

[First Reprint]

**SENATE, No. 2679**

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**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

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INTRODUCED JULY 6, 2020

**Sponsored by:**

**Senator JAMES BEACH**

**District 6 (Burlington and Camden)**

**Senator BOB SMITH**

**District 17 (Middlesex and Somerset)**

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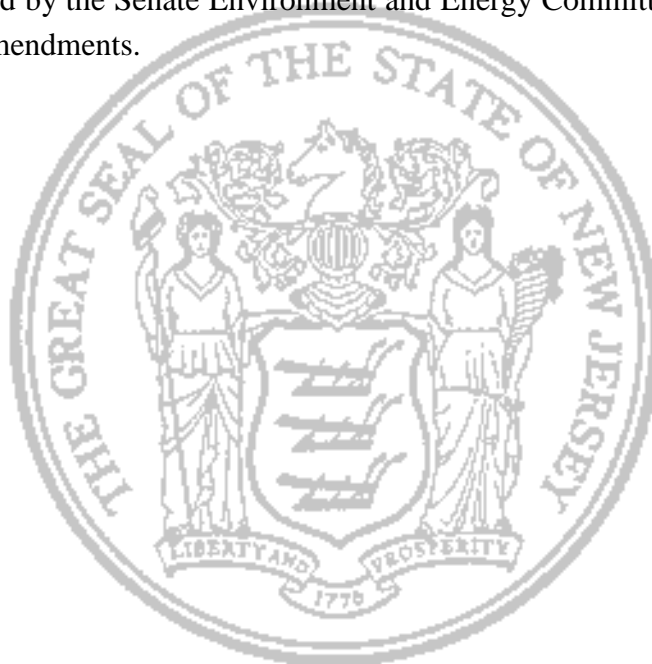
**Senator Pou**

**SYNOPSIS**

Requires paint producers to implement or participate in paint stewardship program.

**CURRENT VERSION OF TEXT**

As reported by the Senate Environment and Energy Committee on March 4, 2021, with amendments.



**(Sponsorship Updated As Of: 6/21/2021)**

1 AN ACT requiring producers of architectural paint to implement or  
2 participate in a paint stewardship program, and supplementing  
3 Title 13 of the Revised Statutes.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. This act shall be known and may be cited as the  
9 “Architectural Paint Stewardship Act.”

10  
11 2. The Legislature finds and declares that local governments,  
12 businesses, and residents of the State do not have ready access to an  
13 efficient, environmentally sound, and cost-effective disposal  
14 method for architectural paint; and that hazardous waste collection  
15 days are costly for local governments and insufficient,  
16 inconvenient, and too infrequent to properly serve local businesses  
17 and residents, resulting in missed opportunities to reduce, reuse, and  
18 recycle paint.

19 The Legislature further finds and declares that the producers of  
20 architectural paint are best able to assume responsibility for the  
21 development and implementation of a cost-effective paint  
22 stewardship program that will provide fiscal relief to local  
23 governments by reducing the volumes of leftover paint, promoting  
24 its reuse, and providing for the collection, transportation, and  
25 processing of such paint.

26 The Legislature therefore determines that it is in the best  
27 interests of the State for the producers of architectural paint to  
28 provide for the planning and implementation of a program to  
29 collect, reuse, recycle, transport, and dispose of post-consumer  
30 architectural paint.

31  
32 3. As used in this act:

33 “Architectural paint” means interior or exterior architectural  
34 coatings that are sold in containers of five gallons or less.  
35 “Architectural paint” shall not mean industrial, original equipment,  
36 or specialty use coatings.

37 “Commissioner” means the Commissioner of Environmental  
38 Protection.

39 “Department” means the Department of Environmental  
40 Protection.

41 “Distributor” means a person who has a contractual relationship  
42 with one or more producers to market and sell architectural paint to  
43 retailers.

