

**PROPOSED AMENDMENTS TO
HOUSE BILL 2048**

1 On page 1 of the printed bill, line 2, after “sections” delete the rest of the
2 line and line 3 and 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

5 **“ARCHITECTURAL PAINT STEWARDSHIP PILOT PROGRAM**
6

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

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

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

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

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

20 **“(3) ‘Collecting’ means all activities performed by cities, counties**
21 **or a collective service franchise holder to provide facilities, supplies,**
22 **labor and advertising to receive, store and prepare post-consumer ar-**

1 **chitectural paint managed through a stewardship organization.**

2 “[3] (4) ‘Distributor’ means a company that has a contractual relation-
3 ship with one or more producers to market and sell architectural paint to
4 retailers in this state.

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

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

11 “[5] (7) ‘Post-consumer architectural paint’ means architectural paint
12 not used and no longer wanted by its purchaser.

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

17 “[6] (9) ‘Producer’ means a person that manufactures architectural paint
18 that is sold or offered for sale in this state.

19 “[7(a)] (10)(a) ‘Recycling’ means any process by which discarded pro-
20 ducts, components and by-products are transformed into new usable or
21 marketable materials in a manner in which the products may lose their ori-
22 ginal composition.

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

26 “[8] (11) ‘Retailer’ means any person that sells or offers for sale archi-
27 tectural paint at retail in this state.

28 “[9] (12) ‘Reuse’ means the return of a product into the economic stream
29 for use in the same kind of application intended for the use of the product,
30 without a change in the product’s original composition **or packaging.**

1 “[10] (13) ‘Sell’ or ‘sale’ means any transfer of title for consideration,
2 including remote sales conducted through sales outlets, catalogs or the
3 Internet or through any other similar electronic means.

4 “[11] (14) ‘Sound management practices’ means policies to be imple-
5 mented by a producer or a stewardship organization to ensure compliance
6 with all applicable laws and that address:

7 “(a) Adequate record keeping;

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

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

14 “[12] (15) ‘Stewardship organization’ means a corporation, nonprofit or-
15 ganization or other legal entity created by a producer or group of producers
16 to implement the architectural paint stewardship pilot program described in
17 sections 1 to 10 [of this 2009 Act], **chapter 777, Oregon Laws 2009.**

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

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

29 “(2)(a) [At the time of sale to a consumer, a producer or retailer] **A**
30 **stewardship organization must provide retailers** selling or offering for

1 sale architectural paint [*must provide the consumer*] with information on
2 available [*end-of-product-life management options*] **collection opportunities**
3 **for post-consumer architectural paint** offered through [*an*] **the**
4 **organization’s** architectural paint stewardship pilot program.

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

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

10 “**Sec. 4.** (1) [*No later than March 1, 2010,*] A stewardship organization
11 must submit a plan for a statewide architectural paint stewardship pilot
12 program to the Director of the Department of Environmental Quality for
13 approval. **The plan must address the requirements set forth in sub-**
14 **sections (2) and (4) of this section.**

15 “(2) The plan must:

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

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

20 “(a) **Specify educational and outreach activities that promote the**
21 **architectural paint stewardship pilot program. Educational and out-**
22 **reach materials must include, but are not limited to, signage, written**
23 **materials and templates of materials for reproduction by retailers to**
24 **be provided to the consumer at the time of sale. The materials must:**

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

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

29 “(C) **Promote:**

30 “(i) **The reduction in the generation of post-consumer architectural**

1 **paint; and**

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

4 **“(b) Specify activities related to the establishment and maintenance**
5 **of a convenient system for the collection of post-consumer architec-**
6 **tural paint. The system must ensure that:**

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

9 **“(B) 95 percent of the residents in this state are within _____ miles**
10 **of a permanent collection site.**

11 **“(c) Provide for the development and implementation of strategies**
12 **to reduce the generation of post-consumer architectural paint; and**

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

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 collected by the stewardship organization under the**
30 **program.**

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

20 “[(3)] (5) Beginning no later than [*July 1, 2010, or*] two months after the
21 plan is approved under subsection (1) of this section, [*whichever occurs*
22 *first,*] the stewardship organization must[:]

23 “[(a)] implement an architectural paint stewardship pilot program **as de-**
24 **scribed in the plan[:].**

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

27 “[(c) *Promote the reuse of post-consumer architectural paint and undertake*
28 *the responsibility of negotiating and executing contracts to collect, transport,*
29 *recycle and process post-consumer architectural paint for end-of-product-life*
30 *management that includes recycling, energy recovery and disposal using sound*

1 *management practices.]*

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

9 “(6) **Not later than 30 days after the last day of each quarter of the**
10 **calendar year, each city, county and collection service franchise holder**
11 **shall provide the stewardship organization with an accounting of costs**
12 **related to collecting post-consumer architectural paint. The**
13 **stewardship organization must make reimbursement within 30 days**
14 **of receipt of the claim for reimbursement.**

15 “**SECTION 4. (1) The first plans for statewide architectural paint**
16 **stewardship pilot programs under section 4, chapter 777, Oregon Laws**
17 **2009, as amended by section 3 of this 2013 Act, must be submitted to**
18 **the Director of the Department of Environmental Quality not later**
19 **than January 1, 2014.**

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

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

29 “**Sec. 6.** *No later than [September 1, 2011, and by September 1 of each*
30 *subsequent] **October 1 of each** year, a stewardship organization must submit*

1 a report to the Director of the Department of Environmental Quality de-
2 scribing the architectural paint stewardship pilot program approved by the
3 director under section 4 [*of this 2009 Act*], **chapter 777, Oregon Laws**
4 **2009**. At a minimum, the report must contain:

