

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0974-05
Bill No.: Truly Agreed To and Finally Passed HCS for SB 187
Subject: Property, Real and Personal; Civil Procedure; Agriculture and Animals
Type: Original
Date: May 20, 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

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

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 7 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
Total Estimated Net Effect on FTE	0	0	0

- 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 Greater than \$100,000	Unknown Greater than \$100,000	Unknown Greater than \$100,000

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
LOCAL GOVERNMENTS			
<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>
 ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS	 <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>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

This act adds Andrew County, Buchanan County, Cass County, Dade County, Jasper County, Livingston County, and Newton County to the list of counties that may enact nuisance abatement ordinances regarding the condition of real property. Counties enacting nuisance abatement ordinances under this act are not authorized to enact ordinances providing for the abatement of any condition related to agricultural structures or agricultural operations or governing any railroad company.

Under the current law, no person or corporation may maintain a junkyard within 200 feet of a state or county road unless the junkyard is screened by a fence. A failure to screen such a junkyard from the motoring public is a misdemeanor. This section changes the penalties for junkyard screening violation by making the first violation a Class C misdemeanor and a 2nd or subsequent violation a Class A misdemeanor. In addition to the penalties, the violators shall be ordered to remove the junk or build a fence to screen the junk from the public.

This act specifies what types of compensatory damages may be awarded in a action for private nuisance where the alleged nuisance emanates from property primarily used for crop or animal production purposes. If the nuisance is a permanent nuisance, compensatory damages shall be measured by the reduction in the fair market value of the property. If the nuisance is a temporary nuisance, compensatory damages are measured by the decrease in the fair rental value of the property. The person who files the lawsuit may also recover compensatory damages for their medical condition, if there is objective and documented medical evidence that the medical condition was caused by the nuisance.

In a action for private nuisance where the alleged nuisance emanates from property primarily used for crop or animal production purposes, if a person or their successor brings any subsequent claim against another person or their successor for temporary nuisance, and the claims are related to a similar activity or use of the property, and that activity or use of property is deemed a nuisance, the activity or use of property shall be considered a permanent nuisance and the person and their successor shall be limited to the remedies available for permanent nuisance.

This act also requires that a nuisance be considered not capable of abatement, if the nuisance emanates from property used for crop or animal production purposes, if a defendant demonstrates a good faith effort to abate the nuisance, including substantial compliance with a court order.

FISCAL DESCRIPTION (Continued)

Where the alleged nuisance emanates from property primarily used for crop or animal production purposes, no person has standing to bring an action for private nuisance unless they have an ownership interest in the property alleged to be affected by the nuisance.

A copy of the final judgment in any action alleging a private nuisance shall be filed with the recorder of deeds in the county in which the final judgment was issued and shall operate as notice to a purchaser of the property that the property was related to a previous claim.

The act does not prohibit the recovery of damages for crop destruction, crop damage, contamination of the seed supply, or a diminution of crop value resulting from contamination of the seed or grain supply, herbicide drift, or other diminution of crop value.

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



Mickey Wilson, CPA
Director

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