

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0385-12
Bill No.: Truly Agreed To and Finally Passed SS #2 for SCS for HCS for HB 89
Subject: Natural Resources Dept.; Fees, Water Resources and Water Districts;
 Environmental Protection
Type: Original
Date: June 2, 2011

Bill Summary: This proposal modifies various provisions pertaining to the regulation and protection of natural resources.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	(\$508,318 to Unknown)	(\$602,218 to Unknown)	(\$612,912 to Unknown)
Total Estimated Net Effect on General Revenue Fund	(\$508,318 to Unknown)	(\$602,218 to Unknown)	(\$612,812 to Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Administrative Hearing Commission	8	8	8
Total Estimated Net Effect on FTE	8	8	8

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Local Government	Unknown	Unknown	Unknown

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Natural Resources** assume Section 644.054.1 of this proposal would extend the existing water permit fee rate structure for wastewater permits imposed under the water pollution statutes until December 31, 2015 (FY 2016). This extension does not affect the department's authority regarding these issues. Based on the number of active permits and the revenue trends seen over the previous two years, this proposal is estimated to generate an estimated \$4.153 million in revenue annually.

Oversight assumes the revenue generated from the proposal will provide the resources needed to administer the program and the net estimated effect of the extension would be \$0.

Officials from the **Department of Agriculture** assume there would be no fiscal impact to their agency.

Officials from the **Department of Elementary and Secondary Education (DESE)** assume there is no anticipated state cost to the foundation formula associated with this proposal. To the extent fine revenues exceed 2004-2005 collections, any increase in this money distributed to school districts increases the deduction in the foundation formula the following year. Therefore the affected districts will see an equal decrease in the amount of funding received through the formula the following year; unless the affected districts are hold-harmless, in which case the districts will not see a decrease in the amount of funding received through the formula (any increase in fine money distributed to the hold-harmless districts will simply be additional money). An increase in the deduction (all other factors remaining constant) reduces the cost to the state of funding the formula.

Section 253.090

Officials from the **Department of Natural Resources (DNR)** assume this proposal authorizes the State Treasurer to deposit all monies in the State Parks Earnings Fund in any of the qualified depositories of the State and that interest and monies earned from such investments shall be credited to the General Revenue Fund. Currently, interest received on these funds is deposited into the General Revenue Fund. No new fees or taxes are being requested under this legislation.

The State Parks Earnings Fund established in 253.090 RSMo, receives revenue from the operation of concessions, gifts, donations and revenue from resale items, and it to be used solely for the operation and maintenance, capital improvements, land purchases, and management of

ASSUMPTION (continued)

Missouri's 85 State Parks and Historic Sites. Section 253.090.2 would reaffirm that the department can use the fund for its intended purpose.

Officials from the **Division of Budget & Planning** defer their response to the Department of Natural Resources.

Sections 621.250, 640.018, 640.116, 640.128, 640.850 & 644.051

Officials from the **Missouri House of Representatives, Department of Agriculture, Missouri Senate, and St. Louis County** assume no fiscal impact to their agencies.

Officials at the **Office of the Secretary of State (SOS)** many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The Secretary of State's Office 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 not to Secretary of State's office for Administrative Rules is less than \$2,500. The Secretary of State's Office recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize that many such bills may be passed by the General Assembly in a give year and that collectively the costs may be in excess of what their office can sustain with their core budget. Therefore, they reserve 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.

Oversight assumes the SOS could absorb the costs of advertising the statewide ballot measure related to this proposal within their current appropriation level. If multiple bills pass or if multiple ballot initiatives are validated which require similar advertising at substantial costs, the SOS could request funding through the appropriation process.

Officials from the **Division of Budget & Planning** defer their response to the Departments of Natural Resources, Conservation, Health & Senior Services, Economic Development and Agriculture.

ASSUMPTION (continued)

Section 621.250.2

Officials from the **Office of Administration - Administrative Hearing Commission (AHC)** assume Section 621.250.2 places a deadline of 60 days from the filing of a complaint for the AHC to hold a hearing and issue a recommended decision. This is too short given the high volume and complexity of the cases heard at the AHC.

The Administrative Hearing Commission hears complex cases, including tax and professional licenses cases. By enacting such a short deadline on one type of case, all cases will be affected. The AHC is requesting a Commissioner, two attorneys, a paralegal, two court reporters, and two senior office assistants to meet this deadline. Expenditures include equipment for computers and Westlaw expenses.

