

A-Engrossed
House Bill 2048

Ordered by the House April 15
Including House Amendments dated April 15

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Department of Environmental Quality)

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.

[Repeals] **Extends** sunset on architectural paint stewardship **pilot** program. Modifies provisions related to architectural paint stewardship **pilot** program participation.

Increases **certain** fees paid by architectural paint stewardship **pilot** program participants.

Establishes civil penalties for violations of certain provisions related to architectural paint stewardship **pilot** program.

Requires Director of Department of Environmental Quality to submit report regarding architectural paint stewardship pilot program to Legislative Assembly.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to paint stewardship; creating new provisions; amending ORS 459.995 and sections 2, 3, 4, 6, 7, 9, 13 and 14, chapter 777, Oregon Laws 2009; and declaring an emergency.

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

ARCHITECTURAL PAINT STEWARDSHIP PILOT PROGRAM

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

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

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

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

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

(3) "Collecting" means all activities performed by cities, counties or a collection service franchise holder to provide facilities, supplies, labor and advertising to receive, store and prepare post-consumer architectural paint managed through a stewardship organization.

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

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

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 **(6) “Permanent collection site” means a collection site for post-consumer architectural**
2 **paint at a fixed location with regular hours of operation.**

3 [(5)] (7) “Post-consumer architectural paint” means architectural paint not used and no longer
4 wanted by its purchaser.

5 **(8) “Premium service” means the curbside collection of post-consumer architectural**
6 **paint by cities, counties or a collection service franchise holder which is included in rates for**
7 **the curbside collection paid by the customers.**

8 [(6)] (9) “Producer” means a person that manufactures architectural paint that is sold or offered
9 for sale in this state.

10 [(7)(a)] (10)(a) “Recycling” means any process by which discarded products, components and
11 by-products are transformed into new usable or marketable materials in a manner in which the
12 products may lose their original composition.

13 (b) “Recycling” does not include energy recovery or energy generation by means of combusting
14 discarded products, components and by-products with or without other waste products from post-
15 consumer architectural paint.

16 [(8)] (11) “Retailer” means any person that sells or offers for sale architectural paint at retail
17 in this state.

18 [(9)] (12) “Reuse” means the return of a product into the economic stream for use in the same
19 kind of application intended for the use of the product, without a change in the product’s original
20 composition **or packaging.**

21 [(10)] (13) “Sell” or “sale” means any transfer of title for consideration, including remote sales
22 conducted through sales outlets, catalogs or the Internet or through any other similar electronic
23 means.

24 [(11)] (14) “Sound management practices” means policies to be implemented by a producer or a
25 stewardship organization to ensure compliance with all applicable laws and that address:

26 (a) Adequate record keeping;

27 (b) The tracking and documentation of the use, reuse or disposal of post-consumer architectural
28 paint within this state and outside this state; and

29 (c) Adequate environmental liability coverage for professional services and for the operations
30 of contractors working for producers or a stewardship organization.

31 [(12)] (15) “Stewardship organization” means a corporation, nonprofit organization or other legal
32 entity created by a producer or group of producers to implement the architectural paint stewardship
33 pilot program described in sections 1 to 10 [*of this 2009 Act*], **chapter 777, Oregon Laws 2009.**

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

35 **Sec. 3.** (1) A producer or retailer may not sell or offer for sale architectural paint to any person
36 in this state unless the producer is participating in [a] **an approved** statewide architectural paint
37 stewardship pilot program organized by a stewardship organization. A retailer is in compliance with
38 this [section] **subsection** if, on the date the architectural paint was ordered from the producer or
39 its agent, the website maintained by the Department of Environmental Quality lists the producer,
40 along with the producer’s product brand, as participating in an **approved** architectural paint
41 stewardship pilot program.

42 (2)(a) [*At the time of sale to a consumer, a producer or retailer*] **A stewardship organization**
43 **must provide retailers** selling or offering for sale architectural paint [*must provide the consumer*]
44 with information on available [*end-of-product-life management options*] **collection opportunities for**
45 **post-consumer architectural paint** offered through [*an*] **the organization’s** architectural paint

1 stewardship pilot program.

