

**PROPOSED AMENDMENTS TO  
HOUSE BILL 3037**

1 On page 1 of the printed bill, line 2, after “stewardship” insert “; appro-  
2 priating money; and declaring an emergency”.

3 Delete lines 3 through 9 and insert:

4 “The Legislative Assembly finds that an architectural paint stewardship  
5 pilot program would allow paint manufacturers to:

6 “(1) Establish an environmentally sound and cost-effective architectural  
7 paint stewardship program;

8 “(2) Undertake responsibility for the development and implementation of  
9 strategies to reduce the generation of post-consumer architectural paint;

10 “(3) Promote the reuse of post-consumer architectural paint; and

11 “(4) Collect, transport and process post-consumer architectural paint for  
12 end-of-product-life management.”.

13 Delete lines 11 through 31 and delete page 2 and insert:

14 **“SECTION 1. Findings. The Legislative Assembly finds that it is in  
15 the best interest of this state for architectural paint manufacturers  
16 to finance and manage an environmentally sound, cost-effective ar-  
17 chitectural paint stewardship pilot program, undertaking responsibil-  
18 ity for the development and implementation of strategies to reduce the  
19 generation of post-consumer architectural paint, promote the reuse  
20 of post-consumer architectural paint and collect, transport and pro-  
21 cess post-consumer architectural paint for end-of-product-life man-  
22 agement, including reuse, recycling, energy recovery and disposal.**

1     **“SECTION 2. Definitions. As used in sections 1 to 10 of this 2009**

2 **Act:**

3     **“(1)(a) ‘Architectural paint’ means interior and exterior architec-**  
4 **tural coatings sold in containers of five gallons or less.**

5     **“(b) ‘Architectural paint’ does not mean industrial, original equip-**  
6 **ment or specialty coatings.**

7     **“(2) ‘Architectural paint stewardship assessment’ means the**  
8 **amount added to the purchase price of architectural paint sold in this**  
9 **state necessary to cover the cost of collecting, transporting and pro-**  
10 **cessing the post-consumer architectural paint managed through a**  
11 **statewide architectural paint stewardship pilot program.**

12     **“(3) ‘Distributor’ means a company that has a contractual re-**  
13 **lationship with one or more producers to market and sell architectural**  
14 **paint to retailers in this state.**

15     **“(4) ‘Energy recovery’ means recovery in which all or a part of the**  
16 **solid waste materials of architectural paint are processed to use the**  
17 **heat content or other forms of energy from the solid waste materials.**

18     **“(5) ‘Post-consumer architectural paint’ means architectural paint**  
19 **not used and no longer wanted by its purchaser.**

20     **“(6) ‘Producer’ means a person that manufactures architectural**  
21 **paint that is sold or offered for sale in this state.**

22     **“(7)(a) ‘Recycling’ means any process by which discarded products,**  
23 **components and by-products are transformed into new usable or**  
24 **marketable materials in a manner in which the products may lose**  
25 **their original composition.**

26     **“(b) ‘Recycling’ does not include energy recovery or energy gener-**  
27 **ation by means of combusting discarded products, components and**  
28 **by-products with or without other waste products from post-consumer**  
29 **architectural paint.**

30     **“(8) ‘Retailer’ means any person that sells or offers for sale archi-**

1 tectural paint at retail in this state.

2 “(9) ‘Reuse’ means the return of a product into the economic  
3 stream for use in the same kind of application intended for the use  
4 of the product, without a change in the product’s original composition.

5 “(10) ‘Sell’ or ‘sale’ means any transfer of title for consideration,  
6 including remote sales conducted through sales outlets, catalogs or the  
7 Internet or through any other similar electronic means.

8 “(11) ‘Sound management practices’ means policies to be imple-  
9 mented by a producer or a stewardship organization to ensure com-  
10 pliance with all applicable laws and that address:

11 “(a) Adequate record keeping;

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

15 “(c) Adequate environmental liability coverage for professional  
16 services and for the operations of contractors working for producers  
17 or a stewardship organization.

18 “(12) ‘Stewardship organization’ means a corporation, nonprofit or-  
19 ganization or other legal entity created by a producer or group of  
20 producers to implement the architectural paint stewardship pilot pro-  
21 gram described in sections 1 to 10 of this 2009 Act.

22 “SECTION 3. Participation in architectural paint stewardship pilot  
23 program. (1) A producer or retailer may not sell or offer for sale ar-  
24 chitectural paint to any person in this state unless the producer is  
25 participating in a statewide architectural paint stewardship pilot pro-  
26 gram organized by a stewardship organization. A retailer is in com-  
27 pliance with this section if, on the date the architectural paint was  
28 ordered from the producer or its agent, the website maintained by the  
29 Department of Environmental Quality lists the producer, along with  
30 the producer’s product brand, as participating in an architectural

1 paint stewardship pilot program.

