

HB 1570-FN – AS AMENDED BY THE HOUSE

20Mar2014... 1053h

2014 SESSION

14-2272
08/03

HOUSE BILL ***1570-FN***

AN ACT establishing a paint stewardship program.

SPONSORS: Rep. Burns, Merr 2; Rep. Ratzki, Merr 1; Rep. Turcotte, Merr 22; Rep. Gottling,
Sull 2; Rep. Sad, Ches 1

COMMITTEE: Environment and Agriculture

AMENDED ANALYSIS

This bill:

I. Establishes a paint stewardship program wherein a nonprofit organization approved by the department of environmental services organizes a program for the reception of discarded architectural paint.

II. Establishes an assessment to fund the paint stewardship program.

III. Requires the department of environmental services to propose changes to the assessment for approval by the joint legislative committee on administrative rules.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT establishing a paint stewardship program.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Subdivision; Paint Stewardship Program. Amend RSA 149-M by inserting after section
2 60 the following new subdivision:

3 Paint Stewardship Program

4 149-M:61 Purpose.

5 I. The general court recognizes that it is unusual for any painting project to use all of the
6 paints purchased for the project, and that current disposal practices for the remaining paints are
7 inefficient and can be costly. The general court further recognizes that the recycling cannot be done
8 efficiently and economically, and in a way that allows a level playing field for producer competition,
9 without the collaboration of all paint producers. The general court thus establishes a single paint
10 stewardship program to support and encourage the collection and recycling of latex paint and of oil-
11 based paints and stains that can be exempt from regulation as hazardous waste if properly managed.

12 II. The goals of the paint stewardship program are:

13 (a) To reduce the amount of unwanted paint generated and promote the reuse and
14 recycling of such paint;

15 (b) To establish collection points for post-consumer paints that are convenient and
16 accessible to all areas of the state;

17 (c) To manage post-consumer paint collected at the collection points established under
18 the program using environmentally-sound management practices;

19 (d) To manage post-consumer paint and paint containers using environmentally-sound
20 management practices in an economically sound manner, while adhering to the waste management
21 hierarchy of source reduction, reuse, recycling, energy recovery, and disposal; and

22 (e) To generate sufficient revenues to cover all costs of the paint stewardship program.

23 149-M:62 Definitions. In this chapter:

24 I. "Architectural paint" or "paint" means any interior or exterior architectural coating sold in
25 containers of 5 gallons or less which is either latex-based paint, oil-based paint, or stain that, if
26 properly managed, can be exempt from regulation as hazardous waste under RSA 147-A and has
27 been exempted by rules adopted by the commissioner under RSA 147-A.

28 II. "Collection point" means a location that is under the direct supervision and control of a
29 retailer, producer, or political subdivision at which there is a suitable container dedicated to
30 collecting and consolidating post-consumer paint.

1 III. “Consumer” means a purchaser or user of architectural paint.

2 IV. “Costs of the paint stewardship program” means the actual costs incurred by the
3 stewardship organization to establish and maintain the program plus the actual costs of the
4 department for program oversight and compliance assurance.

5 V. “Distributor” means a business that has a contractual relationship with one or more
6 producers to market and sell architectural paint to retailers in the state.

7 VI. “Energy recovery” means recovery in which all or a part of solid waste materials is
8 processed in order to use the heat content or other forms of energy of or from the materials.

9 VII. “Environmentally-sound management practices” means procedures for the collection,
10 storage, transportation, reuse, recycling, and disposal of post-consumer paint to be implemented to
11 ensure compliance with all applicable federal, state, and local laws, regulations, rules, and
12 ordinances and protection of human health and the environment. Such procedures shall include
13 adequate recordkeeping, tracking, and documentation of the final disposition of collected materials
14 both within the state and beyond, as well as adequate environmental liability coverage for
15 professional services and for the operations of the contractors working on behalf of the stewardship
16 organization.

17 VIII. “Final disposition” means the point after which no further processing takes place and
18 the paint has been transformed for reuse as a feedstock in producing new products or is disposed of,
19 including for energy recovery, at permitted facilities.

20 IX. “Paint stewardship assessment” means the amount added to the purchase price of
21 architectural paint sold in the state to cover the costs of the paint stewardship program.

22 X. “Paint stewardship program” or “program” means a program for management of post-
23 consumer paint to be operated by a stewardship organization.

