, incurs a civil penalty not to exceed \$100**
16 **per day for each day of the violation.**

17 “(f) **Any producer or retailer that violates the provisions of section**
18 **3 (1), chapter 777, Oregon Laws 2009, incurs a civil penalty not to ex-**
19 **ceed \$1,000 per day for each day of the violation.**

20 “(g) **Any stewardship organization that violates the provisions of**
21 **section 3 (2)(a), 4 or 6, chapter 777, Oregon Laws 2009, sections 4 to 7**
22 **of this 2013 Act, or section 9 of this 2013 Act, incurs a civil penalty not**
23 **to exceed \$1,000 per day for each day of the violation.**

24 “(2) Any product manufacturer or package manufacturer who violates
25 ORS 459A.650 to 459A.665 or any rule adopted under ORS 459A.650 to
26 459A.665 [*shall incur*] **incurs** a civil penalty not to exceed \$1,000 per day for
27 each day of the violation. A violation of ORS 459A.650 to 459A.665 [*shall not*
28 *be*] **is not** subject to additional penalties under subsection (1) of this section.

29 “(3) Any civil penalty authorized by subsection (1) or (2) of this section
30 shall be imposed in the manner provided by ORS 468.135.

1 **“SECTION 14.** ORS 459.995, as amended by section 13 of this 2013 Act,
2 is amended to read:

3 “459.995. (1) Except as provided in subsection (2) of this section, in addi-
4 tion to any other penalty provided by law:

5 “(a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to
6 459.405, 459.705 to 459.790, 459A.005 to 459A.620, 459A.310 to 459A.335,
7 459A.675 to 459A.685 or 646A.080, or any rule or order of the Environmental
8 Quality Commission pertaining to the disposal, collection, storage or reuse
9 or recycling of solid wastes, as defined by ORS 459.005, or any rule or order
10 pertaining to the disposal, storage or transportation of waste tires, as defined
11 by ORS 459.705, or any rule or order pertaining to the sale of novelty items
12 that contain encapsulated liquid mercury, incurs a civil penalty not to ex-
13 ceed \$25,000 per day for each day of the violation.

14 “(b) Any person who violates the provisions of ORS 459.420 to 459.426
15 incurs a civil penalty not to exceed \$500 for each violation. Each battery that
16 is disposed of improperly is a separate violation. Each day an establishment
17 fails to post the notice required under ORS 459.426 is a separate violation.

18 “(c) For each day a city, county or metropolitan service district fails to
19 provide the opportunity to recycle as required under ORS 459A.005, the city,
20 county or metropolitan service district incurs a civil penalty not to exceed
21 \$500 for each violation.

22 “(d) Any person who violates the provisions of ORS 459.247 (1)(f) incurs
23 a civil penalty not to exceed \$500 for each violation. Each covered electronic
24 device that is disposed of improperly is a separate violation.

25 “(e) Any retailer that violates the provisions of section 3 (2)(b), chapter
26 777, Oregon Laws 2009, incurs a civil penalty not to exceed \$100 per day for
27 each day of the violation.

28 “(f) Any producer or retailer that violates the provisions of section 3 (1),
29 chapter 777, Oregon Laws 2009, incurs a civil penalty not to exceed \$1,000
30 per day for each day of the violation.

1 “(g) Any stewardship organization that violates the provisions of section
2 3 (2)(a), 4 or 6, chapter 777, Oregon Laws 2009, **or** sections 4 to 7 of this 2013
3 Act, [*or section 9 of this 2013 Act,*] incurs a civil penalty not to exceed \$1,000
4 per day for each day of the violation.

5 “(2) Any product manufacturer or package manufacturer who violates
6 ORS 459A.650 to 459A.665 or any rule adopted under ORS 459A.650 to
7 459A.665 incurs a civil penalty not to exceed \$1,000 per day for each day of
8 the violation. A violation of ORS 459A.650 to 459A.665 is not subject to ad-
9 ditional penalties under subsection (1) of this section.

10 “(3) Any civil penalty authorized by subsection (1) or (2) of this section
11 shall be imposed in the manner provided by ORS 468.135.

12 **“SECTION 15. The amendments to ORS 459.995 by section 14 of this**
13 **2013 Act become operative on July 1, 2014.**

14

15

“SUNSET PROVISIONS

16

17 **“SECTION 16. Sections 13 and 14, chapter 777, Oregon Laws 2009,**
18 **are repealed.**

19 **“SECTION 17. Section 9 of this 2013 Act is repealed on June 30, 2014.**

20

21

“REPORT

22

23 **“SECTION 18. No later than November 1, 2018, the Director of the**
24 **Department of Environmental Quality shall submit to the Legislative**
25 **Assembly a report describing the results of any existing architectural**
26 **paint stewardship programs and, if necessary, recommending any**
27 **modifications to sections 1 to 10, chapter 777, Oregon Laws 2009, that**
28 **would serve to improve the functioning and efficiency of the programs.**
29 **The report must include an accounting of the administrative fees paid**
30 **by stewardship organizations to the Department of Environmental**