2 **(b) A retailer that sells or offers for sale architectural paint must provide the informa-**
3 **tion described in paragraph (a) of this subsection to the consumer at the time of sale.**

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

5 **Sec. 4.** (1) *[No later than March 1, 2010,]* A stewardship organization must submit a plan for a
6 statewide architectural paint stewardship pilot program to the Director of the Department of Envi-
7 ronmental Quality for approval. **The plan must address the requirements set forth in sub-**
8 **sections (2) and (5) of this section.**

9 (2) The plan must:

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

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

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

18 **(A) Identify collection opportunities for post-consumer architectural paint;**

19 **(B) Explain the architectural paint stewardship assessment described in this section; and**

20 **(C) Promote:**

21 **(i) The reduction in the generation of post-consumer architectural paint; and**

22 **(ii) The reuse, recovery and recycling of post-consumer architectural paint.**

23 **(b) Specify activities related to the establishment and maintenance of a convenient sys-**
24 **tem for the collection of post-consumer architectural paint. The system must ensure that:**

25 **(A) One permanent collection site exists for every 30,000 residents in this state.**

26 **(B) 95 percent of the residents in this state are within 15 miles of a permanent collection**
27 **site.**

28 **(c) Provide for the development and implementation of strategies to reduce the gener-**
29 **ation of post-consumer architectural paint.**

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

34 **(3) In order to meet the requirements of subsection (2)(b) of this section, the director**
35 **may require a stewardship organization to contract with a local government, as defined in**
36 **ORS 174.116, to provide collection sites for post-consumer architectural paint.**

37 **(4) The director may exempt a stewardship organization from one or more of the activ-**
38 **ities specified in subsection (2) of this section if the director determines that the activity is**
39 **impracticable or is unlikely to further the provisions of sections 1 to 10, chapter 777, Oregon**
40 **Laws 2009.**

41 **(5) In addition to the requirements specified in subsection (2) of this section, the plan**
42 **must also:**

43 **(a) Identify each producer participating in the program.**

44 **(b) Identify the participating brands of architectural paint sold in this state.**

45 **(c) Identify the processors that manage the post-consumer architectural paint collected**

1 **by the stewardship organization under the program.**

2 [(c)] (d) Include a funding mechanism whereby each architectural paint producer remits to the
 3 stewardship organization payment of an architectural paint stewardship assessment for each con-
 4 tainer of architectural paint the producer sells in this state. The architectural paint stewardship
 5 assessment must be added to the cost of all architectural paint sold to Oregon retailers and dis-
 6 tributors, and each Oregon retailer or distributor shall add the assessment to the purchase price of
 7 all architectural paint sold in this state. The architectural paint stewardship assessment may not
 8 be described as an Oregon recycling fee at the point of retail, and a fee may not be charged to the
 9 consumer at the point of collection of post-consumer architectural paint. To ensure that the funding
 10 mechanism is equitable and sustainable, a uniform architectural paint stewardship assessment must
 11 be established for all architectural paint sold in this state. The architectural paint stewardship as-
 12 sessment must be approved by the director as part of the plan and must be sufficient to recover, but
 13 not exceed, the costs of the architectural paint stewardship pilot program. **The assessment must**
 14 **be sufficient to recover the costs incurred by cities, counties and collection service franchise**
 15 **holders for collecting post-consumer architectural paint, except those costs related to pre-**
 16 **mium service.**

17 [(3)] (6) 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 **as** described in the plan[:].

20 [(b) *Provide for the development and implementation of strategies to reduce the generation of post-*
 21 *consumer architectural paint; and*]

22 [(c) *Promote the reuse of post-consumer architectural paint and undertake the responsibility of ne-*
 23 *gotiating and executing contracts to collect, transport, recycle and process post-consumer architectural*
 24 *paint for end-of-product-life management that includes recycling, energy recovery and disposal using*
 25 *sound management practices.*]

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

32 **SECTION 4. (1) The first plans for statewide architectural paint stewardship pilot pro-**
 33 **grams under section 4, chapter 777, Oregon Laws 2009, as amended by section 3 of this 2013**
 34 **Act, must be submitted to the Director of the Department of Environmental Quality not**
 35 **later than January 1, 2014.**

36 **(2) A stewardship organization that submitted a plan for a statewide architectural paint**
 37 **stewardship pilot program to the director before the effective date of this 2013 Act, or that**
 38 **had a plan approved by the director before the effective date of this 2013 Act, must submit**
 39 **an updated plan under section 4, chapter 777, Oregon Laws 2009, as amended by section 3 of**
 40 **this 2013 Act, to the director not later than January 1, 2014.**

41 **SECTION 5.** Section 6, chapter 777, Oregon Laws 2009, is amended to read:

42 **Sec. 6.** No later than [*September 1, 2011, and by September 1 of each subsequent*] **October 1 of**
 43 **each** year, a stewardship organization must submit a report to the Director of the Department of
 44 Environmental Quality describing the architectural paint stewardship pilot program approved by the
 45 director under section 4 [*of this 2009 Act*], **chapter 777, Oregon Laws 2009.** At a minimum, the

1 report must contain:

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

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

6 (3) The volume of post-consumer architectural paint collected in this state by method of dispo-
7 sition, including reuse, recycling, energy recovery and disposal;

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

9 (5) A description of program costs;

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

11 (7) Samples of educational **and outreach** materials provided to consumers of architectural paint,
12 an evaluation of the methods used to disseminate those materials and an assessment of the effec-
13 tiveness of the education and outreach, including levels of waste prevention and reuse; and

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

15 **SECTION 6.** Section 9, chapter 777, Oregon Laws 2009, is amended to read:

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

19 (a) \$10,000 when the plan **or updated plan** specified in section 4 [*of this 2009 Act*], **chapter 777,**
20 **Oregon Laws 2009,** is submitted to the [*department*] **Director of the Department of Environ-**
21 **mental Quality;** and

22 (b) [*\$10,000*] **\$40,000** each year thereafter for administrative costs related to the architectural
23 paint stewardship pilot program.

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

28 [(3)] **(2)** Fees collected by the department under this section shall be deposited in the Product
29 Stewardship Fund established under section 10 [*of this 2009 Act*], **chapter 777, Oregon Laws 2009.**

30 **SECTION 7.** Section 7, chapter 777, Oregon Laws 2009, as amended by section 1, chapter 146,
31 Oregon Laws 2011, is amended is read:

32 **Sec. 7.** (1)(a) Except for the financial, cost, production or sales data and records specified in
33 paragraph (b) of this subsection, the Department of Environmental Quality may not disclose any fi-
34 nancial, cost, production or sales data and records of a stewardship organization, or of a specific
35 producer, obtained by the department as part of the approval of a plan, **or updated plan,** for a
36 statewide architectural paint stewardship pilot program pursuant to section 4, chapter 777, Oregon
37 Laws 2009, or as part of an annual report submitted pursuant to section 6, chapter 777, Oregon Laws
38 2009.

39 (b) If the Department of Environmental Quality determines that disclosure is necessary for the
40 public to adequately understand the derivation of the architectural paint stewardship assessment
41 described in section 4, chapter 777, Oregon Laws 2009, the level of the services or associated costs
42 that are anticipated under the assessment or the services or associated costs that are delivered
43 under the assessment, the department may disclose, in aggregate form, information contained in the
44 financial, cost, production or sales data and records related to the level of service and associated
45 costs for the following services offered by the statewide architectural paint stewardship pilot pro-

1 gram:

2 (A) Collection, reuse, transportation, recycling, energy recovery, disposal and other processing
3 of waste paint;

4 (B) Waste reduction efforts;

5 (C) Education and promotion; and

6 (D) Administration.

7 (2) The Department of Environmental Quality may not disclose the names of brands by specific
8 producers obtained by the department as part of the approval of a plan for a statewide architectural
9 paint stewardship pilot program pursuant to section 4, chapter 777, Oregon Laws 2009. The depart-
10 ment may disclose separate lists indicating participating producers and participating brands of the
11 statewide architectural paint stewardship pilot program.

12 (3) Nothing in this section shall impose additional reporting obligations on a stewardship or-
13 ganization beyond those specified in sections 1 to 10, chapter 777, Oregon Laws 2009.

14
15 **PENALTIES**

16
17 **SECTION 8.** ORS 459.995 is amended to read:

18 459.995. (1) Except as provided in subsection (2) of this section, in addition to any other penalty
19 provided by law:

20 (a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790,
21 459A.005 to 459A.620, 459A.310 to 459A.335, 459A.675 to 459A.685 or 646A.080, or any rule or order
22 of the Environmental Quality Commission pertaining to the disposal, collection, storage or reuse or
23 recycling of solid wastes, as defined by ORS 459.005, or any rule or order pertaining to the disposal,
24 storage or transportation of waste tires, as defined by ORS 459.705, or any rule or order pertaining
25 to the sale of novelty items that contain encapsulated liquid mercury, *[shall incur]* **incurs** a civil
26 penalty not to exceed \$25,000 *[a]* **per** day for each day of the violation.

