



Sen. Linda Holmes

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10200SB1164sam001

LRB102 04985 CPF 24558 a

1 AMENDMENT TO SENATE BILL 1164

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1164 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the Paint  
5 Stewardship Act.

6 Section 5. Findings. The General Assembly finds that:

7 (1) Leftover architectural paints present significant  
8 waste management issues for counties and municipalities.  
9 Managing the end-of-life of architectural paint can be costly  
10 and present environmental, health, and safety risks if not  
11 properly managed.

12 (2) Nationally, an estimated 10% of architectural paint  
13 purchased by consumers is leftover. Current governmental  
14 programs collect only a fraction of the potential leftover  
15 paint for proper reuse, recycling, or disposal. In northern  
16 Illinois, there are only 4 permanent household hazard waste

1 facilities and these facilities do not typically accept latex  
2 paint, the most common paint purchased by consumers.

3 (3) It is in the best interest of this State for paint  
4 manufacturers to assume responsibility for development and  
5 implementation of a cost-effective paint stewardship program  
6 that will: educate consumers on strategies to reduce the  
7 generation of leftover paint; provide opportunities to reuse  
8 leftover paint; and collect, transport, and process leftover  
9 paint for end-of-life management, including reuse, recycling,  
10 energy recovery, and disposal. Requiring paint manufacturers  
11 to assume responsibility for the collection, recycling, reuse,  
12 transportation, and disposal of leftover paint will provide  
13 more opportunities for consumers to properly manage their  
14 leftover paint, provide fiscal relief for this State and local  
15 governments in managing leftover paint, keep paint out of the  
16 waste stream, and conserve natural resources.

17 (4) Similar architectural paint stewardship programs are  
18 currently operating in 9 jurisdictions and are successfully  
19 diverting a significant portion of the collected paint waste  
20 from landfills. These paint stewardship programs are saving  
21 counties and municipalities the cost of managing paint waste  
22 and have been successful at recycling leftover paint into  
23 recycled paint products as well as other products. For  
24 instance, in the state of Oregon, 64% of the latex paint  
25 collected in the 2019-2020 fiscal year was recycled into paint  
26 products; and, in Minnesota, 48% of the latex paint collected

1 during the same time period was reused or recycled into paint  
2 products. Given the lack of access to architectural paint  
3 collection programs in Illinois, especially for leftover latex  
4 architectural paint, and the demonstrated ability of the paint  
5 industry to collect and recycle a substantial portion of  
6 leftover architectural paint, this legislation is necessary.  
7 It will create a statewide program that diverts a significant  
8 portion of paint waste from landfills and facilitates  
9 recycling of leftover paint into paint and other products.

10 (5) Establishing a paint stewardship program in Illinois  
11 will create jobs as the marketplace adjusts to the needs of a  
12 robust program that requires transporters and processors.  
13 Certain infrastructure already exists in the State and the  
14 program may attract additional resources.

15 (6) Legislation is needed to establish this program in  
16 part because of the risk of antitrust lawsuits. The program  
17 involves activities by competitors in the paint industry and  
18 may affect the costs or prices of those competitors. As  
19 construed by the courts, the antitrust laws impose severe  
20 constraints on concerted action by competitors that affect  
21 costs or prices. Absent State legislation, participation in  
22 this program would entail an unacceptable risk of class action  
23 lawsuits. The risk can be mitigated by legislation that would  
24 bar application of federal antitrust law under the "state  
25 action" doctrine. Under that doctrine, federal antitrust law  
26 does not apply to conduct that is (1) undertaken pursuant to a

1 clearly expressed and affirmatively articulated state policy  
2 to displace or limit competition, and (2) actively supervised  
3 by the State.

4 (7) To ensure that this defense will be available to  
5 protect participants in the program, it is important for State  
6 legislation to be specific about the conduct it is authorizing  
7 and to express clearly that the State is authorizing that  
8 conduct pursuant to a conscious policy decision to limit the  
9 unfettered operation of market forces. It is also critical for  
10 the legislation to provide for active supervision of the  
11 conduct that might otherwise be subject to antitrust attack.  
12 In particular, the legislation must provide for active  
13 supervision of the decisions concerning the assessments that  
14 will fund the program. A clear articulation of the State's  
15 purposes and policies and provisions for active State  
16 supervision of the program will ensure that industry  
17 participation in the program will not trigger litigation.

