

HOUSE AMENDMENTS TO HOUSE BILL 2048

By COMMITTEE ON ENERGY AND ENVIRONMENT

April 15

1 On page 1 of the printed bill, line 2, after “sections” delete the rest of the line and line 3 and
2 insert “2, 3, 4, 6, 7, 9, 13 and 14, chapter 777.”

3 Delete lines 6 through 28 and delete pages 2 through 9 and insert:
4

“ARCHITECTURAL PAINT STEWARDSHIP PILOT PROGRAM

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

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

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

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

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

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

19 “[3] (4) ‘Distributor’ means a company that has a contractual relationship with one or more
20 producers to market and sell architectural paint to retailers in this state.

21 “[4] (5) ‘Energy recovery’ means recovery in which all or a part of the solid waste materials
22 of architectural paint are processed to use the heat content or other forms of energy from the solid
23 waste materials.

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

26 “[5] (7) ‘Post-consumer architectural paint’ means architectural paint not used and no longer
27 wanted by its purchaser.

28 “(8) ‘Premium service’ means the curbside collection of post-consumer architectural
29 paint by cities, counties or a collection service franchise holder which is included in rates for
30 the curbside collection paid by the customers.

31 “[6] (9) ‘Producer’ means a person that manufactures architectural paint that is sold or offered
32 for sale in this state.

33 “[7(a)] (10)(a) ‘Recycling’ means any process by which discarded products, components and
34 by-products are transformed into new usable or marketable materials in a manner in which the
35 products may lose their original composition.

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

4 “[8] (11) ‘Retailer’ means any person that sells or offers for sale architectural paint at retail
5 in this state.

6 “[9] (12) ‘Reuse’ means the return of a product into the economic stream for use in the same
7 kind of application intended for the use of the product, without a change in the product’s original
8 composition **or packaging**.

9 “[10] (13) ‘Sell’ or ‘sale’ means any transfer of title for consideration, including remote sales
10 conducted through sales outlets, catalogs or the Internet or through any other similar electronic
11 means.

12 “[11] (14) ‘Sound management practices’ means policies to be implemented by a producer or a
13 stewardship organization to ensure compliance with all applicable laws and that address:

14 “(a) Adequate record keeping;

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

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

19 “[12] (15) ‘Stewardship organization’ means a corporation, nonprofit organization or other legal
20 entity created by a producer or group of producers to implement the architectural paint stewardship
21 pilot program described in sections 1 to 10 [*of this 2009 Act*], **chapter 777, Oregon Laws 2009**.

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

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

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

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

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

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

42 “(2) The plan must:

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

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

1 *by each producer; and]*

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

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

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

9 **“(C) Promote:**

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

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

12 **“(b) Specify activities related to the establishment and maintenance of a convenient**
13 **system for the collection of post-consumer architectural paint. The system must ensure**
14 **that:**

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

16 **“(B) 95 percent of the residents in this state are within 15 miles of a permanent col-**
17 **lection site.**

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

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

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

27 **“(4) The director may exempt a stewardship organization from one or more of the ac-**
28 **tivities specified in subsection (2) of this section if the director determines that the activity**
29 **is impracticable or is unlikely to further the provisions of sections 1 to 10, chapter 777,**
30 **Oregon Laws 2009.**

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

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

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

35 **“(c) Identify the processors that manage the post-consumer architectural paint collected**
36 **by the stewardship organization under the program.**

37 **“[(c)] (d) Include a funding mechanism whereby each architectural paint producer remits to the**
38 **stewardship organization payment of an architectural paint stewardship assessment for each con-**
39 **tainer of architectural paint the producer sells in this state. The architectural paint stewardship**
40 **assessment must be added to the cost of all architectural paint sold to Oregon retailers and dis-**
41 **tributors, and each Oregon retailer or distributor shall add the assessment to the purchase price of**
42 **all architectural paint sold in this state. The architectural paint stewardship assessment may not**
43 **be described as an Oregon recycling fee at the point of retail, and a fee may not be charged to the**
44 **consumer at the point of collection of post-consumer architectural paint. To ensure that the funding**
45 **mechanism is equitable and sustainable, a uniform architectural paint stewardship assessment must**

1 be established for all architectural paint sold in this state. The architectural paint stewardship as-
2 sessment must be approved by the director as part of the plan and must be sufficient to recover, but
3 not exceed, the costs of the architectural paint stewardship pilot program. **The assessment must**
4 **be sufficient to recover the costs incurred by cities, counties and collection service franchise**
5 **holders for collecting post-consumer architectural paint, except those costs related to pre-**
6 **mium service.**

7 “[~~(3)~~] **(6)** Beginning no later than [*July 1, 2010, or*] two months after the plan is approved under
8 subsection (1) of this section, [*whichever occurs first,*] the stewardship organization must[:]

9 “[*(a)*] implement an architectural paint stewardship pilot program **as** described in the plan[:].

