

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1868-01
Bill No.: HB 786
Subject: Environmental Audit Privilege
Type: Original
Date: May 10, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
None	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> State Funds	\$0	\$0	\$0

Based on the February 27, 1995, vote of the Oversight Subcommittee on a similar proposal, all fiscal impact to state and federal funds have been removed to reflect a \$0 impact.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
None	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 4 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Labor and Industrial Relations, Office of State Courts Administrator** and the **State Auditor's Office** assume the proposed legislation would have no fiscal impact on their agencies.

In response to similar legislation from this session (SB 335), officials from the **Office of the Attorney General** assume that there may be additional litigation resulting from this proposal and therefore costs are unknown.

Officials from the **Department of Natural Resources (DNR)** assume that the introduction of this proposal is an indication there is a certain amount of known noncompliance with environmental laws. The DNR is not aware of these areas of noncompliance. The DNR assumes if it were aware of areas of noncompliance they would be working with the facilities to bring them into compliance, and noncompliance would not be an issue. However, since the DNR does not know the population of noncompliance, they cannot estimate the increased resources that would result from this proposal.

The DNR assumes that increased enforcement action will be necessary to obtain compliance information independently or through the courts. The DNR is unable to determine the additional costs of the anticipated increased enforcement.

DNR assumes disagreements over whether an audit is privileged will have to be resolved in court and will increase litigation costs. The DNR is unable to determine the additional costs of the increased litigation.

The DNR assumes they will be receiving the privileged audit reports for retention. They expect costs for development of procedures, staff, and storage facilities, however, the actual costs of the additional resources needed to receive and retain the audit reports are unknown.

The DNR assumes it would be subject to losing a delegation of authority from the Environmental Protection Agency (EPA), due to the weakening of penalties for environmental violations. That means Missouri would lose "primacy" in environmental programs causing citizens and local governments to deal directly with EPA. The DNR assumes it would also lose federal funding exceeding \$100,000,000.

Based on the February 27, 1995 vote of the Oversight Subcommittee on a similar proposal, all fiscal impact to state and federal funds have been removed to reflect a \$0 impact.

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

There may be an impact to small businesses who have an environmental audit that discovers a violation, in that this proposal provides for immunity from penalties in certain circumstances.

DESCRIPTION

This proposal creates an audit privilege for owners of facilities regulated by environmental laws. Owners may conduct a voluntary internal audit designed to determine compliance with environmental laws. The proposal also provides penalty immunity for voluntarily-disclosed environmental violations.

The privilege shall not apply when the privilege has been waived. A judicial body may require disclosure of otherwise privileged information if it is determined that the privilege is being asserted fraudulently, the material is not subject to the privilege, or the material shows that party asserting privilege did not exercise ordinary care to pursue compliance upon discovery of noncompliance with environmental laws. The privilege details the burden of proof on the party seeking disclosure as well as the party asserting the privilege.

The state may obtain an audit report if the state has determined from an independent source that a criminal offense has been committed, but may not review or disclose the content until ordered by a court or until the privilege is waived. A review may be requested by the provider of the report within thirty days of the date the state receives the audit report.

The proposal provides conditions for disclosure of a privileged report in civil and administrative cases, and provides for appeal of a civil or administrative disclosure decision by an aggrieved party. Any public entity, employee or official who divulges confidential audit information commits a Class A misdemeanor.

The proposal provides exceptions to the environmental audit privilege for information obtained by a regulatory agency pursuant to requirements of federal, state or local law or regulation,

DESCRIPTION (continued)

information obtained independently or information obtained directly by a regulatory agency.

The proposal defines the voluntary disclosure of information regarding the violation of an environmental law, and prohibits the Department of Natural Resources from assessing administrative penalties or seeking civil or criminal penalties from any entity or person who voluntarily discloses an environmental violation to a division or program within the Department. To qualify, the owner must make the disclosure promptly and correct the violation within two years. The prohibition against penalties does not extend to those who have committed serious, repeated violations within the last three years.

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 Labor and Industrial Relations
Office of Attorney General
Office of State Courts Administrator
State Auditor's Office



Jeanne Jarrett, CPA
Director

May 10, 2001