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

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

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

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

13 “(5) A description of program costs;

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

15 “(7) Samples of educational **and outreach** materials provided to consum-
16 ers of architectural paint, an evaluation of the methods used to disseminate
17 those materials and an assessment of the effectiveness of the education and
18 outreach, including levels of waste prevention and reuse; and

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

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

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

26 “(a) \$10,000 when the plan **or updated plan** specified in section 4 [*of this*
27 *2009 Act*], **chapter 777, Oregon Laws 2009**, is submitted to the
28 [*department*] **Director of the Department of Environmental Quality**; and

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

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

6 “[3] (2) Fees collected by the department under this section shall be
7 deposited in the Product Stewardship Fund established under section 10 [of
8 *this 2009 Act*], **chapter 777, Oregon Laws 2009.**

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

11 **“Sec. 7.** (1)(a) Except for the financial, cost, production or sales data and
12 records specified in paragraph (b) of this subsection, the Department of En-
13 vironmental Quality may not disclose any financial, cost, production or sales
14 data and records of a stewardship organization, or of a specific producer,
15 obtained by the department as part of the approval of a plan, **or updated**
16 **plan**, for a statewide architectural paint stewardship pilot program pursuant
17 to section 4, chapter 777, Oregon Laws 2009, or as part of an annual report
18 submitted pursuant to section 6, chapter 777, Oregon Laws 2009.

19 “(b) If the Department of Environmental Quality determines that disclo-
20 sure is necessary for the public to adequately understand the derivation of
21 the architectural paint stewardship assessment described in section 4, chap-
22 ter 777, Oregon Laws 2009, the level of the services or associated costs that
23 are anticipated under the assessment or the services or associated costs that
24 are delivered under the assessment, the department may disclose, in aggre-
25 gate form, information contained in the financial, cost, production or sales
26 data and records related to the level of service and associated costs for the
27 following services offered by the statewide architectural paint stewardship
28 pilot program:

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

1 “(B) Waste reduction efforts;
2 “(C) Education and promotion; and
3 “(D) Administration.

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

11 “(3) Nothing in this section shall impose additional reporting obligations
12 on a stewardship organization beyond those specified in sections 1 to 10,
13 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 addi-
19 tion to any other penalty provided by law:

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

29 “(b) Any person who violates the provisions of ORS 459.420 to 459.426
30 [*shall incur*] **incurs** a civil penalty not to exceed \$500 for each violation.

1 Each battery that is disposed of improperly [*shall be*] **is** a separate violation.
2 Each day an establishment fails to post the notice required under ORS
3 459.426 [*shall be*] **is** a separate violation.

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

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

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

15 “(f) **Any producer or retailer that violates the provisions of section**
16 **3 (1), chapter 777, Oregon Laws 2009, incurs a civil penalty not to ex-**
17 **ceed \$1,000 per day for each day of the violation.**

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

21 “(2) Any product manufacturer or package manufacturer who violates
22 ORS 459A.650 to 459A.665 or any rule adopted under ORS 459A.650 to
23 459A.665 [*shall incur*] **incurs** a civil penalty not to exceed \$1,000 per day for
24 each day of the violation. A violation of ORS 459A.650 to 459A.665 [*shall not*
25 *be*] **is not** subject to additional penalties under subsection (1) of this section.

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

28

29 “**EXTENSION OF SUNSET AND TRANSFER OF MONEYS**

30

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

3 **“Sec. 13.** Sections 1 to 10 [*of this 2009 Act*], **chapter 777, Oregon Laws**
4 **2009**, are repealed on June 30, [2014] **2018**.

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

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

9

10

“REPORT

11

12 **SECTION 11.** No later than October 1, 2016, the Director of the
13 **Department of Environmental Quality** shall submit a report to the
14 **Legislative Assembly** describing the results of the architectural paint
15 **stewardship pilot program** and recommending whether the program
16 **should be made permanent** and any modifications necessary to im-
17 **prove the program’s functioning and efficiency.** The report must in-
18 **clude an accounting of the administrative fees paid by the producers**
19 **to the Department of Environmental Quality under section 9, chapter**
20 **777, Oregon Laws 2009, as amended by section 6 of this 2013 Act.**

21

22

“MISCELLANEOUS

23

24 **SECTION 12.** The unit captions used in this 2013 Act are provided
25 **only for the convenience of the reader and do not become part of the**
26 **statutory law of this state or express any legislative intent in the**
27 **enactment of this 2013 Act.**

28 **SECTION 13.** (1)(a) The amendments to sections 2 to 4, 6 and 7,
29 **chapter 777, Oregon Laws 2009, by sections 1 to 3, 5 and 7 of this 2013**
30 **Act apply to the plans and updated plans that must be submitted to**

1 the Director of the Department of Environmental Quality on and after
2 the effective date of this 2013 Act.

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

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

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

12 “(b) Administrative costs related to architectural paint stewardship
13 pilot programs for calendar years beginning on or after January 1,
14 2013.

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

19 “(4) The amendments to ORS 459.995 by section 8 of this 2013 Act
20 apply to violations of sections 3, 4 and 6, chapter 777, Oregon Laws
21 2009, as amended by sections 2, 3 and 5 of this 2013 Act, that occur on
22 or after the effective date of this 2013 Act.

23

24

“EMERGENCY CLAUSE

25

26 “SECTION 14. This 2013 Act being necessary for the immediate
27 preservation of the public peace, health and safety, an emergency is
28 declared to exist, and this 2013 Act takes effect on its passage.”.

29