

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2542S.01I
Bill No.: SB 639
Subject: Department of Natural Resources; Environmental Protection
Type: Original
Date: April 16, 2023

Bill Summary: This proposal creates provisions relating to a post-consumer paint recycling program.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Administrative Fee Fund (Unidentified)*	\$0	\$0	\$0
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

*Fund for the administrative fee to be deposited into has not been identified. Income and costs net to zero.

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Administrative Fee Fund (Unidentified)	0 FTE	1 FTE	1 FTE
Total Estimated Net Effect on FTE	0 FTE	1 FTE	1 FTE

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Natural Resources (DNR)** assume the following regarding this proposal:

Section 701.151.1(14)

"Representative organization", a non-profit organization established by producers to implement the program;

PaintCare is a program of the American Coatings Association (ACA) a membership-based trade association of the paint manufacturing industry. PaintCare potentially could act as the representative organization. Working through the Paint Producer Stewardship Initiative (PPSI), facilitated by the Product Stewardship Institute, PaintCare could establish and administer the program which will provide for statewide collection of post-consumer paint in Missouri. The Department is unaware of the number of paint producers or the number of paint products affected by this legislation.

Section 701.151. 3. (3)

The independent financial auditor required under paragraph (g) of subdivision (2) of this subsection shall be selected by the representative organization after consultation with the department. The independent financial auditor shall verify that the cost added to each unit of paint will cover the costs of the program. The department shall review the work product of the independent financial auditor. The cost of any work performed by such independent financial auditor shall be funded by the paint assessment fees authorized by the program.

The Department will review and comment on the selected auditing firm and review work product. The Department anticipates being able to absorb these costs with current appropriation authority. However, until the fiscal year 2024 budget is final the Department cannot identify specific funding sources.

Section 701.151. 4. (1)

The department shall establish an administrative fee to be paid by each producer or representative organization submitting a plan under this section. The department shall set the fee at an amount that, when paid by every producer or representative organization that submits a plan, is adequate to reimburse the department's full costs of administering this section. The total amount of annual fees collected under this subdivision shall not exceed the amount necessary to reimburse costs incurred by the department to administer this section. The department may consider relevant factors when establishing the fee including, but not limited to, the portion of architectural paint sold in the state by the producer, or the members of the representative organization compared to the total amount of architectural paint sold in the state by all producers or representative organizations submitting a plan.

If the proposal is passed by the legislature and signed into law, beginning in FY 2024 the Department will be required to undergo the rulemaking process to establish the Administrative fee. This will likely entail informal and formal stakeholder meetings, the drafting of the regulation and the ushering of the rule package through the formal rulemaking process. A portion of an FTE will be required to implement these additional rulemaking efforts. The Department anticipates being able to absorb these costs. However, until the fiscal year 2024 budget is final the Department cannot identify specific funding sources.

The proposal as written does not indicate which fund within the State Treasury the Administrative fee paid by paint producers to the Department, would be deposited. The proposal does not identify which state agency would collect the fees nor does it describe the collection process. Since this legislative proposal is aimed at recycling non-hazardous paints, the Department believes the funds should be directed into a sub-account of the Solid Waste Management Fund 0570. Collection of the annual Administrative fee will begin by July 1, 2024 (state fiscal year 2025).

Proposed alternate language that establishes the Administrative fee process in statute has been provided by the Department through a Technical Memo. Establishing the Administrative fee in statute will lessen the costs to the Department.

Section 701.151. 3. (3)

A representative organization or a producer of architectural paint sold at retail in this state that is not a member of such representative organization shall develop and submit to the director for the director's approval a plan for the establishment of a post-consumer paint collection program.

Section 701.151. 3. (4).

No later than sixty days after the submission of a plan under this section, the director shall make a written determination of whether to approve the plan as submitted or disapprove the plan. If the director finds the plan does not meet the requirements of this section, the director shall provide a written explanation of the nonconforming items. Within sixty days following receipt of the director's written explanation of items that do not meet the requirements of this section, the representative organization or the producer of architectural paint shall submit a revised plan to the director for approval.

Section 701.151. 3. (5)

The department shall enforce the producer's or the representative organization's compliance with the plan and may, by regulation or by using existing regulations promulgated under sections 260.230, 260.240, and 260.249, establish enforcement procedures and penalties.

The Department will review, comment and approve the post-consumer paint collection program plan submitted by the representative organization or paint producers.

The proposal also directs the Department to investigate compliance concerns and undertake any related enforcement actions. The Department anticipates there would be a fiscal impact to implement the new provisions in section 701.151.3(3), (4), and (5).

Section 701.151. 4. (6)

Financial, production, or sales data reported to the department by a producer or by the representative organization shall not be subject to disclosure, but the director may release a summary form of such data that does not disclose financial, production, or sales data of the producer, retailer, or representative organization.

The Department's understanding of this section is that the representative organization will be responsible for redacting all confidential business information and creating a summary report. If the intent is for the Department to conduct a legal review for redacting documents, the Department would anticipate a fiscal impact.

