

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2679

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 13, 2021

The Assembly Appropriations Committee reports favorably Assembly Bill No. Senate Bill No. 2679 (1R). with committee amendments.

As amended, 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 the involvement of, and eliminate costs to, the public sector in association with the collection, transportation and processing 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 that are consistent with the United States Environmental Protection Agency's Waste Management Hierarchy (federal waste management hierarchy), a four-tiered hierarchy that guides waste management by promoting source reduction, recycling, energy recovery, and waste treatment and disposal, in that order.

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, unless more frequent collection events are deemed to be necessary, and are required, in writing, by the DEP;

(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, to the extent that there are no additional costs to the local, county, or State government, for the collection, transportation, or processing of post-consumer architectural paint;

(4) describe how the program will follow a hierarchy that is consistent, to the extent feasible, with the federal waste management hierarchy;

(5) describe the educational materials and outreach efforts that would be used to inform consumers about the architectural paint stewardship program and the paint stewardship assessment. Educational materials would include, but need not be limited to, information identifying the end-of-life management options that are available for post-consumer architectural paint through the architectural paint stewardship program, as well as a notice provision stating that the costs of program operation will be included in the purchase price of all architectural paint sold in the State;

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

(7) 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

(8) include a proposed budget that has been reviewed and certified by an independent financial auditor, and which confirms that the paint stewardship assessment included in the price of each unit of paint sold in the State will cover and sustain, but not exceed, the costs of the architectural paint stewardship program. The proposed budget would also be required to include a description of surplus funds, if any, that are in reserve for future use.

No sooner than five years and no later than six years, after the effective date of this act, all architectural paint stewardship plans would be required to be amended to provide for the environmentally sound collection, transportation, reuse, recycling and disposal of aerosol paint.

Under the bill, a producer or representative organization is also required to establish, as a funding mechanism for the program and the implementation of its plan, 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 implementing and sustaining the architectural paint stewardship plan and the architectural paint stewardship 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; samples of the educational materials provided to consumers

of architectural paint; and a certification to the validity of the information contained in the report.

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 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.

The bill also provides that when the DEP determines that any producer, distributor, or retailer is in violation of the bill's provisions, the DEP may assess a civil administrative penalty of not more than \$500 for each violation, not to exceed a maximum penalty of \$10,000 during a calendar year, and each day of violation would constitute an additional, separate, and distinct violation. A civil administrative penalty would not be levied until a violator has been notified by certified mail or personal service of the following: the statutory or regulatory basis of the violation; the specific act or omission that constituted the violation; the amount of the civil administrative penalty to be imposed; the right of the violator to contest, through a hearing, any matter contained in the notice; and the procedures for requesting a hearing on any contested matter. The bill also provides that the DEP may post on its Internet website a list of producers, distributors, and retailers that are in violation of this act.

Finally, the bill specifies that a producer or the representative organization participating in a post-consumer paint stewardship program will not be liable for any claim of a violation of antitrust, restraint of trade, unfair trade practice, or other anticompetitive conduct arising from conduct undertaken in accordance with the program, including, without limitation, the types or quantities of paint being managed consistent with the federal waste management hierarchy. 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.

As amended and reported by the committee, Senate Bill No. 2679 (1R) is identical to Assembly Bill No. 1979 (1R), which also was amended and reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments to the bill would:

(1) add a definition for the terms “aerosol paint” and “federal waste management hierarchy;”

(2) clarify that the plan for an architectural paint stewardship program would minimize the involvement of, and eliminate costs to, the public sector in association with the collection, transportation, and processing of architectural paint;

(3) provide that architectural stewardship program plans would be required to use environmentally sound management practices that are consistent with the federal waste management hierarchy;

(4) clarify as a requirement of the plan to be submitted to the DEP, that plans would provide for annual collection events of post-consumer architectural paint for residents that do not have a permanent collection site within 15 miles of their residence, unless more frequent collection events are deemed to be necessary, and are required, in writing, by the DEP;

(5) clarify as a requirement of the plan to be submitted to the DEP, that the coordination of an architectural stewardship program with the existing infrastructure of local governments and the existing household hazardous waste collection infrastructure in the State will be of no additional cost to the local, county, or State government for the collection, transportation, or processing of post-consumer architectural paint;

(6) add as a requirement of the plan to be submitted to the DEP, that the plan would describe how the program will follow a hierarchy that is consistent with the federal waste management hierarchy, to the extent feasible;

(7) add as a requirement of the plan to be submitted to the DEP, that the plan would describe the educational materials and outreach efforts that would be used to inform consumers about the architectural paint stewardship program and the paint stewardship assessment and include language providing what the education materials would include;

(8) require that the proposed budget submitted to the DEP be reviewed and certified by an independent financial auditor confirming that the paint stewardship assessment included in the price of each unit of paint sold in the State will cover and sustain, but not exceed, the costs of the architectural paint stewardship program;

(9) require that a description of surplus funds, if any, that are reserved for future use are included as a part of the proposed budget submitted to the DEP;

(10) include language to require that, no sooner than five years and no later than six years after the bill's effective date, architectural paint stewardship plans are to be amended to provide for the environmentally sound collection, transportation, reuse, recycling and disposal of aerosol paint;

(11) clarify that the funding mechanism to be established by the bill would be to fund the paint stewardship program and the implementation of its plan;

(12) clarify that the paint stewardship assessment cannot exceed the costs of implementing and sustaining the architectural paint stewardship plan and the architectural paint stewardship program;

(13) adjust language within section 6 of the bill to remove the requirement for the DEP to provide a detailed statement in response to plans that were disapproved and instead, require the DEP to provide a list of plan requirements pursuant to section 4 of the bill that were not met by the disapproved plan and changes that are required for approval;

(14) remove section 7 in its entirety;

(15) remove language that set a penalty range of between \$500 and \$1,000 to any producer, distributor, or retailer who violates the bill's provisions after receiving a written warning for a first offense and lower the penalty for subsequent offenses to \$500;

(16) add language allowing the department to assess a civil administrative penalty of not more than \$500 for each violation, not to exceed a maximum penalty of \$10,000 during a calendar year, to any producer, distributor, or retailer who violates the bill's provisions;

(17) add language related to providing notice to a violator of a civil administrative penalty and a process to request a hearing;

(18) provide that a producer or representative organization participating in an architectural paint stewardship program will not be liable for any claim of a violation of antitrust, restraint of trade, unfair trade practice, or other anticompetitive conduct arising from conduct undertaken in accordance with the program;

(19) include in the annual report submitted to the DEP, a description of methods used to reduce, reuse, collect, transport, recycle, and process post-consumer architectural paint that are consistent with the federal waste management hierarchy;

(20) include in the annual report submitted to the DEP, a certification to the validity of the information contained in the annual report;

(21) add a new section allowing the DEP to adopt, pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et seq., rules and regulations as are necessary to effectuate the bill's purposes; and

(22) make technical changes to the bill.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the bill would result in an annual State expenditure increase, since it requires the Department of Environmental Protection (DEP) to review all architectural paint stewardship plans and amendment submissions. At a minimum, a new full time staff member may be required to perform these functions at total annual compensation in the range of \$80,000 to \$120,000, plus additional costs for equipment and technology.

The OLS also finds there would be an annual State revenue increase roughly equal to the expenditure described above, as the DEP is required to charge and collect an annual fee from architectural paint producers to cover its costs in administering the bill's provisions. The department may also receive an indeterminate amount of annual revenue from civil penalties imposed on and collected from producers, distributors, and retailers violating the provisions of this bill.