

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3039-01  
Bill No.: SB 715  
Subject: Environmental Protection; Federal - State Relations; General Assembly  
Type: Original  
Date: February 17, 2020

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Bill Summary: This proposal prohibits the enforcement of any federal rule or regulation promulgated by the United States Environmental Protection Agency unless the rule or regulation is approved by the General Assembly.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	(Could exceed \$95,566)	(Could exceed \$95,566)	(Could exceed \$95,566)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(Could exceed \$95,566)</b>	<b>(Could exceed \$95,566)</b>	<b>(Could exceed \$95,566)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
<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 14 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
Federal Environmental Funds	\$0 or (Could exceed \$321,926,900)	\$0 or (Could exceed \$317,703,587)	\$0 or (Could exceed \$317,448,512)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0 or (Could exceed \$321,926,900)</b>	<b>\$0 or (Could exceed \$317,703,587)</b>	<b>\$0 or (Could exceed \$317,448,512)</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
Federal Environmental Funds	0 or (290.28) FTE	0 or (290.28) FTE	0 or (290.28) FTE
<b>Total Estimated Net Effect on FTE</b>	<b>0 or (290.28) FTE</b>	<b>0 or (290.28) FTE</b>	<b>0 or (290.28) FTE</b>

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials at the **Department of Natural Resources (DNR)** assume the following regarding this proposal:

#### Division of Environmental Quality (DEQ) Response:

##### Section 1.360.1

The proposed legislation prohibits the enforcement of any federal rule or regulation promulgated by the United States Environmental Protection Agency (EPA) unless the rule or regulation is approved by the General Assembly.

The Department currently has delegated enforcement authority from the Environmental Protection Agency for federal regulations required under the following federal laws:

Clean Air Act  
Clean Water Act  
Safe Drinking Water Act  
Drinking Water and Clean Water State Revolving Fund  
Resource Conservation and Recovery Act, Subtitle C

If the EPA decides that a state is not properly administering a delegated program or ensuring compliance for a particular regulated entity, they have the authority and jurisdiction to revoke state delegation and/or pursue enforcement activities against the regulated entity that is subject to the applicability of the federal regulations.

The impact of the proposed legislation focuses mostly on the potential of legislative disapproval of an existing or proposed regulation necessary to implement and provide oversight of the federal environmental programs. The disapproval of state regulations that are based on federal regulation could result in the loss of associated federal funding and may affect the ability to implement new regulations within federal time-lines required.

##### Section 1.360.3

The Department does not promulgate federal laws directly; rather, federal requirements are incorporated into the state regulations prior to implementation of the federal program in the state. The citizens of the state rely on the Department to regulate air, land and water resources in order to protect human health and the environment. The Department uses enforcement as one tool to protect these resources.

ASSUMPTION (continued)

Section 1.360.4 and Section 530.037.4

The Department would need to devote resources to coordinate with the Joint Committee on Administrative Rules (JCAR) on the review of existing regulations and potential recommended changes. Based on regulation review efforts during the 2016-2017 Periodic 5 Year Rule Review pursuant to section 536.175, RSMo, and the 2017-2018 Red Tape Reduction Initiative pursuant to Executive Orders 17-03 and 18-04, the Department anticipates it would be a substantial impact. JCAR would have the ability to hold hearings, which would require a substantial time commitment. This would also require coordination with the EPA should regulation changes be made as to what is considered "as protective as" for the adequacy of state delegation of federal regulations and for maintaining state program delegation.

This proposed process could add complexity to the rule-making process and extend the time-frames that entities would be subject to federal regulations while waiting for state rules to go in effect.

The bill also states that, "Any citizen of this state may request the review of any specific rule or regulation promulgated by the United States Environmental Protection Agency, and the committee shall review such rule or regulation." It is unclear what that process would consist of or if regulations can/would be reviewed more than once.

**Oversight** does not have any information to the contrary in regards to DNR's assumptions; therefore, Oversight will reflect an "unknown" cost to DNR on the fiscal note.

Section 1.360.5

**DNR** notes the proposed legislation would establish a review process, which would lengthen the existing rule-making process, which typically takes 18 month to, in some cases, 36 months depending on when the Department starts the rule-making process.

