

Department of Legislative Services  
 Maryland General Assembly  
 2020 Session

FISCAL AND POLICY NOTE  
 Third Reader - Revised

House Bill 890

(Delegate Boyce, *et al.*)

Environment and Transportation and  
 Economic Matters

Education, Health, and Environmental Affairs

Maryland Paint Stewardship Program

This bill requires a producer of architectural paint sold at retail in the State, or a representative organization acting on behalf of a producer, to (1) submit, by January 1, 2021, a plan for the establishment of a Paint Stewardship Program to the Maryland Department of the Environment (MDE) for approval; (2) pay a plan review fee to MDE; (3) implement the program within six months of plan approval; (4) submit annual reports for MDE review; and (5) pay annual report review fees to MDE. The bill establishes (1) a uniform paint stewardship assessment for architectural paint sold in the State to cover program costs and (2) a prohibition on the sale of architectural paint unless the producer or its representative is implementing an approved paint stewardship program. **The bill takes effect July 1, 2020.**

Fiscal Summary

**State Effect:** Special fund expenditures increase by \$50,900 in FY 2022, by \$46,500 in FY 2023, and minimally in other years. Special fund revenues increase correspondingly from plan review and annual report review fees. Minimal increase in State expenditures (multiple funds) beginning in FY 2022.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
SF Revenue	-	\$50,900	\$46,500	-	-
SF Expenditure	-	\$50,900	\$46,500	-	-
GF/SF Exp.	\$0	-	-	-	-
Net Effect	\$0	(-)	(-)	(-)	(-)

*Note: ( ) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** Potential decrease in local waste management costs beginning in FY 2022. Minimal increase in local government expenditures for paint beginning in FY 2022. Local revenues are not materially affected.

**Small Business Effect:** Meaningful.

## Analysis

### Bill Summary:

#### *Paint Stewardship Program Plan Development and Related Assessment*

The Paint Stewardship Program plan must minimize public-sector involvement in, and financial responsibility for, the management of postconsumer paint by (1) reducing its generation; (2) promoting its reuse and recycling; and (3) negotiating and executing agreements to collect, transport, reuse, recycle, process for resource recovery, and dispose of postconsumer paint. The plan must also provide for convenient and available statewide collection of postconsumer paint, as specified.

A retailer may be identified as a postconsumer paint collection site if the retailer volunteers, is in compliance with all applicable laws and regulations, and the site location is consistent with maintaining a cost-effective network of postconsumer paint collection locations.

The plan also must establish a uniform paint stewardship assessment for all architectural paint sold in the State and a mechanism for participating producers to remit payment of the assessment to the representative organization to cover program costs. The total amount of the assessment may not exceed the costs of implementing the program, and assessments may be used only for program implementation. The assessment must be evaluated by an MDE-designated independent financial auditor, as specified, and the costs of any work performed by an independent financial auditor must be funded by the program.

#### *MDE Plan Review*

MDE must (1) review the program plan and the work product from the independent financial auditor and (2) establish a plan review fee to cover MDE's plan review costs, including associated costs for program compliance oversight, as determined by MDE. Plan review fees are deposited in MDE's State Recycling Trust Fund. The bill makes conforming changes to provisions governing the State Recycling Trust Fund.

If MDE determines that the plan, including the assessment, complies with the bill's requirements, MDE must approve the program. MDE must list participating producers and brands on its website.

#### *Implementation of the Paint Stewardship Program*

Within six months of plan approval, a producer or representative organization must implement its paint stewardship program. Beginning October 1, 2021, or six months after plan approval, whichever is later, a producer or retailer is prohibited from selling or

offering to sell a brand of architectural paint to any person in the State unless the producer of that brand, or a representative organization to which the producer is a member, is implementing an approved paint stewardship program.

The bill requires each producer, retailer, and distributor to add the paint stewardship assessment (described above) to the cost of all architectural paint sold to a retailer, distributor, and a consumer in the State, respectively.

A participating producer or a representative organization must provide consumers with educational materials regarding the program that include information about available end-of-life management options for architectural paint offered through the program and information that notifies consumers about the assessment. Following the implementation of the program, a retailer may only order architectural paint from a participating producer or producer's agent that is listed on MDE's website.

A postconsumer paint collection site that is identified in the plan may not charge an additional fee for the disposal of paint when it is offered for disposal.