44 “Energy recovery” means a procedure in which all or a part of  
45 the solid waste materials of architectural paint are processed to use

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SEN committee amendments adopted March 4, 2021.

1 the heat content or other forms of energy from the solid waste  
2 materials.

3 “Environmentally sound management practices” means the  
4 policies or procedures for collection, storage, transportation, reuse,  
5 recycling, and disposal of architectural paint, which are  
6 implemented by a producer, representative organization, or their  
7 contracted partners to ensure compliance with all applicable federal,  
8 State, and local laws, rules, regulations, and ordinances, and the  
9 protection of human health and the environment, and which address  
10 matters such as adequate recordkeeping, accurate tracking and  
11 documentation of the use, reuse, recycling, or disposal of post-  
12 consumer architectural paint within and outside of the State, and  
13 adequate provision of environmental liability coverage for  
14 professional services and for the operations of contractors working  
15 on behalf of a producer or representative organization.

16 “Paint stewardship assessment” means the assessed amount,  
17 established pursuant to section 5 of this act, which is <sup>1</sup>**‘[added to]**  
18 **included in**<sup>1</sup> the purchase price of architectural paint sold in the  
19 State.

20 “Post-consumer architectural paint” means architectural paint not  
21 used and no longer wanted by a consumer.

22 “Producer” means a manufacturer of architectural paint that is  
23 sold, offered for sale, or distributed in the State, either under the  
24 producer’s own name or under any other brand name.

25 “Recycling” means any process used to transform discarded  
26 products, components, or by-products into new usable or  
27 marketable materials, and which process may cause those discarded  
28 products, components, or by-products to lose their original  
29 composition or identity. “Recycling” shall not include energy  
30 recovery or energy generation by means of combustion or  
31 incineration.

32 “Representative organization” means a nonprofit organization  
33 that is established by, and for the benefit of, two or more  
34 architectural paint producers in the State, and which is tasked with  
35 the development of an architectural paint stewardship program plan,  
36 in accordance with section 4 of this act, and implementation of the  
37 plan on behalf of, and with the participation of, each member  
38 producer.

39 “Retailer” means any person who sells architectural paint or  
40 offers architectural paint for sale at retail to consumers in the State.

41 “Reuse” means the return of a product into the economic stream  
42 for use in the same kind of application originally intended for the  
43 product, without a change in the product’s original composition or  
44 identity.

45 “Sell” or “sale” means any transfer of title for consideration,  
46 including, but not limited to, remote sales transactions conducted  
47 through sales outlets, catalogs, or the Internet, or through any other  
48 similar electronic means.

1       4. a. Within one year after the date of enactment of this act,  
2 every producer of architectural paint, or any representative  
3 organization established pursuant to this act, shall prepare and  
4 submit to the commissioner, for the commissioner's approval, a  
5 plan for an architectural paint stewardship program. The plan shall  
6 minimize public sector involvement in the management of post-  
7 consumer architectural paint by reducing its generation, promoting  
8 its reuse and recycling, and negotiating and executing agreements  
9 for its collection, transportation, reuse, recycling, burning for  
10 energy recovery, incineration, and disposal using environmentally  
11 sound management practices.

12       b. The plan submitted pursuant to this section shall:

13       (1) provide for convenient and available Statewide collection of  
14 post-consumer architectural paint from urban, suburban, and rural  
15 areas of the State in a manner that, at a minimum, ensures collection  
16 rates and a level of convenience equal to or greater than that  
17 provided by other collection programs available to consumers prior  
18 to the establishment of the architectural paint stewardship program;

19       (2) provide collection site locations Statewide that will accept  
20 post-consumer architectural paint, through the use of geographic  
21 information modeling, such that at least 90 percent of State  
22 residents have a permanent collection site within 15 miles of their  
23 residence, that permanent collection sites be established for every  
24 30,000 residents of a population center, and that collection sites be  
25 distributed to provide convenient and equitable access for residents  
26 within each population center, unless otherwise authorized by the  
27 department. For those persons who do not have a permanent  
28 collection site within 15 miles of their residence, the plan shall  
29 provide for annual collection events;

