

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0671-03  
Bill No.: Truly Agreed To and Finally Passed SS for SCS for HB 209  
Subject: Property, Real and Personal; Civil Procedure; Agriculture and Animals  
Type: Original  
Date: May 10, 2011

---

Bill Summary: This proposal revises laws concerning private nuisances when the nuisance emanates from property used for farming, agriculture, crop, or animal production purposes.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 7 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</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 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

- 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).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
<b>Local Government</b>	<b>Unknown Greater than \$100,000</b>	<b>Unknown Greater than \$100,000</b>	<b>Unknown Greater than \$100,000</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials from **Buchanan County (BC)** assume this proposal will enable the county to prevent and enforce about 24 residences from filling draining ditches on their property with everyday household trash, used tires, appliances, etc. The waste from these sites flows down to county roads after heavy rains, resulting in blocked culverts or bridges. Currently the county cleans known areas, of these items, after a heavy rain to prevent over the road damage from water. Buchanan County hauls off multiple truck loads of trash to the landfill each year. Landfill cost, fuel, labor, equipment cost/repairs are considered costs to the tax payers paid from the county Road & Bridge Tax. Revenues spent for this purpose are not able to be used for normal road maintenance.

BC assumes the passage of this proposal will allow the county to enforce and prevent trash related nuisances by adopting a local ordinance. If the offender/land owner fails to clean up the trash, in a timely fashion, after repeated documented attempts to contact the land owner notifying them of the violation, BC will be able to issue an ordinance placing a lien on the property of an offender/land owner.

BC assumes an annual savings of \$70,000 - \$80,000 related to fuel prices, labor, and landfill cost that can be recovered from the enforcement of this proposal.

BC assumes, this proposal will allow the county to address ongoing problems with animal/rodent control at these sites.

Officials at the **Department of Natural Resources (DNR)** assumes this proposal would allow certain counties to enact nuisance abatement ordinances. This proposal would revise the laws concerning private nuisances when the nuisance emanates from property used for farming, agriculture, crop, or animal production purposes. Any person, firm, or corporation who establishes, conducts, owns, maintains, or operates a junkyard without complying with the provisions of this section would, upon their second or subsequent violation, be guilty of a class A misdemeanor and be ordered to either remove the junk from the property or build a fence as described in this section. DNR assumes there is no fiscal impact from this proposed legislation.

Officials at the **Office of the Attorney General (AGO)** assumes that it can absorb the added costs with existing resources. If a substantial increase in caseload results, AGO would seek additional appropriation in the future.

ASSUMPTION (Continued)

Officials at the **Department of Agriculture, Department of Insurance Financial Institutions and Professional Registration, Office of State Courts Administrator, Office of Administration, Department of Conservation, Department of Transportation, Office of Prosecution Services, and State Public Defender’s Office** assumes there is no fiscal impact from this proposed legislation.

No other county responded to Oversight’s request for fiscal impact.

**Oversight** assumes any costs related to this proposal to counties and county recorders could be absorbed by the county.

**Oversight** assumes this proposal includes Boone, Cole, Jefferson, Buchanan, Andrew, Livingston, Cass, Dade, Jasper, and Newton counties. For the purpose of the fiscal note Oversight assumes counties will be able to recovery costs related to trash nuisances by implementing liens on offending land owners who violate the provisions of this proposal.

**Oversight** assumes a combined unknown positive fiscal impact greater than \$100,000 for local government.

<u>FISCAL IMPACT - State Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
 <u>FISCAL IMPACT - Local Government</u>	 FY 2012 (10 Mo.)	 FY 2013	 FY 2014
<b>LOCAL GOVERNMENTS</b>			
<u>Savings</u> - Cost recovery from liens placed on trash nuisances	<u>Unknown</u> <u>Greater than</u> <u>\$100,000</u>	<u>Unknown</u> <u>Greater than</u> <u>\$100,000</u>	<u>Unknown</u> <u>Greater than</u> <u>\$100,000</u>
 <b>ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS</b>	 <u><b>Unknown</b></u> <u><b>Greater than</b></u> <u><b>\$100,000</b></u>	 <u><b>Unknown</b></u> <u><b>Greater than</b></u> <u><b>\$100,000</b></u>	 <u><b>Unknown</b></u> <u><b>Greater than</b></u> <u><b>\$100,000</b></u>

### FISCAL IMPACT - Small Business

Direct fiscal impact to small business farms could be expected as a result of this proposal.