#### *Immunity from Liability*

A producer or representative organization that organizes the collection, transport, and processing of postconsumer paint in accordance with an approved program is immune from liability for any claim of a violation of antitrust, restraint of trade, or unfair trade practice arising from conduct undertaken in accordance with the program.

#### *Annual Reports, MDE Review, and Annual Report Review Fees*

Beginning April 1, 2022, and annually thereafter, a producer or representative organization must submit a report to MDE that includes (1) a description of the methods used to collect, transport, and process postconsumer paint in the State; (2) the volume of paint collected; (3) the volume and type of postconsumer paint collected by method of disposition and by county, as specified; (4) the total cost of implementing and administering the program, as determined by an independent financial audit funded by the paint stewardship assessment; and (5) samples of educational materials provided to consumers of architectural paint. Specified information is confidential and not subject to public inspection. MDE is authorized to release summary data, as specified.

MDE must review each annual report and evaluate the total costs of the program, including all expenses and revenues, to determine whether the paint stewardship assessment meets or exceeds the costs of the program. MDE must also determine whether the plan is being implemented according to the statutory requirements. MDE must approve the annual report if the report, including the paint stewardship assessment, complies with the bill's

requirements. The producer or representative organization must make the approved annual report available to the public.

The producer or representative organization that submits an annual report is required to pay an annual report review fee to MDE. Annual report review fees are deposited in MDE's State Recycling Trust Fund. The report review fee must cover MDE's costs of reviewing the annual reports, including associated costs for program compliance oversight, as determined by MDE. The bill makes conforming changes to provisions governing the State Recycling Trust Fund.

### *Relevant Definitions*

“Architectural paint” means interior and exterior architectural coatings sold in containers of five gallons or less. Industrial coatings, original equipment coatings, and specialty coatings are excluded. “Postconsumer paint” is unused architectural paint that is no longer wanted by the purchaser. A “distributor” is a company with a contractual relationship with one or more producers to market and sell architectural paint to retailers in the State. A “producer” is a manufacturer of architectural paint that sells, offers for sale, or distributes the paint in the State under the producer's own name or brand. A “representative organization” is a nonprofit organization created by producers to implement a paint stewardship program.

**Current Law/Background:** Household hazardous waste (HHW) is defined in Title 9 of the Environment Article of the Maryland Annotated Code as any waste material, including garbage or trash, derived from a household that would be listed as hazardous waste under the federal Resource Conservation and Recovery Act but for the fact that the waste is derived from a household. HHW may include agricultural chemicals, cleaning agents and solvents, paint, pesticides, and preservatives.

According to MDE, Maryland does not regulate HHW as hazardous waste, and federal law allows for the disposal of HHW in household trash. However, due to the potential for HHW to cause physical injury, contaminate septic tanks or wastewater treatment systems, and present hazards to children and pets, MDE recommends the proper recycling and disposal of HHW materials at local HHW collection programs.

Ten states and the District of Columbia have passed paint stewardship legislation (California, Colorado, Connecticut, Maine, Minnesota, New York, Oregon, Rhode Island, Vermont, and Washington) and all of those states and the District of Columbia are currently administering stewardship programs. This bill is similar to the legislation that has been enacted in other states.

MDE reports that several Maryland counties have programs in place to collect HHW, such as mercury, paint, paint thinner, pesticides, herbicides, batteries, and, to a lesser extent, medications. However, some counties collect HHW only once each year.

In the states that have a paint stewardship program in place, producers fulfill their obligations through a program plan submitted and implemented by [PaintCare](#), a nonprofit representative organization. The paint stewardship assessment ranges depending on the size of the container and by state as follows:

<u>Container Size</u>	<u>Stewardship Assessment (Per Container Sold)</u>
½ pint or smaller	\$0
½ pint to less than 1 gallon	0.35-0.49
1 gallon	0.75-0.99
Larger than 1 gallon	1.60-1.99

In states that have a paint stewardship program, collection occurs through a combination of retailer sites, local government-operated collection sites (*e.g.*, HHW collection sites), and special collection events. PaintCare also collects paint directly from certain large generators. Retailer and local government participation in the program is voluntary. According to its website, [PaintCare](#) manages the paint according to a policy of “highest, best use,” with recycling being the highest goal. Ultimately, PaintCare advises that in some PaintCare states, none of the paint is sent to a landfill as waste, while in others, about 5% to 6% is sent to a landfill.