30       (3) address, to the extent reasonably feasible and mutually  
31 agreeable, the coordination of the architectural paint stewardship  
32 program with the existing infrastructure of local governments and  
33 the existing household hazardous waste collection infrastructure in  
34 the State;

35       (4) in accordance with the provisions of section 5 of this act,  
36 identify an appropriate amount for the paint stewardship  
37 assessment;

38       (5) identify, in two separate lists: (a) each producer  
39 participating in the program; and (b) the brands of architectural  
40 paint that are included in the program; and

41       (6) be reviewed by an independent financial auditor to verify  
42 that the paint stewardship assessment <sup>1</sup>~~included in the~~ price of<sup>1</sup> each unit of paint sold in the State will cover, but not  
43 exceed, the costs of the architectural paint stewardship program.  
44 The cost of any work performed by an independent financial auditor  
45 pursuant to this paragraph shall be funded by the architectural paint  
46 stewardship program.  
47

1 c. A producer of architectural paint, or a representative  
2 organization established pursuant to this act, shall notify the  
3 department, in writing, within 30 days of any of the following  
4 changes to a plan approved pursuant to section 6 of this act:

5 (1) the location or number of collection sites identified in the  
6 plan;

7 (2) the identity of the processors that manage the post-consumer  
8 architectural paint collected; or

9 (3) the transporters of the post-consumer architectural paint  
10 collected by the program.

11 d. A producer of architectural paint, or a representative  
12 organization established pursuant to this act, shall submit an  
13 amendment to the plan approved by the department within 120 days  
14 after:

15 (1) any change to the amount of the paint stewardship  
16 assessment imposed pursuant to section 5 of this act; or

17 (2) any change to the goals of the program as approved in the  
18 plan.

19 The department shall review the amendments to the plan and  
20 shall approve or disapprove them in accordance with the procedures  
21 established pursuant to section 6 of this act.

22 e. The department shall charge and collect from each producer  
23 or representative organization that submits a plan for an  
24 architectural paint stewardship program pursuant to this section an  
25 annual administrative fee, which shall not exceed the department's  
26 costs in administering the provisions of this act.

27  
28 5. a. The producer or representative organization submitting a  
29 plan pursuant to section 4 of this act shall establish, as a funding  
30 mechanism for the program, a paint stewardship assessment amount  
31 to be uniformly applied to the sale price of all brands of  
32 architectural paint covered under the architectural paint stewardship  
33 program. The paint stewardship assessment shall not exceed the  
34 costs of the architectural paint stewardship program.

35 b. A paint stewardship assessment, as established by subsection  
36 a. of this section, shall be <sup>1</sup>~~included in~~ <sup>1</sup>~~the cost of each~~  
37 container of architectural paint sold by a producer to a retailer or  
38 distributor in the State, and each retailer or distributor shall <sup>1</sup>~~add~~  
39 ~~include~~ <sup>1</sup>the paint stewardship assessment <sup>1</sup>~~to~~ <sup>1</sup>~~in~~ the purchase  
40 price of the producer's architectural paint.

41 c. If a producer is a member of a representative organization,  
42 the producer shall remit to the representative organization the paint  
43 stewardship assessment received for each container of architectural  
44 paint sold by the producer in the State.

45  
46 6. a. Within 90 days after the department's receipt of a plan  
47 submitted in accordance with section 4 of this act, the commissioner  
48 shall approve or disapprove the plan, including the paint

1 stewardship assessment identified therein, and provide written  
2 notice of its determination to the producer or representative  
3 organization, as the case may be. If the department does not  
4 provide notice of its determination within 90 days after its receipt of  
5 the plan, the plan shall be deemed to have been approved, and the  
6 producer or representative organization, as the case may be, shall  
7 proceed to implement the plan.

