

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3573-01
Bill No.: SB 989
Subject: Environmental Protection; Crimes and Punishment; Natural Resources Dept.;
Political Subdivisions
Type: Original
Date: February 2, 2004

FISCAL SUMMARY

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

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

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 6 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 **State Auditor's Office** and **Office of State Courts Administrator** assume no fiscal impact to their agency.

Officials from the **Attorney General's Office** assume there may be additional litigation resulting from this proposal. Costs are unknown but potentially significant, requiring additional staff.

Officials from the **Department of Transportation (MoDOT)** assume they would have to hire 10 (1 for each of the 10 MoDOT districts) additional Environmental Compliance Coordinators (salary grade 17) to implement the environmental management system statewide. These employees would develop and coordinate environmental programs such as hazardous waste management, underground storage tanks and above ground storage tank management, storm water management, etc., and provide related technical assistance to division and district personnel. The position is governed by the Missouri Department of Natural Resources and Environmental Protection Agency (EPA) rules and regulations and city and local codes.

Each of the Environmental Compliance Coordinators would require a ½ ton pick-up truck at a cost of \$14,910 each for a total of \$149,100 (\$14,190 x 10 vehicles). The estimated annual fuel

and maintenance cost for each vehicle would be \$1,872, therefore the total annual fiscal impact

ASSUMPTION (continued)

for fuel and maintenance would be \$18,710 (\$1,872 x 10 vehicles).

The fiscal impact includes fringe benefits, office expenses, vehicles and vehicle maintenance associated with the 10 additional positions.

Officials from the **Department of Natural Resources (DNR)** assume this proposal encourages increased environmental self-vigilance to ensure compliance with state and federal permit requirements; however, the department is unable to determine the fiscal impact of this bill. Since this legislation, which includes certain immunities, is being proposed, the department assumes there must be a certain amount of known noncompliance with environmental laws and regulations. The department does not know what other noncompliance with environmental laws and regulations exist at this time. Therefore, we cannot estimate the increased resources that would be needed to assist facilities return to compliance if they avail themselves of the immunity provision of this legislation.

This legislation provides circumstances when the DNR is prohibited from imposing any administrative, civil or criminal penalties on a facility if the facility discovers noncompliance through a voluntary audit or environmental management system and voluntarily discloses the information to the DNR. It should be noted that this section conflicts with other state and federal laws related to penalties for environmental violations. Therefore, this provision weakens the state's enforcement provisions and conflicts with federal enforcement policies. In addition, serious environmental impacts or threats to human health and safety from the actions of a company (e.g., dumping hazardous materials causing ground water contamination), some of which could be criminal in nature, could result if the department does not have the ability to seek penalties.

EPA Headquarters sent a memorandum to the Regional Administrators regarding "Statement of Principals, Effect of State Audit Immunity/Privilege Laws on Enforcement Authority for Federal Programs." Among other requirements, the memorandum states that a delegated state must have the authority to:

- Obtain immediate and complete injunctive relief
- Recover civil penalties for: significant economic benefit; repeat violations and violations of judicial or administrative orders; serious harm; and activities that may present imminent and substantial endangerment

- Obtain criminal fines/sanctions for willful and knowing violations of federal law

ASSUMPTION (continued)

The department believes this action could be possible grounds for the Environmental Protection Agency (EPA) to revoke the department's authority/delegation of the related environmental programs. This means the state of Missouri will lose "primacy" in the related environmental programs and Missouri constituents will have to deal directly with the EPA in issues involving permitting and enforcement activities. If the EPA authorization is completely withdrawn, the department will also lose the related federal funds which exceed \$100,000,000 annually. These federal funds provide support to programs such as the department's State Revolving Fund for improvements to water and wastewater facilities; the clean-up of Superfund and LUST sites; and the department's permit, inspection, and enforcement activities.

The EPA has warned several states that it may revoke their authority to enforce laws such as the Clean Air Act or withhold federal grants because the state has passed laws that may conflict with federal policies by providing broad immunity provisions for companies that voluntarily identify their own pollution violations.

Another likely action that the EPA could take would be to increase their inspection and enforcement presence in the state. Increasing the number of inspections in the state will lead to an increased enforcement presence because EPA will take enforcement action on any noncompliance found from facilities they inspect. The EPA has already overfiled on state enforcement actions. If this proposed legislation passes, the number of cases the EPA overfiles could be expected to increase, especially on those cases where the state is precluded from assessing penalties. As a result the state's enforcement program could be undermined.

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

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

<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

This act is intended to permit a regulated entity to avoid civil penalties if the failure to comply with the environmental laws or regulations of federal, state, or local laws or ordinances was promptly reported to the regulation agency in compliance with requirements of this act.

In order to meet the requirements of the act, the non-compliance has to be discovered voluntarily by due diligence and/or a company audit performed by the regulated entity.

The regulated entity is required to take remedial action within 60 days to correct the non-compliance. A shorter or longer time to remediate may be permitted under certain circumstances.

To comply with the act, an incident of non-compliance may not have occurred in the facility within the previous three years and within the previous five years if multiple facilities are involved.

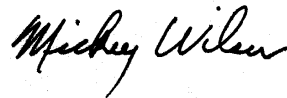
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

VL:LR:OD (12/02)

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Office of Attorney General
Department of Natural Resources
State Auditor's Office
Department of Transportation
Office of State Court Reporters

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
February 2, 2004