18 (8) To ensure that the costs of the program are  
19 distributed in an equitable and competitively neutral manner,  
20 the program will be funded through an assessment on each  
21 container of paint sold in this State. That assessment will be  
22 sufficient to recover, but not exceed, the costs of sustaining  
23 the program and will be reviewed and approved by the Illinois  
24 Environmental Protection Agency. Funds collected through the  
25 assessment will be used by the representative organization to  
26 operate and sustain the program.

1 Section 10. Definitions. In this Section:

2 "Agency" means the Environmental Protection Agency.

3 "Architectural paint" means interior and exterior  
4 architectural coatings sold in containers of 5 gallons or  
5 less. "Architectural paint" does not include industrial  
6 original equipment or specialty coatings.

7 "Collection site" means any location or event at which  
8 architectural paint is accepted into a postconsumer paint  
9 collection program pursuant to a postconsumer paint collection  
10 program plan.

11 "Director" means the director of the Environmental  
12 Protection Agency.

13 "Environmentally sound management practices" means  
14 procedures for the collection, storage, transportation, reuse,  
15 recycling, and disposal of architectural paint to be  
16 implemented by a manufacturer or representative organization  
17 or by the manufacturer's or representative organization's  
18 contracted partners to comply with all applicable federal,  
19 State, and local laws and any rules, regulations, and  
20 ordinances for the protection of human health and the  
21 environment. These procedures shall address adequate record  
22 keeping, tracking and documenting of the final disposition of  
23 materials, and appropriate environmental liability coverage  
24 for the representative organization.

25 "Household waste" has the same meaning as defined in 40

1 CFR 261.4(b)(1).

2 "Postconsumer paint" means architectural paint not used  
3 and no longer wanted by a purchaser.

4 "Manufacturer" means a manufacturer of architectural paint  
5 who sells, offers for sale, or distributes the architectural  
6 paint in the State under the manufacturer's own name or brand.

7 "Program" means the postconsumer paint stewardship program  
8 established pursuant to Section 15.

9 "Recycling" means a method, technique, or process designed  
10 to remove any contaminant from waste so as to render the waste  
11 reusable, or any process by which materials that would  
12 otherwise be disposed of or discarded are collected,  
13 separated, or processed and returned to the economic  
14 mainstream in the form of raw materials or products.

15 "Representative organization" means a nonprofit  
16 organization established by a manufacturer to implement the  
17 postconsumer paint stewardship program.

18 "Retailer" means a company that offers architectural paint  
19 or other allied products for retail sale in the State.

20 "Very small quantity generator" has the same meaning as  
21 defined in 40 CFR 260.10.

22 Section 15. Paint stewardship program plan.

23 (a) A manufacturer of architectural paint sold at retail  
24 in the State or a representative organization shall submit to  
25 the Director a plan for the establishment of a postconsumer

1 paint stewardship program. The program shall seek to reduce  
2 the generation of postconsumer paint, promote its reuse and  
3 recycling, and manage the waste stream using environmentally  
4 sound management practices.

5 (b) The plan submitted by the manufacturer or  
6 representative organization to the Agency under this Section  
7 shall:

8 (1) Provide a list of participating manufacturers and  
9 brands covered by the program.

10 (2) Provide information on the architectural paint  
11 products covered under the program, such as interior or  
12 exterior water-based and oil-based coatings, primers,  
13 sealers, or wood coatings.

14 (3) Describe how it will provide for convenient and  
15 cost-effective statewide collection of postconsumer  
16 architectural paint in the State. The manufacturer or  
17 representative organization may coordinate the program  
18 with existing household hazardous waste collection  
19 infrastructure as is mutually agreeable. A paint retailer  
20 may be authorized by the manufacturer or representative  
21 organization as a paint collection site if the paint  
22 retailer volunteers to act as such, complies with all  
23 applicable laws, rules, and regulations, and the retail  
24 location is consistent with the maintenance of a  
25 cost-effective network of paint collection locations.

26 (4) Establish a goal for the number and geographic

1 distribution of collection sites for postconsumer  
2 architectural paint using geographic modeling and the  
3 following criteria:

4 (A) at least 90% of State residents shall have a  
5 collection site within a 15-mile radius; and

6 (B) one site shall be available for every 50,000  
7 residents of an Urbanized Area, as defined by the U.S.  
8 Census Bureau, unless otherwise approved by the  
9 Director.

