



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

SB0121

Introduced 2/1/2005, by Sen. John J. Cullerton

#### SYNOPSIS AS INTRODUCED:

30 ILCS 105/5.640 new  
415 ILCS 5/Title XVIII heading new  
415 ILCS 5/59.5 new  
415 ILCS 5/59.10 new  
415 ILCS 5/59.15 new  
415 ILCS 5/59.20 new  
415 ILCS 5/59.25 new  
415 ILCS 5/59.30 new  
415 ILCS 5/59.35 new  
415 ILCS 5/59.40 new  
415 ILCS 5/59.45 new  
415 ILCS 5/59.50 new  
415 ILCS 5/59.55 new  
415 ILCS 5/59.60 new

Amends the Environmental Protection Act. Provides that, beginning January 1, 2006, each person selling architectural coatings in the State must collect from the buyer a fee of \$0.20 for each gallon of architectural coating sold. Provides that each person selling general use pesticides in the State must collect from the buyer a fee of \$0.20 for each unit of general use pesticide sold. Requires the seller to pay the fee, less a collection allowance, to the Department of Revenue for deposit into the Household Hazardous Waste Management Programs Fund. Sets forth the purposes for which the moneys in the Household Hazardous Waste Management Fund may be used. Requires retailers to make a quarter-annual tax return to the Department of Revenue concerning the fees. Sets forth procedures for administrative proceedings and hearings by the Department of Revenue concerning the collection of the fees and for judicial review of those decisions. Effective immediately.

LRB094 04046 RSP 34064 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The State Finance Act is amended by adding  
5 Section 5.640 as follows:

6 (30 ILCS 105/5.640 new)

7 Sec. 5.640. The Household Hazardous Waste Management  
8 Programs Fund.

9 Section 10. The Environmental Protection Act is amended by  
10 adding Title XVIII as follows:

11 (415 ILCS 5/Tit. XVIII heading new)

12 TITLE XVIII. HOUSEHOLD HAZARDOUS WASTE MANAGEMENT FEES

13 (415 ILCS 5/59.5 new)

14 Sec. 59.5. Intent. It is the intent of this Title to  
15 generate revenue for a portion of the costs incurred by the  
16 State in the management of household hazardous waste.  
17 Improperly disposed of household hazardous waste presents a  
18 threat to the public health and causes a real and substantial  
19 burden upon the environment that is unique from other types of  
20 waste generated by Illinois citizens. In particular,  
21 architectural coatings and pesticides constitute a substantial  
22 share of the volume and cost associated with the management of  
23 household hazardous waste. This Title seeks to place reasonable  
24 fees on the voluntary users of these hazardous waste producing  
25 products in order to fund programs that strengthen the State's  
26 efforts to combat the threat these products pose to the  
27 environment and the public health.

28 (415 ILCS 5/59.10 new)

1       Sec. 59.10. Definitions. As used in this Title:

2       "Architectural coating" means a coating manufactured and  
3 recommended for field application to stationary structures and  
4 their appurtenances. The term includes all coatings formulated  
5 for normal environmental conditions and sold at retail for  
6 on-site application at ambient temperatures to the interior and  
7 exterior surfaces of residential, commercial, institutional,  
8 or industrial buildings and structures. Architectural coatings  
9 include, but are not limited to, interior and exterior house  
10 paints, stains, varnishes, lacquers, sealers, primers, and  
11 undercoaters. The term does not include:

12           (i) production coatings recommended by the  
13 manufacturer solely for shop application or solely for  
14 application to non-stationary equipment or products such  
15 as automobiles, airplanes, boats, appliances, and other  
16 consumer goods.

17           (ii) industrial coatings, as defined under 30 Code of  
18 Federal Regulations, Part 59, Section 401; or

19           (iii) special purpose coatings including, but not  
20 limited to, coatings formulated and recommended for auto  
21 refinishing, bridge maintenance, and traffic marking.

22       "Coating" means a liquid or mastic composition applied onto  
23 or impregnated into a substrate for protective, decorative, or  
24 functional purposes. Coatings include, but are not limited to,  
25 interior and exterior house paints, stains, varnishes,  
26 lacquers, sealers, primers, and undercoaters.

27       "Distributor" means a person who engages in the business of  
28 distributing architectural coatings or pesticides to a  
29 retailer for the purpose of resale.

30       "General use pesticide" means any pesticide that has been  
31 registered by the United States Environmental Protection  
32 Agency, as evidenced by a registration number on the label, and  
33 that has not been designated for limited or restricted use by  
34 the United States Environmental Protection Agency or Illinois  
35 Department of Agriculture.