Officials from the **Department of Natural Resources (DNR)** assume Section 621.250.2 of this proposal states that within thirty days of any finding, order, or decision for which authority to hear appeals was transferred to the Administrative Hearing Commission (AHC), any party aggrieved or adversely affected by the decision can initiate an appeal by filing a notice of appeal with the AHC. This includes appeals of decisions made by department commissions or by department staff in implementing the provisions of various environmental laws and regulations. Once the notice of appeal is filed with the AHC, the AHC has sixty days to hold a hearing and make a final recommendation on the appeal or to resolve the appeal by another method such as a settlement, consent order, or stipulation.

Section 621.250.3 of the proposal goes on to say that once the AHC has made its final recommendation, the recommendation is sent back to the commission having final authority over the decision. The environmental commission with final authority must issue a final decision within ninety days of the date the notice of appeal was filed with the AHC. Assuming the AHC takes its full sixty days allotted to hold a hearing and issue a recommendation, and the additional fifteen days allotted to the AHC to transmit its recommendation to the originating commission, that leaves the environmental commission with final authority only fifteen days to issue a final decision. Most of the environmental commissions only meet every other month. In order to decide an issue within the ninety day timeframe specified in this proposal, it is assumed special commission meetings could need to be scheduled for the commissions to discuss and decide the appeal. This would involve additional costs and staff time necessary to prepare and conduct a commission meeting, in addition to the regularly scheduled meetings.

Section 621.250.7 of the proposal states that any decisions made by the commissions shall be subject to administrative review before being entered in any court.

ASSUMPTION (continued)

The fiscal impact to implement this proposal is unknown. Costs would be dependent upon the timing of the Administrative Hearing Commissions appeal process and recommendations and the number of appeals.

Officials from the **Division of Budget & Planning** defer their response to the Administrative Hearing Commission.

Section 37.970

Officials from the **Department of Health and Senior Services (DHSS)** assume the requirement that any request for information be interpreted as a Sunshine request could require DHSS to respond to request for information much more timely. The statute requires that any data collected in the course of its duties shall be made available to the public in a timely matter. However it states that this section shall not be construed to limit or exceed the requirements of the provisions in Chapter 610. There is an argument that could be made that this section would apply to all requests, even a request for a birth or death certificate. This would require us to have a response within three working days or face action and fines. This broad interpretation could also include discovery requests, thus speeding up the time a response is needed.

The cost is unknown at this time, as it is impossible to estimate as to which requests this section would apply or and how many such requests are received.

Section 192.1250

Officials from the **Department of Health and Senior Services (DHSS)** assume this proposed section requires DHSS to examine the feasibility of implementing a real-time water quality testing system in the state and report its findings to the general assembly by December 31, 2011. It is not clear as to the intent and definition of a real-time water quality testing system, therefore the fiscal impact is unknown for this section.

Officials from the **Division of Budget & Planning** defer their response to the Department of Health and Senior Services.

Section 701.033.1(5)

Officials from the **Department of Health and Senior Services (DHSS)** assume the proposed language requires DHSS to provide technical assistance, guidance, and oversight regarding the regulation and enforcement of standards for on-site sewage disposal systems upon request or if the department determines that such assistance or oversight is necessary to prevent a violation. DHSS is unable to determine how many requests for technical assistance will develop as a result of this language, therefore the impact for this section is (unknown).

ASSUMPTION (continued)

Officials from the **Division of Budget & Planning** defer their response to the Department of Health & Senior Services.

Section 247.060

Officials from the **Office of State Courts Administrator, County of St. Louis** and the **City of Kansas City** assume that there is no fiscal impact from this proposal.

No other Cities, Counties or Water Districts responded to **Oversight's** request for fiscal impact.

Oversight assumes this proposal is discretionary and would have no local fiscal impact without action by the governing body.

Sections 643.020, 643.040, 643.050, 643.060, 643.079, 643.080, 644.145 & 701.058

In response to SB 958, 5021-01 in 2010, officials from the **Department of Natural Resources** assume this proposal would eliminate certain conflicts between state statute and corresponding state and federal regulations. The department would not anticipate a direct fiscal impact from this proposal.

Oversight assumes, as was stated by the Department of Natural Resources in their response, this proposal would eliminate certain conflicts between state statute and corresponding state and federal regulations. **Oversight** assumes there would be no direct fiscal impact from this proposal.