24 XI. “Post-consumer paint” means architectural paint that was purchased by or for a
25 consumer that was not used and is no longer wanted by the consumer.

26 XII. “Producer” means a manufacturer of architectural paint that sells, offers for sale, or
27 distributes such paint in the state under the producer’s own name or brand.

28 XIII. “Recycling rate” means the percentage of the total amount of post-consumer paint
29 collected by a stewardship organization in a calendar year that is recycled within 12 months of being
30 collected.

31 XIV. “Recycling” means any process by which discarded products, components, and
32 byproducts are transformed into new, usable, or marketable materials in a manner in which the
33 original products may lose their identity but does not include energy recovery or energy generation
34 by means of combusting discarded products, components, and by products with or without other
35 waste products, for purposes of this subdivision.

36 XV. “Representative organization” means a nonprofit organization created by producers to
37 operate a paint stewardship program that is open to all producers on a nondiscriminatory basis.

1 XVI. “Retailer” means a person that offers architectural paint for sale directly to consumers
2 in the state, whether from a physical location or through catalogs or electronically via the Internet or
3 similar conduits.

4 XVII. “Reuse” means the return of a product into the economic stream for use in the same
5 kind of application as originally intended.

6 XVIII. “Stewardship organization” means a producer or representative organization that has
7 submitted a paint stewardship program plan in accordance with RSA 149-M:63 and has received
8 approval for the plan pursuant to RSA 149-M:64, II.

9 149-M:63 Proposals to Establish a Paint Stewardship Program.

10 I. Any producer or representative organization that wishes to become the stewardship
11 organization shall, by January 1, 2015, submit a plan for the establishment of a paint stewardship
12 program to the department for approval, together with a non-refundable application fee as specified
13 in paragraph III.

14 II. The plan required by paragraph I shall include:

15 (a) A description of the applicant, including whether it is a producer or a representative
16 organization, how it is managed and operated, how it is funded, and whether it is operating or has
17 operated a paint stewardship program or similar product stewardship program in another
18 jurisdiction and, if so, a description of that program.

19 (b) A description of how the applicant proposes to collect, transport, recycle, and process
20 post-consumer paint covered by the program to meet the goals stated in RSA 149-M:61, II, including
21 the number and location of proposed collection points, which shall be situated so as to ensure that at
22 least 90 percent of state residents have a permanent collection point within a 15-mile radius of their
23 residence.

24 (c) A description of how containers used to collect and consolidate post-consumer paint
25 will be managed and protected against damage that could result in a spill, leak, or other discharge.

26 (d) The proposed initial amount of the paint stewardship assessment and the
27 information on which the initial amount was determined, together with a description of the process
28 by which the applicant will review and propose adjustments to the assessment, and the frequency of
29 such review and proposed adjustments.

30 (e) A description of the financial assurance mechanism the applicant proposes to use as
31 required by RSA 149-M:67.

32 III. The non-refundable application fee paid by an applicant for review of a paint
33 stewardship plan shall be \$5,000 plus any department costs exceeding that amount by \$100 or more.
34 To collect excess costs of \$100 or more, the department shall send an invoice to the applicant with
35 documentation of such costs. The applicant shall pay such costs prior to the department issuing a
36 decision under RSA 149-M:64.

37 149-M:64 Approval of Plan.

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1 I. The department shall review a plan submitted under RSA 149-M:63 as provided in
2 RSA 541-A:29. The department shall publish a notice on its web site that the plan is available for
3 public review at least 30 days prior to making a determination of whether to approve the plan.

4 II. The department shall approve a plan and send written notification of such approval to
5 the organization that submitted the plan upon determining that:

6 (a) The organization submitting the plan appears capable of implementing the plan;

7 (b) The proposed methods of collecting, transporting, and processing post-consumer
8 paint appear adequate to meet the goals stated in RSA 149-M:61, II;

9 (c) The funding mechanism proposed in the plan appears adequate to meet the
10 requirements of RSA 149-M:65, I; and

11 (d) The proposed financial assurance mechanism meets applicable requirements.

12 III. If the department does not approve the plan, the department shall provide written
13 notification to the organization that submitted the plan of the reason for the denial. Such denial
14 shall not preclude the organization from submitting an amended plan.

15 149-M:65 Paint Stewardship Program Funding.