10 (5) Describe how postconsumer paint will be managed in  
11 an environmentally and economically sound manner using the  
12 following strategies and in the following order: reuse,  
13 recycling, energy recovery, and disposal. Incineration  
14 within the State shall not be utilized.

15 (6) Describe education and outreach efforts to inform  
16 consumers about the program. These materials should  
17 include:

18 (A) information about collection opportunities for  
19 postconsumer paint;

20 (B) information about the fee for the operation of  
21 the program that shall be included in the purchase  
22 price of all architectural paint sold in the State;  
23 and

24 (C) efforts to promote the source reduction,  
25 reuse, and recycling of architectural paint.

26 (7) Be reviewed by an independent auditor to assure



1           that any added fee to paint sold in the State as a result  
2           of the postconsumer paint stewardship program does not  
3           exceed the costs to operate and sustain the program in  
4           accordance with sound management practices. The  
5           independent auditor shall verify that the amount added to  
6           each unit of paint will cover the costs and sustain the  
7           postconsumer paint stewardship program.

8           (c) A manufacturer or representative organization shall  
9           select the independent auditor under paragraph (7) of  
10          subsection (b) in consultation with the Agency. The Agency  
11          shall review the work product of the independent auditor. The  
12          cost of any work performed by the independent auditor shall be  
13          funded by the program.

14          (d) Not later than 60 days after submission of the plan  
15          under this Section, the Director shall make a determination in  
16          writing whether to approve the plan as submitted or disapprove  
17          the plan.

18          (e) The Agency shall enforce the plan and may, by rule or  
19          regulation, establish enforcement procedures. If circumstances  
20          require an adjustment of the paint stewardship fee, the  
21          manufacturer or representative organization shall request the  
22          adjustment by submitting to the Agency a justification for the  
23          adjustment as well as financial reports to support the  
24          request, including a 5-year projection of the financial status  
25          of the organization. The Agency shall review the request to  
26          determine if the proposed fee adjustment will generate

1 revenues sufficient to pay the program expenses, including any  
2 accumulated debt, and develop a reasonable reserve level  
3 sufficient to sustain the program. If a decrease in the paint  
4 fee is requested, the Agency shall review the request to  
5 determine if the proposed fee adjustment and the resulting  
6 decreased revenue is sufficient to pay program expenses and  
7 maintain a reasonable reserve level sufficient to sustain the  
8 program.

9 (f) No later than the implementation date of the program,  
10 information regarding the approved plan, the names of  
11 participating manufacturers, and the brands of architectural  
12 paint covered by the program shall be posted on the Agency's  
13 website and on the website of the manufacturer or  
14 representative organization.

15 (g) Upon implementation of the program, each manufacturer  
16 shall include in the price of any architectural paint sold to  
17 retailers and distributors in the State the per container  
18 amount in the approved program plan. Manufacturers are  
19 responsible for filing, reporting, and remitting the paint  
20 stewardship assessment for each container of architectural  
21 paint to the representative organization. A retailer or  
22 distributor shall not deduct this amount from the purchase  
23 price.

24 Section 20. Incineration prohibited. No person may  
25 incinerate leftover architectural paint collected pursuant to

1 an approved paint stewardship plan as required by Section 15.

2 Section 25. Plan submission. The plan required by Section  
3 15 shall be submitted not later than 12 months after the  
4 authorization of the program is final. The Agency may grant an  
5 extension of time to submit the plan for good cause.

6 Section 30. Sale of paint.

7 (a) A manufacturer or retailer shall not sell or offer for  
8 sale architectural paint to any person in the State unless the  
9 manufacturer of a paint brand or the manufacturer's  
10 representative organization is implementing an approved paint  
11 stewardship plan as required by Section 15.

12 (b) A retailer shall be in compliance with this Act if, on  
13 the date the architectural paint was offered for sale, the  
14 retailer's manufacturer is listed on the Agency's website as  
15 implementing or participating in an approved program or if the  
16 paint brand is listed on the Agency's website as being  
17 included in the program.

18 (c) A paint collection site authorized under the  
19 provisions of this Act shall not charge any additional amount  
20 for the disposal of paint when it is offered for disposal.

21 (d) No retailer is required to participate in a paint  
22 stewardship program as a collection site. A retailer may  
23 participate as a paint collection site on a voluntary basis.

24 (e) Nothing in this Act shall require a retailer to track,

1 file, report, submit, or remit a paint stewardship assessment,  
2 sales data, or any other information on behalf of a  
3 manufacturer, distributor, or representative organization.