1 **Quality under section 9, chapter 777, Oregon Laws 2009.**

2
3 **“MISCELLANEOUS**

4
5 **“SECTION 19. The unit captions used in this 2013 Act are provided**
6 **only for the convenience of the reader and do not become part of the**
7 **statutory law of this state or express any legislative intent in the**
8 **enactment of this 2013 Act.**

9 **“SECTION 20. (1) Initial plans for statewide architectural paint**
10 **stewardship programs under section 4, chapter 777, Oregon Laws 2009,**
11 **as amended by section 3 of this 2013 Act, must be submitted to the**
12 **Director of the Department of Environmental Quality not later than**
13 **January 1, 2014.**

14 **“(2) A stewardship organization that submitted a plan for a state-**
15 **wide architectural paint stewardship pilot program to the director be-**
16 **fore the effective date of this 2013 Act, or that had a plan approved**
17 **by the director before the effective date of this 2013 Act, must submit**
18 **an updated plan under section 4, chapter 777, Oregon Laws 2009, as**
19 **amended by section 3 of this 2013 Act, to the director not later than**
20 **January 1, 2014.**

21 **“(3) If requested by the director in writing, a stewardship organ-**
22 **ization that submitted an initial plan or an updated plan under sub-**
23 **section (1) or (2) of this section must submit a subsequent updated**
24 **plan under section 4, chapter 777, Oregon Laws 2009, as amended by**
25 **section 3 of this 2013 Act, to the director not later than January 1,**
26 **2018, and up to once every four years thereafter.**

27 **“SECTION 21. (1)(a) The amendments to sections 2, 3, 4, 6 and 7,**
28 **chapter 777, Oregon Laws 2009, by sections 1 to 3, 8 and 11 of this 2013**
29 **Act apply to the plans and updated plans that must be submitted to**
30 **the Director of the Department of Environmental Quality on and after**

1 the effective date of this 2013 Act.

2 “(b) A stewardship organization may continue to operate and report
3 under a plan approved by the director before the effective date of this
4 2013 Act until the updated plan required to be submitted to the direc-
5 tor pursuant to section 20 (2) of this 2013 Act is approved.

6 “(2) The amendments to section 9, chapter 777, Oregon Laws 2009,
7 by section 10 of this 2013 Act apply to:

8 “(a) Plans specified in section 4, chapter 777, Oregon Laws 2009, as
9 amended by section 3 of this 2013 Act, submitted to the director on and
10 after the effective date of this 2013 Act.

11 “(b) Administrative costs related to architectural paint stewardship
12 programs for calendar years beginning on or after January 1, 2013.

13 “(3) The amendments to section 4, chapter 777, Oregon Laws 2009,
14 by section 3 of this 2013 Act related to architectural paint stewardship
15 assessments apply to payments of assessments remitted to stewardship
16 organizations on or after the effective date of this 2013 Act.

17 “(4)(a) The amendments to ORS 459.995 by section 13 of this 2013
18 Act apply to violations of sections 3 (2)(a), 4 and 6, chapter 777, Oregon
19 Laws 2009, as amended by sections 2, 3 and 8 of this 2013 Act, and
20 sections 4 to 7 and 9 of this 2013 Act, that occur on or after the effec-
21 tive date of this 2013 Act.

22 “(b) The amendments to ORS 459.995 by section 14 of this 2013 Act
23 apply to violations of sections 3 (2)(a), 4 and 6, chapter 777, Oregon
24 Laws 2009, as amended by sections 2, 3 and 8 of this 2013 Act, and
25 sections 4 to 7 of this 2013 Act, that occur on or after July 1, 2014.

26 “SECTION 22. Sections 4 to 7, 9 and 12 of this 2013 Act are added
27 to and made a part of sections 1 to 10, chapter 777, Oregon Laws 2009.

28

29

“EMERGENCY CLAUSE

30

1 **“SECTION 23. This 2013 Act being necessary for the immediate**
2 **preservation of the public peace, health and safety, an emergency is**
3 **declared to exist, and this 2013 Act takes effect on its passage.”.**

4

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: HB 2048 - A6

Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session
Legislative Fiscal Office

Only Impacts on Original or Engrossed Versions are Considered Official

Prepared by: Krista McDowell
Reviewed by: Paul Siebert
Date: 6/13/2013

Measure Description:

Extends sunset on architectural paint stewardship pilot program.

