

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. NO.: 3080-02
BILL NO.: SB 715
SUBJECT: Environmental Protection; Department of Natural Resources; Administrative Rules; Federal-State Relations; Public Health
TYPE: Original
DATE: January 18, 2002

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
General Revenue	(\$136,498-Unknown)	(\$146,790-Unknown)	(\$150,579-Unknown)
DNR Dedicated Funds	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>All</u> State Funds	(\$136,498 to Unknown)	(\$146,790 to Unknown)	(\$150,579 to Unknown)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Federal Funds	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds	(Unknown)	(Unknown)	(Unknown)

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Local Government	(Unknown)	(Unknown)	(Unknown)

Numbers within parentheses: () indicate costs or losses
This fiscal note contains 5 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Conservation** (MDC) assume the proposed legislation would appear to have no fiscal impact on MDC funds.

Officials from the **Office of Secretary of State** (SOS) assume the bill requires that certain Department of Natural Resources (DNR) rules be no stricter than federal regulations with some exceptions. They assume the bill does not add specific rulemaking and further restricts the rulemaking authority of DNR. SOS officials therefore assume no rules will be promulgated as a result of this bill and thus their office will not be fiscally affected.

Officials from the **Attorney General's Office** assume the AGO would need two Assistant Attorney General IIIs and associated program costs to handle potential litigation if this bill were to pass. AGO bases this assumption on its experience in handling litigation related to Clean Air regulations which contain a similar limitation on state regulation to the proposed limitations in this bill. AGO officials assume this proposal extends these rule restrictions to all areas of environmental regulation and would significantly expand the state's vulnerability to litigation challenging DNR's rulemaking in these areas.

Officials from the **Department of Health** (DOH) assume this legislation will prohibit DNR from establishing rules that are any stricter than federal laws governing the same environmental area (e.g. solid waste, Clean Air Act, etc.). If the federal law is not sufficient to adequately protect human health and the environment, or the specific circumstances or conditions are not subject to regulation by any applicable federal statute or federal regulation, DNR could regulate to "address the specific circumstance or condition in order to prevent or alleviate the specific harm caused to human health and the environment." The criteria for evaluating this includes health. It is anticipated that DOH would be conducting risk assessments to determine the impact to public health.

Therefore, DOH would request three Environmental Specialist IIIs and associated program costs to implement this legislation. These three positions would be responsible for reviewing site contaminant and offsite information, evaluating site characterization data, determining potential exposure pathways, conducting investigations, documenting reviews as appropriate, and preparing risk assessments to quantify the risk to human health from contaminants. These positions would also be responsible for calculating contaminant concentrations that pose no risk to human health. These concentrations would be used for clean-up or attainment goals. This would require these personnel to remain current on all toxicology data and risk assessment methodologies.

ASSUMPTION (cont'd)

Officials from the **Department of Natural Resources** (DNR) assume additional staff time and resources would be required when promulgating new rules which would be stricter than the federal rule. When promulgating new or revised rules, the Department would be responsible for proving a specific circumstance or condition in the state is causing or has the potential to cause harm to human health or the environment.

DNR has approximately 160 rules which have been promulgated to meet specific Missouri needs that may be considered "stricter than" federal law. The Department estimates it could possibly take between 120 hours and 450 hours per rule to review, document, substantiate, and possibly promulgate revised state rules. Assuming 1,800 available hours per year, it would take approximately 10 FTE (assuming 120 hours per rule) or approximately 40 FTE (assuming 450 hours per rule) to implement this legislation.

The Department assumes additional staff time and resources would be required when promulgating new rules. The Department is unable to determine the number of rules which would be promulgated in later years which would be considered stricter than the federal law.

These provisions specify that the fiscal notes required by Section 536.200 and 536.205, RSMo, are to contain information of the effects on human health and the environment, economics, pollution prevention, and the effectiveness and cost of reasonably available control methods for the proposed more restrictive rule. The Department assumes additional staff time and resources would be required to meet these criteria; however, the impact is unknown.

In addition, the Department is unable to determine the legal costs associated with challenges to existing rules from the passage of this legislation.