16 I. The stewardship organization shall administer the paint stewardship assessment for all
17 architectural paint sold by participating producers in the state. The amount of the assessment shall
18 be set so as to recover the costs of the paint stewardship program without exceeding such costs,
19 based on a good faith estimate of those costs. If the funds generated by the assessment exceed the
20 amount necessary to recover the costs of the program, the excess funds shall be used by the
21 stewardship organization as stated in the approved plan to reduce future paint stewardship
22 assessments and to improve services under the program. The department shall approve such
23 changes in services before they are instituted.

24 (a) The original assessment shall not be more than: \$0.35 for a can over a half pint and
25 under 1 gallon, \$0.75 for a one-gallon can, and \$1.60 for cans above one gallon. However, nothing in
26 this section shall be construed to require the product stewardship organization to implement the
27 paint stewardship program if the amount of the approved assessment does not recover the costs of
28 the paint stewardship program based on a good faith estimate of those costs.

29 (b) After July 1, 2016 the department shall establish the assessment by rule. Any
30 change in the assessment shall be proposed by the department with the approval of the joint
31 legislative committee on administrative rules and copies of the proposal shall be sent to the chairs of
32 the house and senate ways and means committees at least 2 weeks before the public hearing.

33 II. All producers shall add the paint stewardship assessment to the cost of all architectural
34 paint sold for sale or other distribution in the state. Each producer shall remit the assessments
35 collected to the stewardship organization. Collection of the paint stewardship assessment shall
36 commence no later than July 1, 2015.

37 III. A retailer or distributor shall include the paint stewardship assessment in the

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1 consumer's purchase price of the architectural paint sold by that retailer or distributor. However,
2 nothing in this section shall be construed to require the retailer or distributor to itemize or otherwise
3 display the assessment on a customer receipt or bill of sale.

4 IV. No charge of any type shall be made at the time of post-consumer paint collection by a
5 retailer or distributor.

6 V. The department shall send an invoice to the stewardship organization in each quarter
7 that accrued costs exceed \$100, with documentation of the costs being invoiced. The stewardship
8 organization shall pay such costs within 30 days of the date of the invoice. In any quarter that the
9 department's costs do not exceed \$100, the amounts shall continue to accrue and be invoiced when
10 the total exceeds \$100. All funds received at the department as recovered costs shall be deposited to
11 the hazardous waste cleanup fund established under RSA 147-B:3.

12 149-M:66 Operation of Paint Stewardship Program.

13 I. The stewardship organization shall implement the approved plan within 3 months of
14 receiving approval under RSA 149-M:64, II.

15 II. Upon implementation of the plan, no producer shall sell or offer for sale architectural
16 paint in the state unless the producer participates in the paint stewardship program. The
17 stewardship organization shall notify the department within 30 days of which producers are
18 participating in that organization's paint stewardship program.

19 III.(a) The stewardship organization shall provide consumers and retailers with educational
20 materials regarding the paint stewardship assessment and paint stewardship program. Such
21 materials shall include information regarding available end-of-life management options for
22 architectural paint offered through the paint stewardship program; promote waste prevention, reuse
23 and recycling; and notify consumers that the assessment to fund the paint stewardship program is
24 included in the purchase price of architectural paint sold in the state and that state law prohibits
25 consumers from being charged any fee at the point of collection of waste paint.

26 (b) The materials provided pursuant to subparagraph (a) may include the following:

27 (1) Signage that is prominently displayed and easily visible to consumers;

28 (2) Printed materials and templates of materials for reproduction by retailers to be
29 provided to the consumer at the time of purchase or delivery;

30 (3) Advertising or other promotional materials that include references to the paint
31 stewardship program; and

32 (4) A manual for the operator of a collection point to ensure the use of
33 environmentally-sound management practices when handling architectural paints.

34 IV. The stewardship organization shall notify the department in writing within 30 days of
35 establishing any additional collection points, changing the location of a collection point, or
36 terminating a collection point.

37 V. If the stewardship organization wishes to change the paint stewardship assessment, the

1 stewardship organization shall submit a request to change the assessment to the department. The
2 organization shall explain in detail the basis for the change and include audited financial reports to
3 support the request. The department shall submit the request to the joint legislative committee on
4 administrative rules by the process provided in RSA 149-M:65 (I)(b) if it determines that the change
5 is necessary to cover the actual reasonable costs of the program.