36       "Retailer" means a person who engages in the business of

1 selling architectural coatings or pesticides to consumers.

2 "Shop application" means that a coating is applied to a  
3 product or a component of a product in a factory or shop as  
4 part of a manufacturing, product, or repairing process.

5 "Unit" means an individual container of pesticide of any  
6 size distributed, or to be distributed, to retailers for  
7 purchase by the consumer. Units may include, but are not  
8 limited to such containers as bags, boxes, bottles, and cans.

9 (415 ILCS 5/59.15 new)

10 Sec. 59.15. Household Hazardous Waste Management Programs  
11 Fund.

12 (a) There is hereby created in the State treasury a special  
13 fund to be known as the Household Hazardous Waste Management  
14 Programs Fund. All fees collected under this Title and all  
15 penalties or punitive damages for violations of this Title  
16 shall be deposited into the Household Hazardous Waste  
17 Management Programs Fund. In addition, the Household Hazardous  
18 Waste Management Programs Fund shall include other moneys made  
19 available from any source for deposit into the Fund.

20 (b) Subject to appropriation, moneys up to an amount of  
21 \$200,000 per fiscal year from the Household Hazardous Waste  
22 Management Programs Fund shall be available to the Department  
23 of Revenue for its activities relating to this Title.

24 (c) Subject to appropriation, moneys in excess of \$200,000  
25 per fiscal year from the Household Hazardous Waste Management  
26 Programs Fund shall be used as follows:

27 (1) 70% shall be available to the Agency for the  
28 following:

29 (i) agency-sponsored household hazardous waste  
30 collection events that include the collection of used  
31 architectural coatings and general use pesticides;

32 (ii) preventive, corrective, or removal action at  
33 sites contaminated by household hazardous waste and  
34 the recovery costs of this action; and

35 (iii) to pay the costs of administration of its

1 activities under this Title.

2 (2) 30% Shall be available to the Agency for the  
3 following:

4 (i) for transfer into the Hazardous Waste Research  
5 Fund to be used by the Department of Natural Resources  
6 for the educational and research activities authorized  
7 under subsection (e) of Section 22.2 of the  
8 Environmental Protection Act; and

9 (ii) for Agency grants authorized under the  
10 Household Hazardous Waste Collection Program Act.

11 (d) Any moneys appropriated from the Household Hazardous  
12 Waste Management Programs Fund, but not obligated, shall revert  
13 to the Fund.

14 (415 ILCS 5/59.20 new)

15 Sec. 59.20. Architectural coating fee.

16 (a) Beginning January 1, 2006, each retailer of  
17 architectural coatings in this State shall collect from retail  
18 customers a fee of \$0.20 for each gallon of architectural  
19 coating that is sold and delivered in this State. The seller  
20 must pay the fee to the Department of Revenue for deposit into  
21 the Household Hazardous Waste Management Programs Fund.

22 (b) Architectural coatings marketed in containers of less  
23 than one-gallon capacity are exempt from this fee.

24 (c) The fee collected under subsection (a) of this Section  
25 shall be stated as a distinct item separate and apart from the  
26 selling price of the architectural coating. No retailer shall  
27 advertise, state, or otherwise hold out to the public or any  
28 consumer, directly or indirectly, that the architectural  
29 coating fee imposed by this Section will be assumed or absorbed  
30 by the retailer, that the fee will not be included in the  
31 selling price of the coating, or that the full amount or any  
32 part of the fee will be refunded upon sale to the consumer.

33 (d) Upon request by a retailer of architectural coatings  
34 doing business in this State or the Department of Revenue, a  
35 distributor shall provide a quarterly, semi-annual, or annual

1 report identifying the number of gallons of architectural  
2 coatings sold to the retailer in containers of one gallon or  
3 more.

4 (e) The fee shall not be includable in the gross receipts  
5 of the retailer subject to the Retailer's Occupation Tax Act,  
6 the Use Tax Act, or any locally imposed retailer's occupation  
7 tax. The fee, and any such fees collected by a retailer, shall  
8 constitute a debt owed by the retailer to the State.

9 (415 ILCS 5/59.25 new)

10 Sec. 59.25. General use pesticide fee.

11 (a) Beginning January 1, 2006, each retailer of general use  
12 pesticides in this State shall collect from retail customers a  
13 fee of \$0.20 on each unit of general use pesticide that is sold  
14 and delivered in this State. The seller must pay the fee to the  
15 Department of Revenue for deposit into the Household Hazardous  
16 Waste Management Programs Fund.

17 (b) In addition to any product that the Agency may, by  
18 rule, exempt, all of the following products are exempt from the  
19 fee imposed under this Section:

20 (1) Household use pesticide products with no more than  
21 3% active ingredients.