Government Unit(s) Affected:

Department of Environmental Quality (DEQ), Cities, Counties

Summary of Expenditure Impact:

Summary of Expenditure Impact		
	2013-15 Biennium	2015-17 Biennium
General Fund		
Lottery Funds		
Other Funds	50,000	80,000
Federal Funds		
Total Funds	\$50,000	\$80,000
Positions		
FTE		

Local Government Mandate:

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

Analysis: The bill, as amended, extends the sunset for the Architectural Paint Stewardship (APS) Program to June 30, 2014 and further specifies program participation standards and requirements. The Director of the Department of Environmental Quality (DEQ) will also be required to submit a report to the Legislative Assembly describing the results of the program.

Cities, Counties and DEQ report minimal to no fiscal impact as a result of the passage of this bill. While this individual measure has a minimal fiscal impact, an agency or local government may incur a net fiscal impact greater than minimal depending on the cumulative impact of all measures enacted into law that affect said agency or local government .

For the purposes of this analysis the APS program is assumed to have only one participant; therefor one plan fee of \$10,000 is anticipated in the 13-15 biennium. The bill increases DEQ's annual administration charge paid by participating stewardship organizations from \$10,000 to \$40,000 annually. Total additional revenues resulting from this fee increase are estimated to be \$50,000 Other Funds (OF) in the 2013-15 biennium and \$80,000 OF in the 2015-17 biennium. Additional civil penalties, in the amount of \$1,000 per day, are created for stewardship programs and producers or retailers who violate provisions set fort within the bill. Additional revenues resulting from these new penalties are not anticipated at this time.

Joint Committee on Ways and Means

Carrier – House: Rep.
Carrier – Senate: Sen.

Revenue:

Fiscal:

Action:

Vote:

House

Yeas:

Nays:

Exc:

Senate

Yeas:

Nays:

Exc:

Prepared By: Paul Siebert, Legislative Fiscal Office

Meeting Date: [Full Committee Meeting Date]

WHAT THE MEASURE DOES: Provides definitions for ‘permanent collection site,’ ‘premium service,’ and ‘collecting.’ Requires stewardship organizations to provide retailers information on collection opportunities to customers. Specifies paint stewardship program plan requirements, including education, outreach and plan submittal deadlines. Provides paint drop-off location standards. Allows the Director of Department of Environmental Quality (DEQ) to require a stewardship organization to contract with local governments to provide collection sites for post-consumer paint. Increases annual administration costs for stewardship organizations to \$40,000. Provides civil penalty caps for retailers and stewardship organization. Requires Director of DEQ to submit report to Legislative Assembly describing results of program and any recommended changes no later than November 1, 2018. Declares emergency, effective on passage.

ISSUES DISCUSSED:

-

EFFECT OF COMMITTEE AMENDMENT: makes program permanent. Changes report date to the Legislature.

BACKGROUND: House Bill 3037 (2009) created a pilot program empowering PaintCare, a non-profit organization created by the paint industry, to collect and recycle paint. Fees charged to customers buying paint at the time of sale funded PaintCare’s efforts. The pilot program is scheduled to sunset on June 30, 2014. House Bill 2048 would make the program permanent while requiring the reporting of additional information by PaintCare to the Department of Environmental Quality.

REVENUE: No revenue impact

FISCAL: Fiscal statement issued

Action:	Do Pass as Amended and Be Printed Engrossed and Be Referred to the Committee on Ways and Means by Prior Reference
Vote:	5 - 4 - 0
Yeas:	Boone, Dembrow, Reardon, Vega Pederson, Bailey
Nays:	Bentz, Johnson, Weidner, Whitsett
Exc.:	0
Prepared By:	Adam Crawford, Administrator
Meeting Dates:	3/14, 3/19, 4/11

WHAT THE MEASURE DOES: Provides definitions for ‘permanent collection site,’ ‘premium service,’ and ‘collecting.’ Requires stewardship organization to provide retailers information on collection opportunities for customers. Specifies paint stewardship program plan requirements, including education, outreach and plan submittal deadlines. Provides paint drop-off location standards. Allows Director of Department of Environmental Quality (DEQ) to require stewardship organization to contract with local governments to provide collection sites for post-consumer paint. Increases annual administration costs for stewardship organization to \$40,000. Provides civil penalty caps for retailers and stewardship organization. Extends paint stewardship pilot program sunset to June 30, 2018. Requires Director of DEQ to submit report to Legislative Assembly describing results of pilot program no later than October 1, 2016. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- History of PaintCare organization
- Location and number of collection sites
- Difficulty in finding locations that will take leftover paint
- Cost recovery for collection
- Local household waste facilities costs

EFFECT OF COMMITTEE AMENDMENT: Replaces measure.

BACKGROUND: House Bill 3037, a paint stewardship bill, passed during the 2009 Legislative Session. This bill created a pilot program empowering PaintCare, a non-profit organization created by the paint industry, to collect and recycle paint. Fees charged to customers buying paint at the time of sale funded PaintCare’s efforts. The pilot program is scheduled to sunset on June 30, 2014. House Bill 2048 A delays the sunset until June 30, 2018 while requiring the reporting of additional information by PaintCare to the Department of Environmental Quality.