4 Section 35. Liability. A manufacturer or representative  
5 organization participating in a postconsumer paint stewardship  
6 program shall not be liable for any claim of a violation of  
7 antitrust, restraint of trade, unfair trade practice, or other  
8 anticompetitive conduct arising from conduct undertaken in  
9 accordance with the program.

10 Section 40. Annual report. Annually, a manufacturer or  
11 representative organization shall submit a report to the  
12 Agency that details the program. The report shall include:

13 (1) a description of the methods used to collect and  
14 transport postconsumer paint collected in the State;

15 (2) the volume and type of postconsumer paint  
16 collected and a description of the methods used to process  
17 the paint, including reuse, recycling, and other methods;

18 (3) samples of educational materials provided to  
19 consumers of architectural paint; and

20 (4) the total cost of the program and an independent  
21 financial audit. An independent financial auditor shall be  
22 chosen by the manufacturer or representative organization.

23 The report or information relating to the report shall be  
24 posted on the Agency's website and on the website of the

1 manufacturer or representative organization.

2 Section 45. Annual report submission. A manufacturer or  
3 representative organization shall submit the first annual  
4 report detailing the postconsumer paint collection program as  
5 required by Section 15 to the Director within 14 months  
6 following implementation of the program, and annually  
7 thereafter. The Agency may extend the time for submission of  
8 the annual report for cause shown.

9 Section 50. Disclosure. Financial, production, or sales  
10 data reported to the Agency by a manufacturer, retailer, or  
11 representative organization shall not be subject to  
12 disclosure, but the Director may release a summary form of the  
13 data that does not disclose financial, production, or sales  
14 data of the manufacturer, retailer, or representative  
15 organization.

16 Section 55. Program plan submission fee. A manufacturer or  
17 representative organization submitting a program plan shall  
18 pay an administrative fee to the Agency at the time of  
19 submission. The Agency may establish a variable fee based on  
20 relevant factors, including, but not limited to, the portion  
21 of architectural paint sold in the State by members of the  
22 manufacturer or representative organization compared to the  
23 total amount of architectural paint sold in the State by all

1 manufacturers or representative organizations that submit a  
2 plan.

3 Section 60. Oversight fee. A manufacturer or  
4 representative organization operating a stewardship program  
5 shall pay to the Agency the costs it incurs in overseeing the  
6 stewardship program. The Agency shall set the fee at an amount  
7 that, when paid by every manufacturer or representative  
8 organization that submits a plan, is adequate to reimburse the  
9 Agency's full costs of administering this Act. The total  
10 amount of annual fees collected under this Section must not  
11 exceed the amount necessary to reimburse costs incurred by the  
12 Agency to administer this Act.

13 Section 65. Timing of oversight fee. A manufacturer or  
14 representative organization subject to Section 60 must pay the  
15 Agency's administrative fee annually. Each year after the  
16 initial payment, the annual administrative fee may not exceed  
17 5% of the aggregate stewardship fee added to the cost of all  
18 architectural paint sold by manufacturers in the State for the  
19 preceding calendar year. The Agency may extend the time for  
20 payment upon good cause shown.

21 Section 70. Implementation. A manufacturer or  
22 representative organization shall implement the postconsumer  
23 paint collection plan within 6 months of the date that the

1 program plan is approved. The Agency may extend the date of  
2 implementation for good cause shown.

3 Section 75. Postconsumer paint from households and small  
4 businesses.

5 (a) Generators of household waste and very small quantity  
6 generators are authorized to transport or send their  
7 architectural paints to a paint collection site to the extent  
8 permitted by a postconsumer paint stewardship program approved  
9 by the Director.

10 (b) Paint collection sites are authorized to collect and  
11 temporarily store architectural paints generated by persons  
12 specified in subsection (a), in accordance with the  
13 requirements of the paint stewardship program, in lieu of any  
14 otherwise applicable hazardous waste or solid waste laws,  
15 rules, or regulations.

16 (c) Nothing in this Act shall be construed as restricting  
17 the collection of architectural paint by a postconsumer paint  
18 stewardship program where the collection is authorized under  
19 any otherwise applicable hazardous waste or solid waste laws,  
20 rules, or regulations.

21 (d) Nothing in this Act shall be construed to affect any  
22 requirements applicable to facilities that treat, dispose, or  
23 recycle architectural paint under any otherwise applicable  
24 hazardous waste or solid waste laws, rules, or regulations."