

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4357S.01I
 Bill No.: SB 981
 Subject: Department of Natural Resources; Lakes, Rivers and Waterways
 Type: Original
 Date: February 29, 2024

Bill Summary: This proposal modifies the definition of waters of the state.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
General Revenue	\$0 to (Unknown, could exceed \$250,000)	\$0 to (Unknown, could exceed \$250,000)	\$0 to (Unknown, could exceed \$250,000)
Total Estimated Net Effect on General Revenue	\$0 to (Unknown, could exceed \$250,000)	\$0 to (Unknown, could exceed \$250,000)	\$0 to (Unknown, could exceed \$250,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Total Estimated Net Effect on FTE	0	0	0

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

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

§644.016(27) – Limiting Waters of the State (WOTS)

The current definition of WOTS protects 136,236 miles of stream with “general use” requirements. These streams are typically small and the most likely to be affected by this proposed change because they do not have “relatively permanent”, standing, or continuous flow. General use requirements are narrative (not numeric) statements that waters must be free from debris and trash and must be free from materials or substances that render the water unsightly, cause color or odor impacts, cause toxicity, or other significant impairments of use. This change would remove those protections from certain small, non-permanent streams statewide. The removal of these small streams segments from WOTS would have private property rights implications. For example, Neighbor A regularly dumps leftover pesticide into a channel that runs onto Neighbor B’s property before running into a larger creek or stream. Neighbor B uses that channel as an occasional watering source for livestock. Under this change, the department would not have any authority to address this issue, even though the pesticide is toxic to the livestock. The fiscal impact of this change is unknown as it is difficult to assess the frequency of these potential issues and the ability of the department to inspect and have regulatory authority would be removed from these 136,236 miles of stream. The loss of regulatory authority will result in decreases in water quality, particularly loss of narrative criteria protections, which will increase the number of complaints and investigations by the department.

Additionally, any of the other 115,700 miles of streams with “fishable/swimmable” designated uses under state and federal Clean Water Law would require a field evaluation to determine whether or not the stream is “relatively permanent”, or if it is a geologic losing stream. Based on a previous set of selective assessments of these waters, and statewide distribution of aquatic life from department and Missouri Department of Conservation studies, it is anticipated that many of these waters would still remain classified as WOTS. These assessments would be conducted upon request and cost, on average, approximately **\$2,388** per evaluation. The actual fiscal impact is unknown as the number of these requests, based on this change, may fluctuate in the future.

The removal of waters that are determined to not be “relatively permanent” from the definition of WOTS would have broad implications throughout the department, and the impact would be significant. For each permitted facility, permit writers would need to evaluate whether previous decisions were based on waters that no longer meet the definition of waters of the state. These evaluations would include the geological assessments detailed above.

If a stream is determined not to be “relatively permanent”, a rulemaking amendment to 10 CSR 20-7.031, Water Quality Standards, would be required to change the classification of the stream. Per 40 CFR 131.21, water quality standards adopted by states must be approved by the EPA before they can be used as the basis for actions under the Clean Water Act. This process would add delay to the permitting process until rulemaking, which can take 18-24 months, is complete. The fiscal impact is unknown as this change will cause an increase in the number of rulemakings for the department, which will result in an increase in staff time and resources needed to complete the rulemakings. Increased waiting time for permits and costs delayed or deferred are anticipated for facilities awaiting the results of department evaluations. This is anticipated to result in an unknown impact to both the department and small businesses which typically require on-time delivery of permits to operate.

If the department is unable to issue permits without first conducting field evaluations to determine the relative permanence of the receiving stream, the backlog would increase significantly due to the volume of permits to be written and stream reaches to be evaluated, and permit issuance would be significantly delayed. The review would increase permitting efforts by at least 15%, which means a staffing increase of at least 3 FTE (Environmental Program Analyst).

§644.016(27)(b)

By limiting WOTS to subsurface aquifers with a known surface connection, the proposed language removes water quality protection for subsurface aquifers without a known surface connection which provide drinking water throughout areas of the state. Groundwater is the source of 2,618 public drinking water systems, providing drinking water to 3,640,094 Missourians, or approximately 59% of the state’s population. If the aquifers these public water systems rely on become degraded, it could result in a substantial cost for Missouri public water systems that may need to add treatment processes in order to continue producing water meeting all Safe Drinking Water Act requirements. The fiscal impact cannot be calculated as the cost would be based on the nature (pollutant) and frequency of the potential impacts and this could increase the number of concerns reported and investigations conducted by the department.

Additionally, there are approximately 185,000 private wells statewide that rely solely on groundwater to supply drinking water to single- or multi-family homes, and/or rural businesses that do not readily have access to public water supplies. Without protections of groundwater, an increase in contamination would be anticipated, which would require homeowners and rural business owners to upgrade or dig deeper wells, or bring water in. While the fiscal impact cannot be calculated, as the frequency of aquifer contamination after removal of groundwater protection is unknown, this could increase the number of concerns reported and investigations conducted by the department.

Fiscal impact: **\$0 to unknown**

Oversight assumes DNR could incur significant costs related to this proposal; therefore, Oversight will assume a fiscal impact of \$0 (does not incur additional costs) to an “Unknown, could exceed \$250,000” if DNR is required to hire additional FTE and perform additional inspections.

Officials from the **Missouri Department of Agriculture** and **Missouri Department of Conservation** each assume the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

<u>FISCAL IMPACT – State Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
GENERA REVENUE FUND			
<u>Cost – DNR – potential additional FTE and potential increase in inspections and/or evaluations</u>	\$0 to (Unknown, could exceed \$250,000)	\$0 to (Unknown, could exceed \$250,000)	\$0 to (Unknown, could exceed \$250,000)
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	\$0 to (Unknown, could exceed \$250,000)	\$0 to (Unknown, could exceed \$250,000)	\$0 to (Unknown, could exceed \$250,000)

<u>FISCAL IMPACT – Local Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
	\$0	\$0	\$0

FISCAL IMPACT – Small Business

Officials from the Department of Natural Resources note small businesses in rural areas on well water could potentially be impacted by the removal of subsurface aquifers without a clear surface connection.

Additionally, there are approximately 185,000 private wells statewide that rely solely on groundwater to supply drinking water to single- or multi-family homes, and/or rural businesses that do not readily have access to public water supplies. Without protections of groundwater, an increase in contamination would be anticipated, which would require homeowners and rural business owners to upgrade or dig deeper wells, or bring water in.

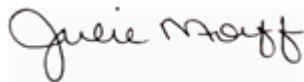
FISCAL DESCRIPTION

The act modifies the definition of "waters of the state" to include various surface and subsurface waters that are adjacent or connected to relatively permanent, standing or continuously flowing bodies of water, as defined in the act.

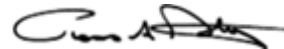
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Natural Resources
Missouri Department of Agriculture
Missouri Department of Conservation



Julie Morff
Director
February 29, 2024



Ross Strobe
Assistant Director
February 29, 2024