Missouri State Parks Response:

The proposed legislation could potentially affect the eligibility of the state receiving federal funding for the Recreational Trails Program (RTP) of approximately \$1 - \$2 million annually, Land and Water Conservation Fund (LWCF) of \$4 million annually, and Historical Preservation Fund (HPF) grants of \$1 million annually if the Department is unable to enforce the requirements of those grants that rely on EPA requirements or compliance with federal Clean Air Act and Clean Water Act requirements. These grants are not administered by EPA, but it is uncertain how the sponsoring federal agencies for those grants would react to a possible limitation on the Department's ability to enforce grant requirements that are linked to EPA requirements.

ASSUMPTION (continued)

The Division of State Parks would still be required to fulfill the easement monitoring requirements based on previous grant awards regardless of any new incoming federal grants with the potential repayment of past federal grant awards

In addition to providing grants for historic preservation, the HPF funding is associated with the operations of the State Historic Preservation Office (SHPO). The National Parks Service (NPS) could determine that the SHPO is not able to fulfill its obligations under the National Historic Preservation Act, and all federal work done by the SHPO would revert to the federal agency. This means all Section 106 review projects, National Register Nominations, surveys, Certified Local Government responsibilities, and federal tax credit applications would get sent to the NPS for direct review with no input from the states.

Fiscal Impact

Division of Environmental Quality Response:

The fiscal impact of this legislation is currently unknown, however shepherding state rules that are based on federal regulations through the proposed approval/denial process would have an impact on state resources. The potential disapproval of existing or proposed state regulations that are based on federal regulation could result in the loss of federal delegation to the Department and the loss of associated federal funding. The Division of Environmental Quality and the Missouri Geological Survey Division receive annual federal fiscal year funding from the EPA of approximately **\$81 million**.

In addition, many state fees are collected due to the federal delegation. For example, air pollution control emissions fees are collected by the state to assist with running the federally delegated Air Pollution Control Program. For the purpose of this fiscal note, the Department anticipates the continuation of collecting state fees. However, regulatory actions would be conducted and fees assessed by EPA. Fee payers may challenge the collection of state fees by the Department if EPA is collecting a fee for the same service.

With the loss of funding, it would be necessary for the Department to return the enforcement of federal regulated programs back to EPA and reduce staff resources. The Department estimates up to 93% of DEQ's federal personal service budget (or **254.37 FTE**) would likely be reduced.

Missouri State Parks Response:

In summary, Missouri State Parks could see no impact or could lose up to **\$10 million** annual grant funding and approximately **13.46 FTE**.

ASSUMPTION (continued)

Additional Departmental impacts:

Both the Missouri Geological Survey and Department Operations are also partially funded, both directly and indirectly, with EPA grants. While the fiscal impact is noted in DEQ's response above (\$81 million), based on annual federal funding received compared to division personal service budgets, the Department estimates up to **22.45 FTE** would be reduced with the loss of federal funding.

Summary:

The Department could lose up to \$91 million annually in federal grant funding. Approximately 30% of this is Operating Cost and 70% is Pass-Through.

**Oversight** does not have any information to the contrary in regards to DNR's assumptions; therefore, Oversight will range the fiscal impact of this proposal from \$0 (Missouri is found to be compliant with federal regulations) to an annual loss of up to \$81 million (Missouri is found to be noncompliant with federal regulations). In addition, Oversight will reflect a potential savings to DNR for the loss of FTE (290.28 FTE) associated with federal grant funding.

Officials from the **Missouri Veterans Commission (MVC)** assume the following regarding this proposal:

§1.360.2 appears to say that no state agency can enforce U.S. environmental regulations after August 28, 2020 unless the State of Missouri adopts the same language. All Federal Veterans Affairs (VA) construction grants require phase I & phase II environmental surveys, including but not limited to land disturbance and water shed studies.

CFR 59.110 "Recapture Provisions" allows the VA to recover the federal construction grant funds if the facility does not maintain services previously specified in the construction MOU between VA and MVC for 20 years.

In the current fiscal year we have one major project and in the next fiscal year we anticipate 4 projects with federal grants.

FY 2020

St. Louis Veterans Home	Renovations	\$9.3 million (federal funds)
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ASSUMPTION (continued)

FY 2021

Cape Girardeau Veterans Home	Renovations	\$8.7 million (federal funds)
Bloomfield Veterans Cemetery	Columbarium Wall	\$3.2 million (federal funds)
St. James Veterans Home	Renovations	\$3.7 million (federal funds)
Jacksonville Veterans Cemetery	Columbarium Wall	\$3.8 million (federal funds)

Most projects take two years from start of design to end of construction. The five projects listed total \$28.7 million in federal dollars. The average revenue received over a three-year period is \$9.55 million. An average calculation over the previous 20 years is \$191 million.

