

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4333H.02I  
Bill No.: HB 2152  
Subject: Environmental Protection; Waste - Hazardous  
Type: Original  
Date: February 11, 2024

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Bill Summary: This proposal requires paint manufacturers to establish a paint recycling program and prohibits the sale of their paint in the absence of a recycling program.

**FISCAL SUMMARY**

| <b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>  |                |                |                |
|--|----------------|----------------|----------------|
| <b>FUND AFFECTED</b>                                 | <b>FY 2025</b> | <b>FY 2026</b> | <b>FY 2027</b> |
|  |                |                |                |
|  |                |                |                |
| <b>Total Estimated Net Effect on General Revenue</b> | <b>\$0</b>     | <b>\$0</b>     | <b>\$0</b>     |

| <b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>              |                |                |                |
|---|----------------|----------------|----------------|
| <b>FUND AFFECTED</b>  | <b>FY 2025</b> | <b>FY 2026</b> | <b>FY 2027</b> |
| Administrative Fee Fund (Unidentified)*                       | \$0            | \$0            | \$0            |
|   |                |                |                |
| <b>Total Estimated Net Effect on <u>Other</u> State Funds</b> | <b>\$0</b>     | <b>\$0</b>     | <b>\$0</b>     |

\*Fund for the administrative fee to be deposited into has not been identified. Income and costs net to zero starting in FY 2026.

Numbers within parentheses: () indicate costs or losses.

| <b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>                  |                |                |                |
|---|----------------|----------------|----------------|
| <b>FUND AFFECTED</b>  | <b>FY 2025</b> | <b>FY 2026</b> | <b>FY 2027</b> |
|   |                |                |                |
|   |                |                |                |
| <b>Total Estimated Net Effect on <u>All</u> Federal Funds</b> | <b>\$0</b>     | <b>\$0</b>     | <b>\$0</b>     |

| <b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b> |                |                |                |
|---|----------------|----------------|----------------|
| <b>FUND AFFECTED</b>                                      | <b>FY 2025</b> | <b>FY 2026</b> | <b>FY 2027</b> |
| Administrative Fee Fund (Unidentified)                    | 0 FTE          | 1 FTE          | 1 FTE          |
|   |                |                |                |
| <b>Total Estimated Net Effect on FTE</b>                  | <b>0 FTE</b>   | <b>1 FTE</b>   | <b>1 FTE</b>   |

- 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.

| <b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b> |                |                |                |
|--|----------------|----------------|----------------|
| <b>FUND AFFECTED</b>                       | <b>FY 2025</b> | <b>FY 2026</b> | <b>FY 2027</b> |
| <b>Local Government</b>                    | <b>\$0</b>     | <b>\$0</b>     | <b>\$0</b>     |

## FISCAL ANALYSIS

### ASSUMPTION

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

#### 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 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 2025 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 2025 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.

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. This administrative fee shall not exceed five percent of the aggregate program fee added to the cost of all architectural paint sold by producers in the state for the proceeding calendar year.

Section 701.151.3 (1)

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 (5)

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 (6)

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, RSMo., 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(1), (5), and (6).

Section 701.151.7 (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 Analyst at an annual salary of \$57,768. 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 2026 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 2025<br>(10 Mo.) | FY 2026           | FY 2027           |
|--|---------------------|-------------------|-------------------|
| <b>ADMINISTRATIVE FEE FUND<br/>(UNIDENTIFIED)</b>                    |                     |                   |                   |
| <u>Revenue</u> – DNR – administrative fee to offset costs of program | \$0                 | \$102,179         | \$102,009         |
| <u>Cost</u> – DNR  |                     |                   |                   |
| Personnel Service  | \$0                 | (\$58,923)        | (\$60,102)        |
| Fringe Benefits  | \$0                 | (\$37,629)        | (\$38,070)        |
| Expense and Equipment  | \$0                 | (\$5,627)         | (\$3,837)         |
| <u>Total Cost</u> – DNR  | \$0                 | (\$102,179)       | (\$102,009)       |
| FTE Change   | 0 FTE               | 1 FTE             | 1 FTE             |
| <b>ESTIMATED NET EFFECT ON<br/>THE ADMINISTRATIVE FEE<br/>FUND</b>   | <b><u>\$0</u></b>   | <b><u>\$0</u></b> | <b><u>\$0</u></b> |
| Estimated Net FTE Change to the Administrative Fee Fund              | 0 FTE               | 1 FTE             | 1 FTE             |

| <u>FISCAL IMPACT – Local Government</u> | FY 2025<br>(10 Mo.) | FY 2026           | FY 2027           |
|---|---------------------|-------------------|-------------------|
|   |                     |                   |                   |
|   | <b><u>\$0</u></b>   | <b><u>\$0</u></b> | <b><u>\$0</u></b> |

FISCAL IMPACT – Small Business

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

FISCAL DESCRIPTION

This bill authorizes producers of architectural paint sold at retail to establish or join a nonprofit representative organization. The representative organization and any producer not a member of such organization must submit a plan for the establishment of a post-consumer paint collection program to the Department of Natural Resources. The program shall be structured to reduce the generation, promote the reuse and recycling, and manage the waste stream of post-consumer paint.

The plan must include specified items including a list of participating producers and brands, information on the types of architectural paint products covered under the program, and a description of how the program will provide for convenient cost effective statewide collection of post-consumer paint in this state and the education and outreach efforts to inform consumers about the program. The plan must be reviewed by an independent financial auditor selected by the representative organization to verify that the paint assessment fees will cover the costs of the program.

No later than 60 days after the submission of a plan, the Department Director must make a determination of whether to approve the plan as submitted. If the director finds that the plan does not meet the requirements, he or she must provide a written explanation and the organization or producer has 60 days to revise the plan.

The Department must enforce compliance with the plan as specified in the bill. The plan must be submitted within 12 months of the effective date. At the time the plan is submitted and annually thereafter, each producer submitting a plan must pay an administrative fee as set by the Department according to the bill.

Each producer must include in the price of any architectural paint sold to retailers and distributors the per-container amount, known as the paint assessment fee, in the approved plan. The retailer or distributor may not deduct the amount from the purchase price. Retailers may incorporate the fee as part of the price but are not required to. No paint may be sold in the state unless the producer of a paint brand or a representative organization is implementing or participating in the program.

A paint collection site may not charge any additional amount for the disposal of paint when the paint is offered for disposal. A producer or the representative organization that organizes the collection, transport, and processing of post-consumer paint may not be liable for any claim of a violation of antitrust, restraint of trade, unfair trade practice, or other anticompetitive activity arising from conduct undertaken in accordance with the program.

Before March 31st of each year, the producers or representative organization must submit an annual report for the previous year to the Director that details the program. The bill specifies the information required to be included in the report. The producers or the representative organization must implement the program on January 1, 2026, or 6months after the approval of the plan, whichever occurs later.

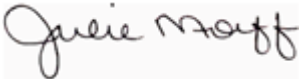
Generators of household wastes and conditionally exempt small quantity generators may transport or send architectural paints to a paint collection site to the extent permitted by a program. Paint collection sites may collect and temporarily store architectural paints generated by certain entities in lieu of any otherwise applicable requirements of state laws or regulations.

The program does not restrict the collection of architectural paint by a program where such collection is authorized by any other state laws or regulations or 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.

SOURCES OF INFORMATION

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



Julie Morff  
Director  
February 11, 2024



Ross Strobe  
Assistant Director  
February 11, 2024