6 VI. The stewardship organization that organizes the collection, transportation, and
7 processing of post-consumer paint, in accordance with the paint stewardship program approved by
8 the department under this subdivision, shall be exempt from RSA 356 with respect to any claims of a
9 violation of antitrust arising from conduct undertaken in accordance with the paint stewardship
10 program.

11 149-M:67 Financial Assurance Required.

12 I. Upon receiving approval of a proposed paint stewardship program, the stewardship
13 organization shall take such steps as are necessary to ensure that financial assurance is in place. No
14 post-consumer paint shall be collected until financial assurance is in place.

15 II. Financial assurance shall be in the form of a bond, letter of credit, or some other financial
16 mechanism, with or without a trust or standby trust, provided that whatever mechanism is used
17 shall:

18 (a) Be in an amount sufficient to remove all collected post-consumer paint if the
19 stewardship organization terminates the program unexpectedly or fails to provide collection services
20 that are consistent with the approved plan;

21 (b) Insure to the benefit of, and be payable to, the state of New Hampshire, department
22 of environmental services, upon presentation of appropriate documentation; and

23 (c) Require at least 120 days prior notice to the department prior to termination.

24 149-M:68 Annual Report Required.

25 I. The stewardship organization shall submit a report to the department annually, with the
26 first report due 90 days after completion of the first year of program implementation, and in no case
27 later than 18 months from the date the plan was approved pursuant to RSA 149-M:64, II.
28 Thereafter, annual reports shall be submitted within 90 days after the end of each operating year.
29 Such reports shall include:

30 (a) A description of the methods used to collect, transport, reduce, reuse, and process
31 post-consumer paint in the state, including the location of each collection point;

32 (b) The volume and type of post-consumer paint collected in the state by method of
33 disposition, including reuse, recycling, and other methods of processing;

34 (c) Whether the recycling rate has increased, decreased, or remained the same;

35 (d) The total costs of the paint stewardship program, as determined by an independent
36 financial audit which may be funded from the paint stewardship assessment, that includes a
37 breakdown of administration, collection, transportation, disposition, and communication costs;

1 (e) A summary of all outreach and educational activities undertaken and samples of
2 educational materials provided to consumers of architectural paint;

3 (f) The total volume of post-consumer paint collected by the paint stewardship program
4 and a breakdown of the volume collected at each collection site;

5 (g) Based on the paint stewardship assessment collected by the paint stewardship
6 program, an estimate of the total volume of architectural paint sold in the state during the preceding
7 year;

8 (h) An evaluation of the effectiveness of the paint stewardship program compared to
9 prior years and anticipated steps the stewardship organization plans to take to improve performance
10 throughout the state, if needed; and

11 (i) A report on how the stewardship organization has ensured environmental compliance
12 at all collection points within the program.

13 II. Reports submitted to the department under this section shall be posted on the
14 department's website, except that proprietary information submitted to the department in a plan, in
15 an amendment to a plan, or pursuant to reporting requirements of this section that is identified by
16 the submitter as proprietary information shall be subject to the exception for confidential
17 information in RSA 91-A. As used in this paragraph, "proprietary information" means information
18 that is a trade secret or production, commercial, or financial information, the disclosure of which
19 would impair the competitive position of the submitter and would make available information not
20 otherwise publicly available. Such an exclusion shall not be used to conceal information necessary to
21 the understanding of the finances of the program.

22 III. The department shall append to each annual report submitted under this section its own
23 accounting of its activities and finances relative to this chapter, and shall provide the combined
24 report to the chairs of the house and senate environmental and ways and means committees.

25 149-M:69 Retailers.

26 I. Beginning July 1, 2015 or 3 months after a plan is approved by the commissioner under
27 RSA 149-M:64, whichever occurs later, no retailer shall sell architectural paint unless, on the date
28 the retailer ordered the architectural paint from the producer or the producer's agent, the producer
29 or the paint brand is listed by the department as provided under RSA 149-M:70 as implementing or
30 participating in an approved paint stewardship program.

31 II. Any retailer may serve as a paint collection point under the paint stewardship program
32 provided the retailer complies with all applicable requirements of the paint stewardship program,
33 including using environmentally-sound management practices.

34 149-M:70 List of Producers and Brands. The department shall maintain a list of producers
35 participating and the brands included in the paint stewardship program. Such list shall be made
36 available to the public on the department's web site and by other means as the department deems
37 appropriate.