Oversight assumes the DNR will be required to conduct some level of review of the estimated 160 rules that may be stricter than federal rules. Oversight assumes after such a review, any necessary rule changes, or deletions could result in unknown savings, costs, or losses of revenue.

Oversight also assumes there could be unknown costs to the Solid Waste Management Districts due to this proposal as the DNR's current rules relating to Solid Waste could be considered stricter than federal rules.

Additionally, Oversight assumes that until DNR rules need to be changed or established, it appears that the FTE requested by DOH would not be necessary. If DNR rules need to be changed or established and the FTE are deemed necessary to fulfill the requirements of this proposed legislation, the DOH could request these FTE through the budget process.

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
GENERAL REVENUE FUND			
<u>Cost - Attorney General's Office</u>			
Personal Service (2 FTE)	(\$75,000)	(\$92,250)	(\$94,556)
Fringe Benefits	(\$24,998)	(\$30,747)	(\$31,516)
Expense and Equipment	(\$36,500)	(\$23,793)	(\$24,507)
Total Cost - Attorney General's Office	<u>(\$136,498)</u>	<u>(\$146,790)</u>	<u>(\$150,579)</u>
 <u>Cost - Department of Natural Resources</u>			
Personal Services	(Unknown)	(Unknown)	(Unknown)
Estimated Net Effect on GENERAL REVENUE FUND	<u>(\$136,498 to Unknown)</u>	<u>(\$146,790 to Unknown)</u>	<u>(\$150,579 to Unknown)</u>
 DNR DEDICATED FUNDS			
<u>Cost - Department of Natural Resources</u>			
Personal Services	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
 <u>FISCAL IMPACT - Local Government</u>			
	FY 2003 (10 Mo.)	FY 2004	FY 2005
<u>Cost - Solid Waste Management Districts</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

FISCAL IMPACT - Small Business

This proposal could impact small businesses subject to DNR rules.

DESCRIPTION

This proposal provides that the Department of Natural Resources and the regulatory commissions within the Department may adopt rules to ensure the state complies with applicable federal law and regulations. The proposal revises rulemaking authority in the following areas: air pollution, water pollution and underground storage tanks, hazardous waste, surface mining and land reclamation, drinking water and solid waste.

The rules shall not be stricter than the scope or subject matter of federal law and regulations, unless the Department or commission makes specific findings based upon competent and

DESCRIPTION (cont'd)

substantial evidence in the administrative record. The scope and subject matter of federal regulation includes the content of any and all applicable federal statutes, regulations, guidance documents and policy documents. Where there are no federal statutes or regulations, the scope is zero and the Department and commissions shall not adopt regulations pertaining to that subject unless findings are documented in the administrative record .

Findings in the administrative record must include:

- 1) Missouri-specific circumstances may cause harm to human health and the environment;
- 2) Either: a) The circumstances are not subject to any federal law or regulation; or
b) The existing federal law or regulations are not sufficient to adequately protect human health and the environment;
- 3) A more restrictive rule is necessary to address the circumstances.

For any rule promulgated that is more strict than federal law or regulations, the Department or commission shall specifically enumerate in the administrative record and publish in the Missouri Register, findings of fact regarding the circumstances or conditions causing harm, the nature and scope of harm to human health and the environment, and health-based or science-based reasons justifying why the more restrictive rule will prevent or alleviate the harm. The fiscal note for the rule shall contain a consideration of the effects on human health and the environment, economics, pollution prevention and the effectiveness and cost of control methods required by the rule.

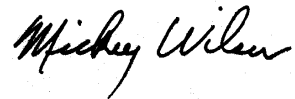
Any more-restrictive rule promulgated without complying with this act shall be void. All rules must comply with the provisions of Chapter 536, RSMo.

The bill also removes general authority for affected parties to appeal decisions of the Director of the Department to the relevant board or commission.

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 Conservation
Department of Health
Department of Natural Resources
Office of Attorney General
Office of Secretary of State



Mickey Wilson, CPA
Acting Director
January 18, 2002