2 “(2) At the time of sale to a consumer, a producer or retailer selling  
3 or offering for sale architectural paint must provide the consumer  
4 with information on available end-of-product-life management options  
5 offered through an architectural paint stewardship pilot program.

6 “SECTION 4. Architectural paint stewardship pilot program. (1)  
7 No later than March 1, 2010, a stewardship organization must submit  
8 a plan for a statewide architectural paint stewardship pilot program  
9 to the Director of the Department of Environmental Quality for ap-  
10 proval.

11 “(2) The plan must:

12 “(a) Provide for convenient and available statewide collection of  
13 post-consumer architectural paint in urban and rural areas of this  
14 state;

15 “(b) Identify each producer participating in the program and the  
16 brands of architectural paint sold by each producer; and

17 “(c) Include a funding mechanism whereby each architectural paint  
18 producer remits to the stewardship organization payment of an archi-  
19 tectural paint stewardship assessment for each container of architec-  
20 tural paint the producer sells in this state. The architectural paint  
21 stewardship assessment must be added to the cost of all architectural  
22 paint sold to Oregon retailers and distributors, and each Oregon  
23 retailer or distributor shall add the assessment to the purchase price  
24 of all architectural paint sold in this state. The architectural paint  
25 stewardship assessment may not be described as an Oregon recycling  
26 fee at the point of retail, and a fee may not be charged to the con-  
27 sumer at the point of collection of post-consumer architectural paint.  
28 To ensure that the funding mechanism is equitable and sustainable, a  
29 uniform architectural paint stewardship assessment must be estab-  
30 lished for all architectural paint sold in this state. The architectural

1 paint stewardship assessment must be approved by the director as part  
2 of the plan and must be sufficient to recover, but not exceed, the costs  
3 of the architectural paint stewardship pilot program.

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

7 “(a) Implement an architectural paint stewardship pilot program  
8 described in the plan;

9 “(b) Provide for the development and implementation of strategies  
10 to reduce the generation of post-consumer architectural paint; and

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

16 “(4) A stewardship organization shall promote the architectural  
17 paint stewardship pilot program and provide consumers with educa-  
18 tional materials describing collection opportunities for post-consumer  
19 architectural paint and information promoting waste prevention, reuse  
20 and recycling. The educational materials must also make consumers  
21 aware that funding for the operation of the architectural paint  
22 stewardship pilot program has been added to the purchase price of all  
23 architectural paint sold in this state.

24 “SECTION 5. Conduct authorized. (1) It is the intent of this section  
25 that a stewardship organization operating an architectural paint  
26 stewardship pilot program pursuant to sections 1 to 10 of this 2009 Act,  
27 approved by the Department of Environmental Quality and subject to  
28 the regulatory supervision of the department, is granted immunity  
29 from federal and state antitrust laws for the limited purpose of es-  
30 tablishing and operating an architectural paint stewardship pilot pro-

1 gram. The activities of the stewardship organization that comply with  
2 the provisions of this section may not be considered to be in restraint  
3 of trade, a conspiracy or combination or any other unlawful activity  
4 in violation of any provisions of ORS 646.705 to 646.826 or federal anti-  
5 trust laws.

6 “(2) The department shall actively supervise the conduct of the  
7 stewardship organization, including but not limited to conduct related  
8 to payments made by architectural paint producers to the stewardship  
9 organization for the architectural paint stewardship assessment spec-  
10 ified in section 4 of this 2009 Act. The department may require the  
11 stewardship organization to take whatever action the department  
12 considers necessary to:

13 “(a) Ensure that the stewardship organization is engaging in con-  
14 duct authorized under this section;

15 “(b) Ensure that the policies of this state are being fulfilled by an  
16 architectural paint stewardship pilot program; and

17 “(c) Enjoin conduct that is not authorized by the department or  
18 conduct that the department finds does not advance the interests of  
19 this state in carrying out the architectural paint stewardship pilot  
20 program.

21 “(3) The Director of the Department of Environmental Quality may  
22 designate employees of the department to carry out the responsibility  
23 of actively supervising the conduct of the stewardship organization.

24 “(4) The Environmental Quality Commission may adopt rules to  
25 carry out the purposes of this section.