### FISCAL DESCRIPTION

This bill changes the laws regarding county nuisance abatement ordinances, junkyards, and private nuisance actions. In its main provisions, the bill:

- (1) Adds the counties of Andrew, Buchanan, Cass, Dade, Jasper, Livingston, and Newton to the list of counties authorized to enact nuisance abatement ordinances regarding the condition of real property;
- (2) Prohibits a county from enacting a nuisance abatement ordinance relating to agricultural structures or operations including, but not limited to, the raising of livestock or row crops and specifies that no county of the first, second, third, or fourth classification will have the power to adopt any ordinance, resolution, or regulation governing any railroad company regulated by the Federal Railroad Administration;
- (3) Changes the penalty for a junkyard screening violation by making a first violation a class C misdemeanor and a second or subsequent violation a class A misdemeanor. In addition to the penalties, a violator must be ordered to remove the junk or build a fence to fully screen the junk from public view;
- (4) Specifies that the exclusive damages that may be awarded to a claimant for a private nuisance originating from property primarily used for crop or animal production purposes will be:
  - (a) For a permanent nuisance, compensatory damages measured by the reduction in the fair market value of the claimant's property caused by the nuisance not to exceed the fair market value of the property;
  - (b) For a temporary nuisance, compensatory damages measured by the reduction in the fair rental value of the claimant's property caused by the nuisance; and
  - (c) For a nuisance that has been shown by objective and documented evidence to have caused a medical condition to the claimant, compensatory damages arising from the medical condition may be awarded in addition to the aforementioned damages;

FISCAL DESCRIPTION (Continued)

(5) Specifies that if any subsequent claim for a temporary nuisance related to a similar activity or use of the defendant's property is brought against the same defendant or the defendant's successor by the same claimant or the claimant's successor with ownership or possessory interest and the activity or use of property at issue is deemed a nuisance, the activity or use of property must be considered a permanent nuisance and the claimant and the claimant's successor must be limited to and bound by the remedies available for a permanent nuisance;

(6) Specifies that if a defendant in a private nuisance case where the alleged nuisance is from property used for crop or animal production purposes demonstrates a good faith effort to abate the condition determined to be a nuisance, the nuisance is to be deemed to be not capable of abatement;

(7) Specifies that a person is not prohibited from recovering damages for: (a) Annoyance, discomfort, sickness, or emotional distress if the damages are awarded on the basis of a cause of action independent of a claim of nuisance; or

(b) Crop destruction, crop damage, contamination of the seed supply, or a reduction of crop value resulting from contamination of the seed or grain supply, herbicide drift, or other reduction of crop value; and

(8) Requires a copy of the final judgment in any action alleging a private nuisance to be filed with the recorder of deeds in the county in which the judgment was issued. The filing will operate as a notice to any purchaser of the claimant's property that the property was related to a previous nuisance claim.

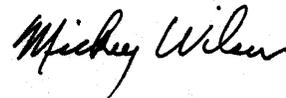
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Buchanan County  
Department of Agriculture  
Department of Conservation  
Department of Insurance, Financial Institutions and Professional Registration  
Department of Natural Resources  
Office of Administration  
Office of Prosecution Services  
Office of State Courts Administrator  
Office of the Attorney General  
State Public Defender's Office

NOT RESPONDING

Boone County  
Cole County  
Jefferson County  
Andrew County  
Livingston County  
Cass County  
Dade County  
Jasper County  
Newton County



Mickey Wilson, CPA  
Director  
May 10, 2011