

HOUSE BILL REPORT

SHB 2634

As Passed Legislature

Title: An act relating to antifouling paints on recreational water vessels.

Brief Description: Concerning the use of antifouling paints on recreational water vessels.

Sponsors: House Committee on Environment (originally sponsored by Representatives Chapman, Graves, Fitzgibbon, Hayes, Tarleton, Hudgins and McBride; by request of Department of Ecology).

Brief History:

Committee Activity:

Environment: 1/15/18, 1/30/18 [DPS].

Floor Activity:

Passed House: 2/8/18, 98-0.

Passed Senate: 3/1/18, 49-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Extends various prohibitions on the use and sale of copper-based antifouling paints to January 1, 2021.
- Directs the Department of Ecology to submit to the Legislature a report concerning antifouling paint, including the environmental impacts of antifouling paints and their ingredients, recommendations for safer alternatives, and recommendations for the development of regulatory standards for antifouling paint.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Taylor, Ranking Minority Member; Maycumber, Assistant Ranking Minority Member; Buys, Dye, Fey, Kagi and McBride.

Staff: Robert Hatfield (786-7117).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Antifouling Paints.

Metal-based antifouling paints are designed to control the growth of organisms such as algae and barnacles on boats. This growth, known as fouling, creates friction that can decrease a boat's speed and fuel efficiency. Most antifouling hull paints contain a copper biocide. Copper-based antifouling paints are designed to leach copper slowly into the water immediately surrounding a boat's hull.

Paint stripping and painting activities are potential sources of pollution from boatyards. Under the Clean Water Act, National Pollutant Discharge Elimination System permits that are issued to boatyards by the Department of Ecology (Ecology) contain effluent limitations that restrict the volume and concentration of heavy metals and other pollutants, including copper, that are discharged.

Recreational Water Vessels - Antifouling Paints Law.

In 2011, Washington enacted legislation for the purpose of phasing out copper-based antifouling paint. Among other things, the 2011 legislation set timelines for the phase-out of copper-based antifouling paint on recreational water vessels, established civil penalties, and directed Ecology to provide a report to the Legislature concerning antifouling paint.

Recreational water vessels are defined as a vessel that is less than 65 feet in length and is used primarily for pleasure or leased, rented, or chartered to a person for the pleasure of that person. It does not include a vessel that is subject to United States Coast Guard inspection and is engaged in commercial use or carries paying passengers.

Antifouling Paints Law - Timelines.

The 2011 legislation established the following timelines:

- Beginning January 1, 2018, new recreational water vessels with copper-based antifouling paint may not be sold in the state.
- Beginning January 1, 2020, the sale of antifouling paint containing more than 0.5 percent copper intended for use on recreational water vessels is prohibited.
- Beginning January 1, 2020, antifouling paint containing more than 0.5 percent copper may not be applied to a recreational water vessel.

Antifouling Paints Law - Antifouling Paint Report.

The 2011 legislation required Ecology to study how antifouling paints affect marine organisms and water quality. In addition, Ecology was required to survey the manufacturers of antifouling paints to determine the types of antifouling paints available in the state. Ecology was required to submit its report to the Legislature by December 31, 2017.

Results of Antifouling Paint Report.

Ecology issued its report on antifouling paints in December 2017. Among other findings, the report found that banning copper in antifouling paints may lead to the increase use of other, more toxic biocides. Ecology has recommended that the ban on copper paints be delayed until Ecology can review additional data on the impacts of alternative biocides in antifouling paint.

Summary of Substitute Bill:

The effective dates of the following prohibitions are all extended to January 1, 2021:

- prohibition on sale of new recreational water vessels with copper-based antifouling paint;
- prohibition on sale of antifouling paint containing more than 0.5 percent copper intended for use on a recreational water vessel; and
- prohibition on the application of antifouling paint containing more than 0.5 percent copper to a recreational water vessel.

Wood boats, which are defined as a recreational water vessel with an external hull constructed entirely of wood planks or sheets, are exempt from the prohibition on the sale of new recreational boats with copper-based antifouling paint, and from the prohibition on the application of copper-based antifouling paint to a recreational water vessel.

Ecology is directed to submit a report to the Legislature by September 30, 2019 that considers the environmental impacts of antifouling paints and their ingredients. The report must include recommendations on safer alternatives, and recommendations as to whether changes to the existing regulation of antifouling paints are needed. The report may also include information about the advantages and disadvantages of using leaching rates as a regulatory standard. Ecology may include recommendations regarding the adoption of a leach rate standard but is not required to do so.

In preparing the report, Ecology is directed to review available scientific studies. Additionally, Ecology is required to conduct performance testing, modeling, alternatives assessments, and other scientific studies as appropriate. These studies must address, among other things, the development of possible regulatory standards, such as a leaching rate standard. Ecology is also directed to consider applicable data concerning the sources of copper in Washington's marinas, including any available information related to upland sources of copper.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) It does not make sense to ban a hazardous chemical only to find out later that its substitutes are worse. Preparation of the 2017 Ecology report revealed studies that gave rise to concerns about the alternatives to copper. It is important to look at alternative chemicals, to examine how they would impact Washington's waters, and to then make an informed decision going forward. Wooden boats are susceptible to ship worms, and copper-based paints are the only option on the market for ship worms. There are about 3,500 wooden boats in Washington, and only the ones in salt water need the copper-based paint. Antifouling paint is primarily needed in salt water. There are aesthetic reasons for using antifouling paint in freshwater, but there is an operational concern in salt water. The year 2018 turned out not to

be the right year for a phase-out of copper-based paint. California has moved to a leach rate regulatory standard, and it makes sense to look at that option here. There is only one true non-biocide antifouling paint on the market. In 1998 discharges from boatyards in Washington had 410 parts per billion copper and that number is now down to 25 parts per billion, due to advanced treatment systems and better management practices. Copper is essential to combat invasive species, but the paint industry is working on alternatives.

(Opposed) None.

(Other) It is time to pause and reexamine these paints in order to make the right judgment. The 2011 legislation regarding copper-based paints grew out of copper stormwater runoff, which has a significant impact on salmon. Boat hulls get sanded in boat yards, and the paint dust that falls to the ground and is washed out into the water via stormwater. Thirty-five percent of stormwater samples in the southwest region of Washington exceeded benchmarks for copper. If it is possible to change the paint, it is possible to change the impact, rather than having to change boatyard practices. There are concerns with developing a leach rate regulatory standard. Such a standard would focus on leaching from boats in the water, but would not address paint sanded off the hull while the boat was in the boatyard.

Persons Testifying: (In support) Representative Chapman, prime sponsor; Kimberly Goetz, Department of Ecology; Peter Schrappen, Northwest Marine Trade Association; and Tony Bulpin, Sea Hawk Paints.

(Other) Bruce Wishart, Puget Soundkeeper Alliance.

Persons Signed In To Testify But Not Testifying: None.