26 “SECTION 6. Reports. (1) No later than September 1, 2011, and by  
27 September 1 of each subsequent year, a stewardship organization must  
28 submit a report to the Director of the Department of Environmental  
29 Quality describing the architectural paint stewardship pilot program  
30 approved by the director under section 4 of this 2009 Act. At a mini-

1 mum, the report must contain:

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

4 “(b) The volume and type of post-consumer architectural paint  
5 collected in all regions of this state;

6 “(c) The volume of post-consumer architectural paint collected in  
7 this state by method of disposition, including reuse, recycling, energy  
8 recovery and disposal;

9 “(d) An independent financial audit of the program;

10 “(e) A description of program costs;

11 “(f) An evaluation of the operation of the program’s funding  
12 mechanism;

13 “(g) Samples of educational materials provided to consumers of ar-  
14 chitectural paint, an evaluation of the methods used to disseminate  
15 those materials and an assessment of the effectiveness of the educa-  
16 tion and outreach, including levels of waste prevention and reuse; and

17 “(h) An analysis of the environmental costs and benefits of col-  
18 lecting and recycling latex paint.

19 “SECTION 7. Data disclosure. The Department of Environmental  
20 Quality may not disclose data reported by a stewardship organization  
21 under section 6 of this 2009 Act. The department may disclose infor-  
22 mation contained in the records obtained by the department under  
23 section 6 of this 2009 Act in aggregate form.

24 “SECTION 8. Orders and actions. (1) In accordance with the appli-  
25 cable provisions of ORS chapter 183 relating to contested case pro-  
26 ceedings, the Department of Environmental Quality may issue an  
27 order requiring compliance with the provisions of sections 1 to 10 of  
28 this 2009 Act.

29 “(2) The department may bring an action against any producer or  
30 stewardship organization in violation of the provisions of sections 1 to

1 10 of this 2009 Act.

2 **“SECTION 9. Administrative fees.** (1) The Department of Environ-  
3 mental Quality shall charge the following fees to be paid by a  
4 stewardship organization for administering sections 1 to 10 of this 2009  
5 Act:

6 **“(a) \$10,000** when the plan specified in section 4 of this 2009 Act is  
7 submitted to the department; and

8 **“(b) \$10,000** each year thereafter for administrative costs related to  
9 the architectural paint stewardship pilot program.

10 **“(2) The department** may establish a schedule of fees in lieu of the  
11 fees specified in subsection (1) of this section that is based on an av-  
12 erage of the results of the financial audits described in section 6 of this  
13 2009 Act and that do not exceed 0.05 percent of the average architec-  
14 tural paint stewardship pilot program costs reported in the financial  
15 audits.

16 **“(3) Fees** collected by the department under this section shall be  
17 deposited in the Product Stewardship Fund established under section  
18 10 of this 2009 Act.

19 **“SECTION 10. Product Stewardship Fund.** The Product Stewardship  
20 Fund is established, separate and distinct from the General Fund. Fees  
21 collected by the Department of Environmental Quality under section  
22 9 of this 2009 Act shall be deposited in the State Treasury to the credit  
23 of the Product Stewardship Fund. Interest earned by the Product  
24 Stewardship Fund shall be credited to the fund. Moneys in the fund  
25 are continuously appropriated to the Department of Environmental  
26 Quality and may be used only to pay the costs of implementing the  
27 provisions of sections 1 to 10 of this 2009 Act.

28 **“SECTION 11. Report to Legislative Assembly.** No later than Octo-  
29 ber 1, 2011, the Director of the Department of Environmental Quality  
30 shall submit a report to the Legislative Assembly describing the re-

1 sults of the architectural paint stewardship pilot program and recom-  
2 mending whether the program should be made permanent and any  
3 modifications necessary to improve its functioning and efficiency. The  
4 report must include an accounting of the administrative fees paid by  
5 the producers to the Department of Environmental Quality under  
6 section 9 of this 2009 Act.

7 **“SECTION 12. Section captions.** The section captions used in this  
8 2009 Act are provided only for the convenience of the reader and do  
9 not become part of the statutory law of this state or express any leg-  
10 islative intent in the enactment of this 2009 Act.

11 **“SECTION 13. Repeal.** Sections 1 to 10 of this 2009 Act are repealed  
12 on June 30, 2014.

13 **SECTION 14. Transfer.** Any moneys remaining in the Product  
14 Stewardship Fund on June 30, 2014, are transferred to the General  
15 Fund.

16 **“SECTION 15. Effective date.** This 2009 Act being necessary for the  
17 immediate preservation of the public peace, health and safety, an  
18 emergency is declared to exist, and this 2009 Act takes effect on its  
19 passage.”.

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