Officials from the **Division of Budget & Planning (BAP)** defer their response to the Department of Natural Resources. However, according to BAP, there should be no effect on 18E calculations or TSR due to this extension.

	FY 2012	FY 2013	FY 2014
<u>FISCAL IMPACT - State Government</u>	(10 Mo.)		

GENERAL REVENUE

Costs - Administrative Hearing

Commission

Salaries	(\$314,600)	(\$384,050)	(\$390,732)
Fringe Benefits	(\$164,662)	(\$201,012)	(\$204,509)
Equipment and Expense	<u>(\$29,056)</u>	<u>(\$17,156)</u>	<u>(\$17,671)</u>

Total	<u>(\$508,318)</u>	<u>(\$602,218)</u>	<u>(\$612,912)</u>
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Costs - Department of Natural Resources

Additional costs dependent on appeal process	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>(\$508,318 to Unknown)</u>	<u>(\$602,218 to Unknown)</u>	<u>(\$612,912 to Unknown)</u>
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Estimated Net FTE (Administrative Hearing Commission)	8	8	8
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<u>FISCAL IMPACT - Local Government</u>	FY 2012 Mo.)	FY 2013	FY 2014
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ESTIMATED NET EFFECT ON LOCAL GOVERNMENT	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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FISCAL IMPACT - Small Business

No additional impact on small business is anticipated. Small businesses that meet the requirements to secure Missouri State Operating Permits for discharge of pollutants into the waters of the state are currently paying these fees, which are now expired as of December 31, 2010.

FISCAL IMPACT - Small Business (continued)

Administrative Hearing Commission (Section 621.250)

This legislation has the potential to have an economic impact on small business as the business may choose to have legal representation before the Administrative Hearings Commission rather than representing themselves during the appeals process. Additionally, the proposed section 621.250.7 provides for the notice of appeal to be accompanied by a surety bond when the notice is filed by other than the applicant for the permit. A small business filing a notice of appeal, when they are not the applicant for the permit, would bear the cost of the surety bond.

Small business could be impacted by a change in the financial assurance instruments available to them as a result of the change in the appeals process. Small businesses frequently obtain lines of credit with their local banking institution. With Administrative Hearings Commission (AHC) involvement potentially lengthening the timeframe for resolution of appeals past the amount of time for lapsing of financial assurance instruments, the Department would likely cease taking lines of credit as an acceptable form of financial assurance. The initial costs of obtaining surety and other bonds routinely are approximately 10% of the face value of the bond.

Asbestos and Air Quality (Sections 643.020, 643.040, 643.050, 643.060, 643.079, 643.130, 643.191, 643.225, 643.232, 643.237, 643.240, 643.242, 643.245 & 643.250)

No. This proposed legislation may appear to have a positive impact on small business by increasing the amount of asbestos containing material necessary to require the service of a registered asbestos abatement contractor. However, this new language merely repeats the requirements of federal law, and this is what the Department has been implementing since a Missouri court decision voided the present language (see Corvera Abatement Technologies Inc. v. Air Conservation Commission, 973 S.W. 2d, 851, 859 (Mo. Banc 1998)).

FISCAL DESCRIPTION

This proposed legislation modifies various provisions pertaining to the regulation and protection of natural resources.

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
Department of Agriculture
State Treasurer's Office
Attorney General's Office
Department of Health and Senior Services
Office of Administration
Governor's Office
Department of Mental Health
Department of Revenue
Department of Transportation
Department of Conservation
Missouri Consolidated Health Care Plan
State Emergency Management Administration
Department of Economic Development
Secretary of State's Office
Missouri Office of Prosecution Services
Office of State Courts Administrator
Administration Hearing Commission
Division of Alcohol and Tobacco Control
Missouri Veterans Commission
Department of Social Services
Department of Elementary & Secondary Education
Missouri Gaming Commission
State Tax Commission
Missouri House of Representatives
State Auditor's Office
Department of Higher Education
Missouri Ethics Commission
Capitol Police
Missouri State Public Defender
Division of Fire Safety

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SOURCES OF INFORMATION (continued)

Joint Committee on Public Employee Retirement

Joint Committee on Administrative Rules

Administrative Hearing Commission

Missouri Lottery

Division of Insurance, Financial Planning & Professional Registration



Mickey Wilson, CPA

Director

June 2, 2011