22 (2) Dichlorovos (DDVP) impregnated strips with  
23 concentrations not more than 25% in resin strips and pet  
24 collars.

25 (3) The following products with unlimited percentages  
26 of active ingredients:

27 (i) pet supplies such as shampoos and tick and flea  
28 collars and dusts;

29 (ii) disinfectants, germicides, bactericides, and  
30 virucides;

31 (iii) insect repellents;

32 (iv) indoor and outdoor animal repellents;

33 (v) moth flakes, crystals, cakes, and nuggets;

34 (vi) indoor aquarium supplies;

35 (vii) swimming pool supplies;

1 (viii) pediculocides and mange cure on man;

2 (ix) aerosol products; and

3 (x) general use paints, stains, and wood  
4 preservatives and sealants.

5 (c) The fee collected under subsection (a) of this Section  
6 shall be stated as a distinct item separate and apart from the  
7 selling price of the general use pesticide. No retailer shall  
8 advertise, state, or otherwise hold out to the public or any  
9 consumer, directly or indirectly, that the general use  
10 pesticide fee imposed by this Section will be assumed or  
11 absorbed by the retailer, or that the fee will not be included  
12 in the selling price of the pesticide, or that the full amount  
13 or any part of the fee will be refunded upon sale to the  
14 consumer.

15 (d) Upon request by a retailer of general use pesticides  
16 doing business in this State or the Department of Revenue, a  
17 distributor shall provide a quarterly, semi-annual, or annual  
18 report identifying the number of units of general use pesticide  
19 sold to the retailer.

20 (e) The fee shall not be includable in the gross receipts  
21 of the retailer subject to the Retailer's Occupation Tax Act,  
22 the Use Tax Act, or any locally imposed retailer's occupation  
23 tax. The fee, and any such fees collected by a retailer, shall  
24 constitute a debt owed by the retailer to the State.

25 (415 ILCS 5/59.30 new)

26 Sec. 59.30. Tax returns by retailer.

27 (a) Each retailer of architectural coatings or general use  
28 pesticides subject to this Title and maintaining a place of  
29 business in this State must make a return to the Department of  
30 Revenue on a quarter-annual basis, with the return for January,  
31 February, and March of a given year being due by April 30 of  
32 that year; with the return for April, May, and June of a given  
33 year being due by July 31 of that year; with the return for  
34 July, August, and September of a given year being due by  
35 October 31 of that year; and with the return for October,

1 November, and December of a given year being due by January 31  
2 of the following year. Each return made to the Department of  
3 Revenue must state:

4 (1) the name of the retailer;

5 (2) the address of the retailer's principal place of  
6 business and the address of the principal place of business  
7 (if that is a different address) from which the retailer  
8 engages in the business of making retail sales of  
9 architectural coatings or general use pesticides;

10 (3) the total number of (i) gallons of architectural  
11 coatings or (ii) units of general use pesticides, sold at  
12 retail for the preceding calendar quarter;

13 (4) the amount of tax due; and

14 (5) any other reasonable information that the  
15 Department of Revenue requires.

16 (b) Notwithstanding any other provision of this Act  
17 concerning the time within which a retailer may file his or her  
18 return, in the case of any retailer who ceases to engage in the  
19 retail sale of architectural coatings or general use  
20 pesticides, the retailer must file a final return under this  
21 Act with the Department of Revenue not more than one month  
22 after discontinuing that business.

23 (415 ILCS 5/59.35 new)

24 Sec. 59.35. Application of Retailers' Occupation Tax  
25 provisions. All the provisions of Sections 4, 5, 5a, 5b, 5c,  
26 5d, 5e, 5f, 5g, 5i, 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, and 11 of  
27 the Retailers' Occupation Tax Act that are not inconsistent  
28 with this Act apply, as far as practicable, to the fees imposed  
29 by Sections 59.20 and 59.25 of this Act to the same extent as  
30 if those provisions were included in this Act. References in  
31 the incorporated Sections of the Retailers' Occupation Tax Act  
32 to retailers, to sellers, or to persons engaged in the business  
33 of selling tangible personal property mean retailers of  
34 architectural coatings and retailers of general use  
35 pesticides.



1 (415 ILCS 5/59.40 new)

2 Sec. 59.40. Hearing; notice. The Department of Revenue may  
3 adopt and enforce any reasonable rules and regulations relating  
4 to the Administration and enforcement of the fees imposed by  
5 Sections 59.20 and 59.25 of this Act that are expedient.