In addition, the cost of the original construction of facilities constructed since 2000 is approximately \$68.8 million. Included in this number is the construction of all five Veterans cemeteries, the Mt. Vernon Veterans Home, and the Warrensburg Veterans Home.

MVC believes the language as it relates to the construction grant program could cost MVC in excess of **\$260 million** in "Recapture Provisions".

**Oversight** does not have any information to the contrary in regards to MVC's assumptions; therefore, Oversight will range the fiscal impact from \$0 (Missouri found to be compliant with federal regulations) to a loss of \$260 million in federal funds (Missouri is found to be noncompliant with federal regulations).

Officials from the **Department of Agriculture (MDA)** and its Division of Plant Industries/Pesticide Control Program receives an annual EPA grant to help cover the program's costs. In FY 2020 this program is scheduled to receive approximately \$682,454 in EPA grant funds. We believe this legislation could potentially reduce the EPA funding between \$0 and \$682,454, depending on whether or not the rules governing this program are approved by the General Assembly.

MDA estimates the impact to be \$0 if the legislature approves all of the EPA regulations currently in effect in the program (it's the only program we have that receives EPA grants). The impact could be \$682,454 (the total EPA grants received) if none of the regulations are approved and the EPA eliminates its funding as a result of the program no longer being able to operate according to its current rules. Since it's impossible for us to predict with any certainty the outcome of the legislature's approval process and subsequent EPA action, we believe the best estimate is a loss of between **\$0 - \$682,454** in EPA federal funding.

ASSUMPTION (continued)

**Oversight** does not have any information to the contrary in regards to MDA’s assumptions; therefore, Oversight will range the fiscal impact from \$0 (Missouri found to be compliant with federal regulations) to a loss of \$682,454 in federal funds (Missouri is found to be noncompliant with federal regulations).

Officials from the **Missouri Department of Conservation (MDC)** assume this proposal will have an unknown fiscal impact; however, MDC estimates the proposal could have a negative fiscal impact on Department funds of more than \$100,000 annually due to the potential loss of funding from federal programs.

**Oversight** does not have any information to the contrary in regards to MDC’s assumptions; therefore, Oversight will range the fiscal impact from \$0 (Missouri found to be compliant with federal regulations) to a loss of more than \$100,000 in federal funds (Missouri is found to be noncompliant with federal regulations).

Officials from the **Department of Corrections (DOC)** assume this proposal prohibits the enforcement of any federal rule or regulation promulgated by the United States Environmental Protection Agency (EPA) unless the rule or regulation is approved by the General Assembly.

This legislation could potentially have an impact on future capital improvement projects that are designed under the guidelines set by the EPA. It may result in cost avoidance related to staff certifications or construction projects that require additional or special processes. If some of the latest guidelines are not required, it could reduce the cost of the project. However, the actual impact is unknown at this time as it is unknown what current or future EPA regulations would be affected.

**Oversight** does not have any information to the contrary in regards to DOC’s assumptions; therefore, Oversight will reflect a positive “Unknown” savings for the potential reduction of project costs and a negative “Unknown” cost for potential impact on capital improvement projects on the fiscal note.

Officials from the **Office of Administration - Budget and Planning** assume this proposal will have no fiscal impact on their organization, no direct impact on General and Total State Revenues and will not impact the calculation pursuant to Article X Section 18(e).

Officials from the **Department of Transportation (MoDOT)** assume this proposal could have a negative impact on federal funding. If the federal government were to find MoDOT to be out of compliance with federal law, then federal funds could be withheld as a penalty.



ASSUMPTION (continued)

**Oversight** does not have any information to the contrary in regards to MoDOT's assumptions; therefore, Oversight will range the fiscal impact from \$0 (Missouri found to be compliant with federal regulations) to an "Unknown" loss of federal funds (Missouri is found to be noncompliant with federal regulations).

Officials from the **Joint Committee on Administrative Rules (JCAR)** state there are in excess of 4,000 federal EPA regulations and approximately 128 or more state-level environmental regulations by DNR. Additionally, more travel time will be needed for the committee members to meet or have hearings relating to such regulations.

Section 536.037.4 would allow citizens to request a review/hearing of any specific rule or regulation promulgated by the U.S. EPA and the committee shall review such rule or regulation. This could result in a large number of hearings since there are in excess of 4,000 such rules. These reviews would be in addition to the committees own review requirement. Additionally, any such review may lead to judicial review. JCAR estimates the cost for two committee meetings per month during the interim to be \$9,926 or **\$96,566** annually.

