

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2973-02
Bill No.: SB 739
Subject: Commissions, environmental protection, Natural Resources Dept.; Water
Type: Original
Date: January 15, 2004

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
General Revenue*	\$0	\$0 to(Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on General Revenue Fund*	\$0	\$0 to (Unknown)	\$0 to (Unknown)

*Could exceed \$100,000 per year

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on Other 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 2005	FY 2006	FY 2007
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Attorney General (AGO)** assume that the additional steps in the rulemaking process might require additional staff time in counseling DNR, staff and commissions. AGO assumes that these costs could be absorbed with existing resources. The additional steps in the rulemaking process also provide additional bases for litigation on the validity of rules. Additional litigation would require additional staffing. Because the volume of additional litigation is unknown, AGO assumes the cost of this proposal is unknown.

Officials from the **Department of Conservation, Department of Economic Development and Department of Agriculture** assume this proposal would have no fiscal impact on their organization.

Officials from the **Department of Natural Resources (DNR)** assume that in order to promulgate any rule, the Department of Natural Resources and each of its boards and commissions must file the following with the joint committee on administrative rules concurrently with the filing of the proposed rule:

ASSUMPTION (continued)

Regulatory Impact Report

The proposed legislation states that a regulatory impact report must be done for all rules promulgated that prescribe environmental conditions and standards. However, this provision does not apply if the department adopts environmental protection agency rules and rules from other applicable federal agencies without variance.

It is very difficult to convert risks to public welfare and the environment into economic terms. Placing a dollar value on human life and health is even more problematic. However, in order to compare the regulatory costs with the risk reduction benefits, this would be required.

Risks are cumulative. It would be very difficult to estimate the risk or the risk reduction benefits of one rule in isolation.

Further, there is very little data available on the combined risk of exposure to a number of contaminants, such as atmospheric ozone and a pesticide contaminated water system might have if an individual had those combined exposures. For example, the exponential risks associated with pollutants in an urban setting where multiple industrial smokestacks are in close proximity to residential areas cannot be quantified.

Generally, the department has relied upon the EPA, the Department of Health (DOH) and the Agency for Toxic Substances and Disease Registry to conduct risk assessment when needed. In addition, even when the federal statute does not explicitly set a risk-based standard, EPA frequently engages in some sort of risk analysis at the national level prior to promulgating a federal rule.

The cost to complete a rule-specific regulatory impact report would vary widely from rule to rule, depending upon the number of pollutants to be regulated, the number of affected facilities, the extent to which data already exists, etc.

The department assumes there would be 4 state-initiated rules at a cost of approximately \$42,440 per rule. Therefore the estimated annual cost for implementing this portion of the proposal would be \$169,760, or the equivalent of about 3 new FTEs (assuming \$58,000 annual expenditures, including personal service, fringe benefits, and expense and equipment.) This cost estimate assumes that the regulatory impact report would not need to contain all the elements of a risk assessment.

ASSUMPTION (continued)

The proposed legislation requires the department to clearly state the basis for denying a permit. This provision will not impact the department because we currently provide that justification on any denial.

The proposed legislation prohibits the department from placing any conditions in the permit that are not prescribed by regulation unless the applicant agrees to such condition. The department assumes this proposal would result in reevaluation of permit conditions to determine if they are based on prescribed regulation. If they are not, the department assumes that these conditions would need to be promulgated.

This proposal would allow the permit applicant the ability to review the draft permit prior to the public notice period unless the applicant waives the opportunity to review the draft permit. Currently some permit issuances must comply with certain time lines. This provision could jeopardize the department's ability to meet those deadlines and could result in an unknown fiscal impact.

Under current environmental law, the burden of proof lies with the appellant. Section 640.016 of this proposal would shift the burden of proof to the department in all matters where a rule that prescribes environmental conditions or standards has been promulgated. The department is unable to determine the amount of resources that would be necessary to meet this provision of the proposal.

Section 640.018.4 of the proposal prohibits the department from revoking a permit or changing a decision for a period of one year unless it is determined that immediate action is necessary to protect the public health and welfare. This provision would affect our ability to protect the environment if we can not address changes during this timeframe for a regulated facility or site. The department is unable to determine what fiscal impact could result from this provision due to the uncertainty of unknown circumstances that could arise in the year after a permit is issued.

Oversight assumes that the cost of compliance with this proposal is unknown. Some administrative rules would not require the cost-benefit analysis contemplated in this proposal. Further, Oversight assumes it is not possible to predict the number of rules which would be adopted or the number of rules adopted which would require the scientific review proposed in this legislation, let alone the number which might be challenged. Oversight assumes that any costs resulting from this proposal would be paid from the state General Revenue Fund since program funds would not be available for such costs.

ASSUMPTION (continued)

Officials from the **Department of Transportation (MoDOT)** assume this proposal could have a negative fiscal impact on MoDOT at least in part, as it states it applies to authorities over environmental standards promulgated pursuant to chapter 260, RSMo, which is the authority that MoDOT's Motor Carrier Services (MCS) unit uses to issue hazardous waste and waste tire permits to motor carriers.

Beyond the MCS unit, the overall effect on MoDOT is unclear. The phrase in Section 640.015 that state "...all rules that prescribe environmental conditions....promulgated by....a commission....pursuant to authorities granted in this chapter and ...(others)... shall cite the specific section of law ...the rule shall be based on the regulatory impact report.....", and the later section 640.015.3 which states the "department, board or commission" shows that the sponsor intends to cover other state agencies than DNR in this bill. Since it specifically mentions a commission, MoDOT could be included as well.

The costs associated with the rulemaking process, primarily employee time and supplies associated with preparing the required regulatory impact reports, could increase as a result of the legislation. However, the amount of the negative fiscal impact is unknown.

<u>FISCAL IMPACT - State Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
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GENERAL REVENUE FUND

Cost - Department of Natural Resources

Risk Assessment	\$0	\$0 to (Unknown)	\$0 to (Unknown)
Cost-Risk Analysis	\$0	\$0 to (Unknown)	\$0 to (Unknown)
Publication Costs	<u>\$0</u>	<u>\$0 to</u> (Unknown)	<u>\$0 to</u> (Unknown)

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND*	<u>\$0</u>	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>
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*Could exceed \$100,000 per year

<u>FISCAL IMPACT - Local Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

All rules of the hazardous waste, soil and water, petroleum storage tank insurers, land reclamation, safe drinking water, air conservation, and clean water commissions and funds will require a regulatory impact report.

In addition, the regulatory impact report shall contain a qualitative and quantitative impact report regarding the rule. The impact report shall be published in at least one newspaper and be filed with the joint committee on administrative rules.

The act also provides that the burden of proof shall be on the boards or commissions promulgating rules to prove that the rule is necessary to prevent the specific circumstance or condition that would cause harm to human health, public welfare, or the environment.

DESCRIPTION (continued)

The act requires that the Department of Natural Resources submit all permits to the applicants in ample time for their final review before public comment. If the department denies the permit, they must state the reasons for the denial.

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

Attorney General's Office
Department of Natural Resources
Department of Conservation
Department of Agriculture
Department of Transportation



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Director
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