27 (b) Any person who violates the provisions of ORS 459.420 to 459.426 *[shall incur]* **incurs** a civil
28 penalty not to exceed \$500 for each violation. Each battery that is disposed of improperly *[shall*
29 *be]* **is** a separate violation. Each day an establishment fails to post the notice required under ORS
30 459.426 *[shall be]* **is** a separate violation.

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

34 (d) Any person who violates the provisions of ORS 459.247 (1)(f) *[shall incur]* **incurs** a civil
35 penalty not to exceed \$500 for each violation. Each covered electronic device that is disposed of
36 improperly *[shall be]* **is** a separate violation.

37 (e) **Any retailer that violates the provisions of section 3 (2)(b), chapter 777, Oregon Laws**
38 **2009, incurs a civil penalty not to exceed \$100 per day for each day of the violation.**

39 (f) **Any producer or retailer that violates the provisions of section 3 (1), chapter 777,**
40 **Oregon Laws 2009, incurs a civil penalty not to exceed \$1,000 per day for each day of the vi-**
41 **olation.**

42 (g) **Any stewardship organization that violates the provisions of section 3 (2)(a), 4 or 6,**
43 **chapter 777, Oregon Laws 2009, incurs a civil penalty not to exceed \$1,000 per day for each**
44 **day of the violation.**

45 (2) Any product manufacturer or package manufacturer who violates ORS 459A.650 to 459A.665

1 or any rule adopted under ORS 459A.650 to 459A.665 [*shall incur*] **incurs** a civil penalty not to ex-
2 ceed \$1,000 per day for each day of the violation. A violation of ORS 459A.650 to 459A.665 [*shall*
3 *not be*] **is not** subject to additional penalties under subsection (1) of this section.

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

6
7 **EXTENSION OF SUNSET AND TRANSFER OF MONEYS**

8
9 **SECTION 9.** Section 13, chapter 777, Oregon Laws 2009, is amended to read:

10 **Sec. 13.** Sections 1 to 10 [*of this 2009 Act*], **chapter 777, Oregon Laws 2009**, are repealed on
11 June 30, [2014] **2018**.

12 **SECTION 10.** Section 14, chapter 777, Oregon Laws 2009, is amended to read:

13 **Sec. 14.** Any moneys remaining in the Product Stewardship Fund on June 30, [2014] **2018**, are
14 transferred to the General Fund.

15
16 **REPORT**

17
18 **SECTION 11.** No later than October 1, 2016, the Director of the Department of Environ-
19 mental Quality shall submit a report to the Legislative Assembly describing the results of
20 the architectural paint stewardship pilot program and recommending whether the program
21 should be made permanent and any modifications necessary to improve the program's func-
22 tioning and efficiency. The report must include an accounting of the administrative fees paid
23 by the producers to the Department of Environmental Quality under section 9, chapter 777,
24 Oregon Laws 2009, as amended by section 6 of this 2013 Act.

25
26 **MISCELLANEOUS**

27
28 **SECTION 12.** The unit captions used in this 2013 Act are provided only for the conven-
29 ience of the reader and do not become part of the statutory law of this state or express any
30 legislative intent in the enactment of this 2013 Act.

31 **SECTION 13.** (1)(a) The amendments to sections 2, 3, 4, 6 and 7, chapter 777, Oregon Laws
32 2009, by sections 1 to 3, 5 and 7 of this 2013 Act apply to the plans and updated plans that
33 must be submitted to the Director of the Department of Environmental Quality on and after
34 the effective date of this 2013 Act.

35 (b) A stewardship organization may continue to operate and report under a plan approved
36 by the director before the effective date of this 2013 Act until the updated plan required to
37 be submitted to the director pursuant to section 4 (2) of this 2013 Act is approved.

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

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

42 (b) Administrative costs related to architectural paint stewardship pilot programs for
43 calendar years beginning on or after January 1, 2013.

44 (3) The amendments to section 4, chapter 777, Oregon Laws 2009, by section 3 of this 2013
45 Act related to architectural paint stewardship assessments apply to payments of assess-

1 **ments remitted to stewardship organizations on or after the effective date of this 2013 Act.**

2 **(4) The amendments to ORS 459.995 by section 8 of this 2013 Act apply to violations of**
3 **sections 3, 4 and 6, chapter 777, Oregon Laws 2009, as amended by sections 2, 3 and 5 of this**
4 **2013 Act, that occur on or after the effective date of this 2013 Act.**

5
6 **EMERGENCY CLAUSE**

7
8 **SECTION 14. This 2013 Act being necessary for the immediate preservation of the public**
9 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
10 **on its passage.**

11 _____