6 Whenever the Department of Revenue is required to provide  
7 notice to a retailer under this Title, the notice may be  
8 personally served or given by United States certified or  
9 registered mail, addressed to the retailer or taxpayer  
10 concerned at his or her last known address, and proof of this  
11 mailing is sufficient for the purposes of this Title. In the  
12 case of a notice of hearing, the notice must be mailed not less  
13 than 7 days prior to the date fixed for the hearing.

14 All hearings provided by the Department of Revenue under  
15 this Act with respect to or concerning a taxpayer having his or  
16 her principal place of business in this State other than in  
17 Cook County shall be held at the Department's office nearest to  
18 the location of the taxpayer's principal place of business. If  
19 the taxpayer has his or her principal place of business in Cook  
20 County, the hearing shall be held in Cook County. If the  
21 taxpayer does not have his or her principal place of business  
22 in this State, the hearing shall be held in Sangamon County.

23 Whenever any proceeding provided by this Title has been  
24 begun by the Department of Revenue or by a person subject  
25 thereto and that person subsequently dies or becomes a person  
26 under legal disability before the proceeding has been  
27 concluded, the legal representative of the deceased person or  
28 person under legal disability shall notify the Department of  
29 Revenue of the death or legal disability. The legal  
30 representative, as such, shall then be substituted by the  
31 Department of Revenue in place of and for the person. Within 20  
32 days after notice to the legal representative of the time fixed  
33 for that purpose, the proceeding may proceed in all respects  
34 and with like effect as though the person had not died or  
35 become a person under legal disability.

1 (415 ILCS 5/59.45 new)

2 Sec. 59.45. Administrative procedures. The Illinois  
3 Administrative Procedure Act is hereby expressly adopted and  
4 applies to all administrative rules and procedures of the  
5 Department of Revenue under this Title, except that: (1)  
6 paragraph (b) of Section 4 of the Illinois Administrative  
7 Procedure Act does not apply to final orders, decisions, and  
8 opinions of the Department of Revenue; (2) subparagraph (a)(2)  
9 of Section 4 of the Illinois Administrative Procedure Act does  
10 not apply to forms established by the Department of Revenue for  
11 use under this Act; and (3) the provisions of Section 13 of the  
12 Illinois Administrative Procedure Act regarding proposals for  
13 decision are excluded and not applicable to the Department of  
14 Revenue under this Act.

15 (415 ILCS 5/59.50 new)

16 Sec. 59.50. Review under Administrative Review Law.

17 (a) The circuit court of any county in which a hearing is  
18 held has the power to review all final administrative decisions  
19 of the Department of Revenue in administering the fees imposed  
20 under Sections 59.20 and 59.25 of this Act. If, however, the  
21 administrative proceeding that is to be reviewed judicially is  
22 a claim for refund proceeding commenced under this Act and  
23 Section 2a of the State Officers and Employees Money  
24 Disposition Act, the circuit court having jurisdiction over the  
25 action for judicial review under this Section and under the  
26 Administrative Review Law shall be the same court that entered  
27 the temporary restraining order or preliminary injunction that  
28 is provided for in that Section 2a, and that enables the claim  
29 proceeding to be processed and disposed of as a claim for  
30 refund proceeding other than as a claim for credit proceeding.

31 (b) The provisions of the Administrative Review Law, and  
32 the rules adopted pursuant thereto, apply to and govern all  
33 proceedings for the judicial review of final administrative  
34 decisions of the Department of Revenue under this Act. The term

1 "administrative decision" is defined as in Section 3-101 of the  
2 Code of Civil Procedure.

3 (c) Service of summons issued in any action to review a  
4 final administrative decision upon the Director or Assistant  
5 Director of Revenue shall be service upon the Department of  
6 Revenue. The Department of Revenue shall certify the record of  
7 its proceedings if the taxpayer pays to it the sum of \$0.75 per  
8 page of testimony taken before the Department of Revenue and  
9 \$0.25 per page of all other matters contained in the record,  
10 except that these charges may be waived if the Department of  
11 Revenue is satisfied that the aggrieved party cannot afford to  
12 pay these charges.

13 (415 ILCS 5/59.55 new)

14 Sec. 59.55. Penalty. Any retailer who fails to make a  
15 return or who makes a fraudulent return, or who willfully  
16 violates any rule or regulation of the Department of Revenue  
17 for the administration and enforcement of the fees imposed by  
18 Sections 59.20 and 59.25 of this Act, is guilty of a Class 4  
19 felony.

20 (415 ILCS 5/59.60 new)

21 Sec. 59.60. Severability. The provisions of this Title are  
22 severable under Section 1.31 of the Statute on Statutes.

23 Section 99. Effective date. This Act takes effect upon  
24 becoming law.