8 b. If the commissioner disapproves a plan submitted pursuant  
9 to section 4 of this act, the written notice provided pursuant to  
10 subsection a. of this section shall be accompanied by a detailed  
11 statement, prepared by the department, describing the reasons for  
12 the disapproval, and prescribing the changes required for approval.  
13 No more than 45 days after receipt of the department's written  
14 notice and accompanying statement of the reasons for the  
15 disapproval of a plan submitted pursuant to section 4 of this act, the  
16 producer or representative organization, as appropriate, shall submit  
17 the modified plan to the department for approval.

18 c. Within 45 days after receipt of a modified plan that has been  
19 submitted in accordance with subsection b. of this section, the  
20 department shall approve the plan or reject it, and shall certify the  
21 approval or rejection to the producer or representative organization,  
22 as the case may be. Upon the department's disapproval of any  
23 modified plan submitted pursuant to subsection b. of this section, or  
24 upon the failure of the producer or representative organization to  
25 submit a modified plan as required, the department shall propose  
26 any revisions to the plan the department deems necessary, and shall  
27 transmit the proposed plan revisions to the producer or  
28 representative organization, as the case may be. Upon receipt of the  
29 department's proposed revisions to the plan, the producer or  
30 representative organization, as appropriate, shall implement the  
31 revised plan unless otherwise agreed to by the department.

32 d. Within 90 days after the department's approval of, or  
33 revisions to, a plan submitted in accordance with section 4 of this  
34 act:

35 (1) the producer or representative organization, as appropriate,  
36 shall implement the architectural paint stewardship program  
37 described in the plan; and

38 (2) the department shall post, at a publicly accessible location  
39 on its Internet website, two separate lists respectively identifying  
40 (a) each producer participating in the architectural paint stewardship  
41 program, and (b) the brands of architectural paint included in the  
42 program.

43  
44 7. In implementing a plan approved or revised pursuant to  
45 section 6 of this act, the producer, or representative organization of  
46 which the producer is a member, shall provide consumers with  
47 educational materials related to the architectural paint stewardship  
48 program and the paint stewardship assessment. These educational

1 materials shall include, but need not be limited to, information  
2 identifying the end-of-life management options that are available  
3 for post-consumer architectural paint through the architectural paint  
4 stewardship program, and a notice provision stating that the costs of  
5 program operation will be included in the purchase price of all  
6 architectural paint sold in the State. The producer, or representative  
7 organization of which the producer is a member, may provide  
8 retailers and collection sites with educational and informational  
9 material describing collection opportunities and promoting waste  
10 prevention, reuse, and recycling of post-consumer architectural  
11 paint. The educational and promotional materials may include, but  
12 need not be limited to, signage, written materials, templates of  
13 materials for reproduction by retailers to be provided to consumers  
14 at the time of purchase, and advertising materials describing the  
15 architectural paint stewardship program.

16

17 8. a. A producer, distributor, or retailer shall not sell  
18 architectural paint or offer architectural paint for sale to any person  
19 in the State unless the producer of the architectural paint, or a  
20 representative organization of which the producer is a member, is  
21 engaged in the implementation of, or has fully implemented, a plan  
22 approved or revised by the commissioner pursuant to section 6 of  
23 this act.

24 b. A distributor or retailer shall be deemed to be in compliance  
25 with subsection a. of this section if, on the date architectural paint is  
26 ordered thereby, the producer of the paint and the brand name of the  
27 paint are each identified on the respective lists maintained on the  
28 department's Internet website pursuant to paragraph (2) of  
29 subsection d. of section 6 of this act.

30 c. (1) Any producer, distributor, or retailer who violates the  
31 provisions of subsection a. of this section shall be subject to: (a) a  
32 written warning for a first offense, and (b) a penalty of between  
33 \$500 and \$1,000 for each subsequent offense. Any applicable  
34 penalty under this subsection shall be collected by the State in a  
35 civil action by summary proceeding under the "Penalty  
36 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.),  
37 or in any case before a court of competent jurisdiction wherein  
38 injunctive relief has been requested. The Superior Court and the  
39 municipal court shall have jurisdiction to enforce the provisions of  
40 the "Penalty Enforcement Law of 1999" in accordance with the  
41 provisions of this act.

