

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

SENATE, No. 2679

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 4, 2021

The Senate Environment and Energy Committee favorably reports Senate Bill No. 2679 with committee amendments.

This bill requires every producer of architectural paint sold in the State to implement, or participate in, a Statewide architectural paint stewardship program.

The bill requires every architectural paint producer, or a representative organization established on behalf of two or more such producers, to develop and implement a plan for an architectural paint stewardship program designed to minimize public sector involvement in the management of post-consumer architectural paint by reducing its generation, promoting its reuse and recycling, and negotiating and executing agreements for its collection, transportation, reuse, recycling, burning for energy recovery, incineration, and disposal using environmentally sound management practices.

The bill requires any such plan to:

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

(2) provide collection site locations Statewide that will accept post-consumer architectural paint, through the use of geographic information modeling, such that at least 90 percent of State residents have a permanent collection site within 15 miles of their residence, that permanent collection sites be established for every 30,000 residents of a population center, and that collection sites be distributed to provide convenient and equitable access for residents within each population center, unless otherwise authorized by the Department of Environmental Protection (DEP). For those persons who do not have a permanent collection site within 15 miles of their residence, the bill requires the plan to provide for annual collection events;

(3) address, to the extent reasonably feasible and mutually agreeable, the coordination of the architectural paint stewardship program with the existing infrastructure of local governments and the

existing household hazardous waste collection infrastructure in the State;

(4) identify an appropriate amount for the paint stewardship assessment;

(5) provide two lists respectively identifying each producer participating in the architectural paint stewardship program, and the brands of architectural paint included under the program; and

(6) be reviewed by an independent financial auditor to verify that the amount included in the price of each unit of paint sold in the State will cover, but not exceed, the costs of the architectural paint stewardship program.

Under the bill, a producer or representative organization is also required to establish, as a funding mechanism for the program, and to include in the program plan, a paint stewardship assessment amount that is uniformly included in the sale price of all brands of architectural paint covered under the architectural paint stewardship program. The bill prohibits the assessment amount from exceeding the costs of the program. Each producer is required to include the paint stewardship assessment in the cost of each container of architectural paint sold thereby to a retailer or distributor in the State, and each retailer or distributor is then required to include the paint stewardship assessment in the purchase price of the producer's architectural paint. If a producer is a member of a representative organization, the producer is required to remit to the representative organization the paint stewardship assessment received for each container of architectural paint sold by the producer in the State.

The bill requires an architectural paint stewardship program plan to be submitted to the DEP for approval prior to its implementation by a paint producer or representative organization. The bill authorizes the DEP to approve or disapprove of a proposed plan. If the DEP disapproves of a plan, the bill provides a procedure for subsequent plan revision by the producer or representative organization, and DEP review of the revised plan. If the DEP is dissatisfied with a revised plan, the bill authorizes the DEP, in the interests of expediency, to propose any modifications or substitutions to the plan's provisions it deems necessary. The bill requires notice to the DEP if there are any changes to the location or number of collection sites, the identity of the processors that manage the post-consumer architectural paint, or the transporters of the post-consumer architectural paint collected by the program. An amendment to the plan is required if there is any change to the amount of the paint stewardship assessment or the goals of the architectural paint stewardship program. The bill directs the DEP to charge and collect from each producer or representative organization that submits a plan pursuant to the bill an annual administrative fee, not to exceed the DEP's costs in administering the provisions of the bill.

The bill requires a producer or representative organization to implement the program described in a proposed plan within 90 days after its approval or modification by the DEP. The producer or representative organization is further required to submit an annual report to the DEP, which describes or includes, among other things: the pounds of post-architectural paint collected in the State; the methods used to collect, transport, reduce, reuse, recycle, and process post-consumer architectural paint; a list of all producers participating in the program; the estimated volume collected at each collection site; a list of the processors of post-consumer architectural paint and the disposition method used by each processor; an evaluation of the effectiveness of the program and any steps necessary to improve the program; and samples of the educational materials provided to consumers of architectural paint.

The bill prohibits a producer, distributor, or retailer of architectural paint from selling architectural paint, or offering it for sale, in the State unless the producer of the paint, or a representative organization of which the producer is a member, is engaged in the implementation of, or has fully implemented, an architectural paint stewardship program plan or revised plan approved by the DEP commissioner. A distributor or retailer is deemed to be in compliance with this sales prohibition if, on the date architectural paint is ordered thereby, the producer of the paint and the brand name of the paint are each identified on the DEP's Internet website as being included in an architectural paint stewardship program plan.

The bill provides that any producer, distributor, or retailer who fails to comply with the bill's sales prohibition is subject to a written warning for a first offense, and a penalty of \$500 to \$1,000 for each subsequent offense. The bill authorizes the DEP to institute a civil action for injunctive relief to prevent a continuing violation of this sales prohibition. However, in order to allow time for the submission, approval, or modification of the plans required by the bill, the sales prohibition and penalty provision do not take effect until the first day of the 18th month following enactment of the bill into law.

Finally, the bill specifies that a producer or representative organization who undertakes an action affecting the types or quantities of paint being recycled, or the cost or structure of any return or recycling program, will not be deemed to be in violation of any State law relating to antitrust, restraint of trade, unfair trade practices, or the regulation of trade or commerce, so long as the action undertaken is necessary to plan or implement the organized collection or processing of architectural paint pursuant to the provisions of the bill. This protection against antitrust liability is, however, not applicable to: (1) any agreement establishing or affecting the price of architectural paint, except an agreement to establish a paint stewardship assessment, as authorized by the bill; or (2) any agreement restricting the output or

production of architectural paint or the geographic area or customers to which paint will be sold.

The committee amendments clarify that the paint stewardship assessment required by the bill would be included in the price of paint sold in the State, rather than added to the price.