**Oversight** does not have any information to the contrary in regards to JCAR's assumptions; therefore, Oversight will reflect JCAR's costs on the fiscal note.

Officials from the **Office of the Governor, Office of the State Treasurer, Department of Economic Development, Department of Mental Health, Department of Higher Education and Workforce Development, Office of the State Public Defender, Department of Labor and Industrial Relations, Capitol Police, Missouri House of Representatives, Department of Public Safety, Department of Commerce and Insurance, Department of Social Services, Office of the State Auditor, Missouri National Guard, Missouri Consolidated Health Care Plan, Missouri Ethics Commission, Department of Health and Senior Services, Department of Revenue, Department of Public Safety - Division of Fire Safety, Office of Prosecution Services, Missouri Lottery, Legislative Research, Department of Public Safety - State Emergency Management Agency, Missouri Gaming Commission, State Tax Commission, Department of Public Safety - Division of Alcohol and Tobacco Control, Missouri State Employees Retirement System, Administrative Hearing Commission, Missouri Senate, Department of Elementary and Secondary Education and Office of the State Courts Administrator** each assume the proposal will have no fiscal impact on their respective organizations.

ASSUMPTION (continued)

**Oversight** notes that the agencies mentioned above have stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for these agencies.

Officials from the **Attorney General's Office (AGO)** assume that any additional litigation costs arising from this proposal can be absorbed with existing personnel and resources; however, the AGO may seek additional appropriations if there is a significant increase in litigation.

**Oversight** assumes AGO is provided with core funding to handle a certain amount of activity each year. Oversight assumes AGO could absorb the costs related to this proposal.

Officials from the **Department of Public Safety - Missouri Highway Patrol** defer to DNR for the fiscal impact of this proposal.

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS 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 note to the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves 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 printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could require additional resources.

FISCAL IMPACT - State Government	FY 2021 (10 Mo.)	FY 2022	FY 2023
<b>GENERAL REVENUE FUND</b>			
Savings- DOC - potentially reduction of project costs p. 8	Unknown	Unknown	Unknown
Cost - DNR - costs for rule-making process p. 4	(Unknown)	(Unknown)	(Unknown)
Cost - DOC - potential impact of federal regulations on capital improvement projects p. 8	(Unknown)	(Unknown)	(Unknown)
Cost - JCAR - cost for two meetings per month for review of rules p. 9	(\$96,566)	(\$96,566)	(\$96,566)
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b>(Could exceed \$96,566)</b>	<b>(Could exceed \$96,566)</b>	<b>(Could exceed \$96,566)</b>



### FISCAL IMPACT - Small Business

Small businesses could be impacted expected as a result of this proposal due to the potential of higher fees for noncompliance, fewer opportunities for state focused compliance, and the potential for grant funding to not be distributed.

### FISCAL DESCRIPTION

Prohibits the enforcement of any federal rule or regulation promulgated by the United States Environmental Protection Agency unless the rule or regulation is approved by the General Assembly.

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  
Missouri Department of Conservation  
Department of Agriculture  
Department of Transportation  
Missouri Veterans Commission  
Department of Corrections  
Joint Committee on Administrative Rules  
Office of the Secretary of State  
Attorney General's Office  
Department of Public Safety - Missouri Highway Patrol  
Office of the Governor  
Office of the State Treasurer  
Department of Economic Development  
Department of Mental Health  
Department of Higher Education and Workforce Development  
Office of the State Public Defender  
Department of Labor and Industrial Relations  
Capitol Police  
Missouri House of Representatives  
Department of Public Safety  
Department of Commerce and Insurance  
Department of Social Services

SOURCES OF INFORMATION (continued)

Office of the State Auditor  
Missouri National Guard  
Missouri Consolidated Health Care Plan  
Missouri Ethics Commission  
Department of Health and Senior Services  
Department of Revenue  
Department of Public Safety - Division of Fire Safety  
Office of Prosecution Services  
Missouri Lottery  
Legislative Research  
Department of Public Safety - State Emergency Management Agency  
Missouri Gaming Commission  
State Tax Commission  
Department of Public Safety - Division of Alcohol and Tobacco Control  
Missouri State Employees Retirement System  
Administrative Hearing Commission  
Missouri Senate  
Department of Elementary and Secondary Education  
Office of the State Courts Administrator



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