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

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

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

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

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

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

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

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

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

41 **“(3)** The volume of post-consumer architectural paint collected in this state by method of dis-
42 position, including reuse, recycling, energy recovery and disposal;

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

44 **“(5)** A description of program costs;

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

1 “(7) Samples of educational **and outreach** materials provided to consumers of architectural
2 paint, an evaluation of the methods used to disseminate those materials and an assessment of the
3 effectiveness of the education and outreach, including levels of waste prevention and reuse; and

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

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

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

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

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

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

18 “[*(3)*] **(2)** Fees collected by the department under this section shall be deposited in the Product
19 Stewardship Fund established under section 10 [*of this 2009 Act*], **chapter 777, Oregon Laws 2009.**

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

22 “**Sec. 7.** (1)(a) Except for the financial, cost, production or sales data and records specified in
23 paragraph (b) of this subsection, the Department of Environmental Quality may not disclose any fi-
24 nancial, cost, production or sales data and records of a stewardship organization, or of a specific
25 producer, obtained by the department as part of the approval of a plan, **or updated plan,** for a
26 statewide architectural paint stewardship pilot program pursuant to section 4, chapter 777, Oregon
27 Laws 2009, or as part of an annual report submitted pursuant to section 6, chapter 777, Oregon Laws
28 2009.

29 “(b) If the Department of Environmental Quality determines that disclosure is necessary for the
30 public to adequately understand the derivation of the architectural paint stewardship assessment
31 described in section 4, chapter 777, Oregon Laws 2009, the level of the services or associated costs
32 that are anticipated under the assessment or the services or associated costs that are delivered
33 under the assessment, the department may disclose, in aggregate form, information contained in the
34 financial, cost, production or sales data and records related to the level of service and associated
35 costs for the following services offered by the statewide architectural paint stewardship pilot pro-
36 gram:

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

39 “(B) Waste reduction efforts;

40 “(C) Education and promotion; and

41 “(D) Administration.

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

1 statewide architectural paint stewardship pilot program.

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

4
5 “PENALTIES

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7 “**SECTION 8.** ORS 459.995 is amended to read:

8 “459.995. (1) Except as provided in subsection (2) of this section, in addition to any other penalty
9 provided by law:

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

17 “(b) Any person who violates the provisions of ORS 459.420 to 459.426 [*shall incur*] **incurs** a civil
18 penalty not to exceed \$500 for each violation. Each battery that is disposed of improperly [*shall*
19 *be*] **is** a separate violation. Each day an establishment fails to post the notice required under ORS
20 459.426 [*shall be*] **is** a separate violation.

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

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

27 “(e) **Any retailer that violates the provisions of section 3 (2)(b), chapter 777, Oregon Laws**
28 **2009, incurs a civil penalty not to exceed \$100 per day for each day of the violation.**

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

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

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

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

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42 “EXTENSION OF SUNSET AND TRANSFER OF MONEYS

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

45 “**Sec. 13.** Sections 1 to 10 [*of this 2009 Act*], **chapter 777, Oregon Laws 2009,** are repealed on

1 June 30, [2014] 2018.

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

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

5
6 “**REPORT**

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8 “**SECTION 11.** No later than October 1, 2016, the Director of the Department of Envi-
9 ronmental Quality shall submit a report to the Legislative Assembly describing the results
10 of the architectural paint stewardship pilot program and recommending whether the pro-
11 gram should be made permanent and any modifications necessary to improve the program’s
12 functioning and efficiency. The report must include an accounting of the administrative fees
13 paid by the producers to the Department of Environmental Quality under section 9, chapter
14 777, Oregon Laws 2009, as amended by section 6 of this 2013 Act.

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16 “**MISCELLANEOUS**

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

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

25 “(b) A stewardship organization may continue to operate and report under a plan ap-
26 proved by the director before the effective date of this 2013 Act until the updated plan re-
27 quired to be submitted to the director pursuant to section 4 (2) of this 2013 Act is approved.

28 “(2) The amendments to section 9, chapter 777, Oregon Laws 2009, by section 6 of this
29 2013 Act apply to:

30 “(a) Plans specified in section 4, chapter 777, Oregon Laws 2009, as amended by section
31 3 of this 2013 Act, submitted to the director on and after the effective date of this 2013 Act.

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

34 “(3) The amendments to section 4, chapter 777, Oregon Laws 2009, by section 3 of this
35 2013 Act related to architectural paint stewardship assessments apply to payments of as-
36 sessments remitted to stewardship organizations on or after the effective date of this 2013
37 Act.

38 “(4) The amendments to ORS 459.995 by section 8 of this 2013 Act apply to violations of
39 sections 3, 4 and 6, chapter 777, Oregon Laws 2009, as amended by sections 2, 3 and 5 of this
40 2013 Act, that occur on or after the effective date of this 2013 Act.

41
42 “**EMERGENCY CLAUSE**

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44 “**SECTION 14.** This 2013 Act being necessary for the immediate preservation of the public
45 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect

1 **on its passage.”**

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