Cost assumption:

As the Department is unable to quantify the number of paint producers in Missouri nor the level of effort to administer the program, the Department can identify, at a minimum, a need for 1 FTE; Environmental Program Analysts at an annual salary of \$69,048*. The Department will be reviewing, commenting and approving the plan(s) submitted by the representative organizations or producers and all future annual reports. The Department would continue to ensure adequate record keeping, and documenting the final disposition of materials collected by the producers. The Department shall enforce the producer's or the representative organization's compliance with the post-consumer paint collection program plan. The Department will manage the new Administrative fee fund and set the annual Administrative fee.

Activities to be performed by the 1 FTE would start in FY 2025 and continue on an on-going basis.

As the total amount of annual Administrative fees collected under this subdivision "shall not exceed the amount necessary to reimburse costs incurred by the department to administer the new post-consumer paint collection program", fee revenues equal annual Department expenditures (net \$0 impact to the Administrative fee fund).

Oversight does not have information to the contrary and therefore, Oversight will reflect the estimates as provided by DNR.

Rule Promulgation

Officials from the **Joint Committee on Administrative Rules** assume this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

Officials from the **Office of the Secretary of State (SOS)** note many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and

regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with its core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

<u>FISCAL IMPACT – State Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
ADMINISTRATIVE FEE FUND (UNIDENTIFIED)			
<u>Revenue – DNR – administrative fee to offset costs of program</u>	\$0	\$116,925	\$117,391
<u>Cost – DNR</u>			
Personnel Service	\$0	(\$70,429)	(\$71,838)
Fringe Benefits	\$0	(\$41,933)	(\$42,460)
Expense and Equipment	\$0	(\$4,563)	(\$3,093)
<u>Total Cost – DNR</u>	<u>\$0</u>	<u>(\$116,925)</u>	<u>(\$117,391)</u>
FTE Change	0 FTE	1 FTE	1 FTE
ESTIMATED NET EFFECT ON THE ADMINISTRATIVE FEE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Estimated Net FTE Change to the Administrative Fee Fund	0 FTE	1 FTE	1 FTE

<u>FISCAL IMPACT – Local Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

Small businesses that produce and/or sell paint could be impacted as a result of this proposal.

FISCAL DESCRIPTION

This act creates provisions relating to a post-consumer paint recycling program.

Under the act, producers of architectural paint sold in the state may establish or join a representative organization, as defined in the act. The duties under the act shall be met by the representative organization on behalf of all its member producers. Any producer who is not a member of a representative organization shall meet the duties under the act separately.

A representative organization or a producer of architectural paint sold at retail in the state that is not a member of such representative organization shall develop and submit to the Director of the Department of Natural Resources for the Director's approval a plan for the establishment of a post-consumer paint collection program. The structure of such program includes the projected number and geographic distribution of collection sites, charges related to the operation of the program, independent financial auditor requirements, and other specifics described in the act.

The Department shall enforce the producer's or the representative organization's compliance with the plan for the paint collection program and may, by regulation or by using existing regulations, establish enforcement procedures and penalties.

No later than the implementation date of such program, information regarding the approved plan, the names of participating producers, and the brands of architectural paint covered by the program shall be posted on the Department's website and on the website of the representative organization.

The plan required under the act shall be submitted to the Department no later than twelve months after the effective date under the act. The Department may, for good cause shown, grant an extension of the deadline for such submission. Under the act, only the producers or a representative organization are required to establish such plan, not the Department.

The Department shall establish an administrative fee to be paid by each producer or representative organization for such plan as described in the act. Such fee shall reimburse the Department for implementing the provisions under the act.

Upon implementation of the program under the act, each producer shall include in the price of any architectural paint sold to retailers and distributors in the state a paint assessment fee in the approved plan as described in the act.

After the paint collection program is implemented, no producer or retailer shall sell or offer for sale architectural paint to any person in this state unless the producer of a paint brand or a

representative organization is implementing or participating in such program as required under the act.

A retailer shall be deemed to be in compliance with this act if, on the date the architectural paint was offered for sale, the producer is listed on the Department's website as implementing or participating in the program or if the paint brand is listed on the Department's website as being included in the program. A paint collection site authorized under the act shall not charge any additional amount for the disposal of paint when the paint is offered for disposal.

A producer or a representative organization that organizes the collection, transport, and processing of post-consumer paint under the act shall not be liable for anticompetitive activity as described in the act arising from conduct undertaken in accordance with the program under the act.

Before March 31st of each year, the producers or representative organizations shall submit an annual report for the previous year to the Director that details the program under the act. The requirements of such report are described in the act. The producers or the representative organization shall implement the program under the act on January 1, 2025, or six months after the approval of the plan under the act, whichever later occurs.

Generators of household waste, as defined in the act, and conditionally exempt small quantity generators may transport or send architectural paints to a paint collection site to the extent permitted by a paint collection program approved by the Director. Paint collection sites may collect and temporarily store architectural paints generated by entities specified in the act in accordance with the requirements of the program in lieu of any otherwise applicable requirements of state laws or regulations.

Nothing in the act shall be construed to restrict the collection of architectural paint by a program where such collection is authorized by any other state laws or regulations. Nothing in the act shall be construed to affect any requirements applicable to facilities that treat, dispose, or recycle architectural paint under any other state laws or regulations.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

L.R. No. 2542S.011

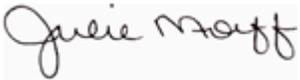
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SOURCES OF INFORMATION

Department of Natural Resources
Office of the Secretary of State
Joint Committee on Administrative Rules



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April 16, 2023