**State Expenditures:**

*MDE General Program Administration Costs*

Special fund expenditures from the State Recycling Trust Fund increase by \$50,890 in fiscal 2022, which accounts for the program’s earliest possible implementation date of July 1, 2021. This estimate reflects the cost of hiring one contractual environmental compliance specialist to conduct compliance and enforcement activities and to maintain the listing of compliant producers on MDE’s website. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses, including travel. The estimate does not include costs associated with MDE’s plan or annual report review, which are discussed below.

Contractual Position	1
Salary and Fringe Benefits	\$41,165
Operating Expenses	<u>9,725</u>
<b>Total FY 2022 MDE Expenditures</b>	<b>\$50,890</b>

MDE advises that the contractual environmental compliance specialist is only needed during the first two years that the program is operational. Although the bill's effective date is July 1, 2020, it is assumed that the new staff is not hired until July 1, 2021, which is when program implementation and coordination responsibilities for MDE are anticipated to begin.

Future year expenditures reflect a salary with annual increases and employee turnover and ongoing operating expenditures, including travel costs. Beginning in fiscal 2024, MDE advises that it can implement the bill's requirements with existing budgeted resources and that the contractual employee is no longer necessary.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

#### *MDE Plan and Report Review*

MDE plans to use existing staff to conduct the required review of the proposed program plan and the annual reports. Further, although producers may participate individually or jointly through a representative organization, similar programs in other states are generally only carried out by a single representative organization (PaintCare) under a single program plan. As such, MDE assumes, and the Department of Legislative Services (DLS) concurs, that it is likely that MDE reviews only one plan (in fiscal 2021) and one annual report each year (beginning in fiscal 2023) under the bill. Thus, special fund expenditures from the State Recycling Trust Fund increase minimally for MDE to review the proposed plan in fiscal 2021 and to review the annual reports beginning in fiscal 2023.

#### *State Agencies as Consumers of Paint*

State expenditures (multiple fund types) increase beginning in fiscal 2022 for any State agency that purchases paint as a result of the assessment established under the bill. As discussed above, and based on other state programs, this fee is likely no more than \$1.99 per container of paint. Although the total amount of paint purchased by the State is unknown, this analysis assumes that any increase in costs for State agencies to purchase paint is likely minimal.

**State Revenues:** MDE is required to set the plan review fee at a level to cover MDE's plan review and program compliance oversight costs. Similarly, the annual report review fee must cover MDE's costs to review the annual reports and for program compliance oversight. Thus, this analysis assumes that MDE's costs to implement the bill (as described above) are fully offset by plan review and annual report review fees. Accordingly, special

fund revenues increase minimally in fiscal 2021, by \$50,890 in fiscal 2022, by \$46,452 in fiscal 2023, and minimally annually thereafter beginning in fiscal 2023.

**Local Fiscal Effect:** Waste management costs at local landfills may decrease as a result of the diversion of architectural paint waste under the paint stewardship program. Further, costs may decrease for local governments that currently collect paint and choose to participate in a producer's stewardship program instead. PaintCare reports that since the cost of managing postconsumer paint is passed on to everyone who purchases the paint, costs for paint management for local governments are reduced.

In addition, as a consumer of paint, any local government agency that purchases paint must pay the paint stewardship assessment established as a result of the bill. Thus, local government expenditures for the purchase of paint increase minimally beginning in fiscal 2022.

**Small Business Effect:** The bill results in potentially significant additional operational responsibilities for producers, retailers, and distributors of architectural paint in the State, as they are required to (1) add a paint stewardship assessment to the cost of all architectural paint sold and (2) account for those assessments and remit them to the representative organization. Producers and retailers must also (1) verify that all architectural paint sold in the State is in compliance with an approved program and (2) submit required reports. On the other hand, retailers who volunteer to act as postconsumer paint collection sites may benefit if they are able to attract additional customers to their stores as a result. Several retailers affected by the bill are likely considered small businesses.

As a consumer of paint, small businesses that purchase paint incur additional costs to pay the paint stewardship assessment established by the bill. On the other hand, small businesses may benefit from having viable options for disposing of and managing end-of-life paint.

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### **Additional Information**

**Prior Introductions:** SB 168 of 2017, a similar bill, received a hearing in the Senate Education, Health and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 674, received a hearing in the House Environment and Transportation Committee but was subsequently withdrawn.

**Designated Cross File:** None.

**Information Source(s):** Baltimore City; Harford and Montgomery counties; Maryland Association of Counties; Northeast Maryland Waste Disposal Authority; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; Department of Legislative Services

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Analysis by: Kathleen P. Kennedy

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510