1 149-M:71 Liability for Discharges.

2 I. Any person who causes or suffers a spill, leak, or other discharge of materials collected
3 under this program shall be liable for all costs of containment and removal of the discharged paint
4 and, if the spill, leak, or discharge was onto or into any land surface, sewer or storm water collection
5 network, surface water, or wetland, or in any area where the paint could reach surface water or
6 groundwater, also shall be liable for the costs of cleanup and restoration of the site and surrounding
7 environment.

8 II. Any person who causes or suffers a spill, leak, or other discharge of materials collected
9 under this program due to gross negligence or reckless disregard, or by intention, shall be subject to
10 the applicable penalty provisions of RSA 149-M and RSA 147-A.

11 III. Any person who agrees to operate a collection point and who responsibly implements
12 environmentally-sound management practices in good faith shall not be subject to penalties for the
13 acceptance or storage of, or for any spill, leak, or discharge of collected paint, or other materials that
14 are inadvertently accepted pursuant to the program, and which occurs despite the implementation of
15 such practices.

16 149-M:72 Rulemaking. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

17 I. The content and structure of applications under RSA 149-M:63, including information and
18 other materials to be submitted by an applicant.

19 II. The amount of the assessments for the stewardship organization.

20 III. The types of financial assurance that may be used to comply with RSA 149-M:67.

21 IV. The content and structure of annual reports under RSA 149-M:68, including information
22 and other materials to be submitted by the stewardship organization.

23 V. Procedures for filing and review of requests to change the paint stewardship assessment.

24 VI. Environmentally-sound management practices at collection points.

25 VII. Definitions of terms not defined in this chapter.

26 VIII. Standards for granting any waivers from RSA 149-M:61-71.

27 2 Repeal. RSA 149-M:65, I(a), relative to the initial paint stewardship program assessment, is
28 repealed.

29 3 Effective Date.

30 I. Section 2 of this act shall take effect July 1, 2016.

31 II. The remainder of this act shall take effect 60 days after its passage.

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LBAO
14-2272
Amended 03/27/14

HB 1570-FN FISCAL NOTE

AN ACT establishing a paint stewardship program.

FISCAL IMPACT:

The Department of Environmental Services states this bill, as amended by the House (Amendment #2014-1053h), may increase state restricted expenditures and revenue by \$26,144 in FY 2015, \$63,035 in FY 2016, \$37,879 in FY 2017 and \$39,289 in FY 2018; may increase county expenditures by an indeterminable amount in FY 2016 and each year thereafter; and, have an indeterminable fiscal impact on local expenditures in FY 2016 and each year thereafter. There is no impact on county and local revenue.

METHODOLOGY:

The Department of Environmental Services states this bill establishes a paint stewardship program to be developed by a nonprofit organization approved by the Department. The Department will be responsible for reviewing the plan for a paint stewardship program, reviewing reports, rulemaking, oversight, administration and enforcement. The Department states the addition of these responsibilities to the Department will necessitate the addition of a part-time waste management specialist position. During the implementation of the program, the Department assumes the hours worked by the waste management specialist and other staff will equal the cost of a full-time for the first two years of the program, with the hours decreasing by about half after the program is implemented. The Department assumes the waste management specialist position would need to be filled by March 2015 to allow for review of the plan by April 2015. Position costs contained in the table adjust for the 2.25 percent salary increases in July 2014 and January 2015.

	FY 2015	FY 2016	FY 2017	FY 2018
Waste Management Specialist (LG 26)	\$16,203	\$50,373	\$26,869	\$28,040
Benefits	1,240	3,854	2,055	2,145
Current Expenses	950	950	950	950
Office Space	3,604	3,640	3,713	3,787
OIT Costs	3,591	3,663	3,736	3,811
Travel	556	556	556	556
Total	\$26,144	\$63,036	\$37,879	\$39,289

The Department assumes all expenditures associated with this program will be reimbursed by the revenue generated by fee revenue generated by the program.

The Department states to the extent county and local entities buy paint that has the paint stewardship assessment, they will have an increase in costs. For those municipalities that accept responsibility for the proper disposal of waste paint, the paint stewardship program may result in a decrease in costs.

This bill does not contain authorization or an appropriation for additional positions.