42 (2) The department may institute a civil action for injunctive  
43 relief to enforce the provisions, or prevent a violation, of this  
44 section, and the court may proceed in the action in a summary  
45 manner.

46

47 9. a. Except as provided in subsection b. of this section, an  
48 action undertaken by a producer or representative organization,

1 which affects the types or quantities of paint being recycled, or the  
2 cost or structure of any return or recycling program, shall not be  
3 deemed to be a violation of any State law relating to antitrust,  
4 restraint of trade, unfair trade practices, or the regulation of trade or  
5 commerce, so long as the action is necessary to plan or implement  
6 the organized collection or processing of architectural paint  
7 pursuant to this act.

8 b. Subsection a. of this section shall not apply to: (1) any  
9 agreement establishing or affecting the price of architectural paint,  
10 except an agreement to establish a paint stewardship assessment, as  
11 authorized by this act; or (2) any agreement restricting the output or  
12 production of architectural paint or the geographic area or  
13 customers to which paint will be sold.

14  
15 10. a. One year after the department provides notification to a  
16 producer or representative organization of its approval of a plan in  
17 accordance with section 6 of this act, and annually thereafter, the  
18 producer or representative organization, as the case may be, shall  
19 submit a report to the department describing its architectural paint  
20 stewardship program. The report shall include, at a minimum:

21 (1) a description of the methods used to reduce, reuse, collect,  
22 transport, recycle, and process post-consumer architectural paint  
23 under the program;

24 (2) the pounds of latex and oil-based post-consumer  
25 architectural paint collected under the program during the preceding  
26 year;

27 (3) the volume of post-consumer architectural paint processed  
28 under the program by method of disposition, including reuse,  
29 recycling, energy recovery, incineration, and disposal in accordance  
30 with environmentally sound management practices;

31 (4) the estimated volume of post-consumer architectural paint  
32 collected at each collection site under the program;

33 (5) a list of all processors of post-consumer architectural paint  
34 from the time of collection to final disposition that are used in the  
35 program and the disposition method used by each processor;

36 (6) a list of all producers participating in the program;

37 (7) the total volume of architectural paint sold in the State  
38 during the preceding year based upon the collection of the paint  
39 stewardship assessment;

40 (8) the total cost of implementing the program, which shall  
41 include separate figures for the cost of collection, transportation,  
42 disposition, communication, and independent financial audit;

43 (9) an evaluation of the effectiveness of the program and any  
44 steps necessary to improve the program; and

45 (10) samples of the educational materials provided to consumers  
46 of architectural paint, together with an evaluation of the methods  
47 used to disseminate those materials, and an assessment of the  
48 educational and outreach effectiveness of those materials.



1       b. Within 90 days after receipt of an annual report, the  
2 department shall meet with interested stakeholders to review it.  
3 The department shall post minutes of the stakeholder meeting on its  
4 Internet website within 30 days after the date of the meeting.

5       c. Each report submitted pursuant to subsection a. of this  
6 section shall be posted on the department's Internet website. The  
7 department shall not disclose financial, production, or sales data  
8 reported by a producer or representative organization pursuant to  
9 this section, except that the department may disclose such data in  
10 aggregate or summary format, provided that individual producers,  
11 distributors, or retailers and their financial, production, or sales data  
12 are not specifically identified, and the summary omits any reference  
13 to unique characteristics from which the identities of individual  
14 producers, distributors, or retailers might be inferred or otherwise  
15 ascertained.

16

17       11. This act shall take effect immediately, except that section 8  
18 of this act shall take effect on the first day of the 18th month after  
19 the date of enactment of this act.