

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3339-01
Bill No.: SB 881
Subject: Administration, Office of; Environmental Protection; Administrative Law
Type: Original
Date: January 25, 2002

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
General Revenue	(\$616,976)	(\$684,618)	(\$701,000)
DNR Dedicated Funds	Unknown	Unknown	Unknown
Total Estimated Net Effect on <u>All</u> State Funds	(\$616,976) to Unknown	(\$684,618) to Unknown	(\$701,000) to Unknown

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 6 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials of the **Office of State Courts Administrator** assume this proposal would have no fiscal impact on their organization.

In response to a similar proposal, officials from the **Office of the Governor** assume this proposal would have no fiscal impact on their organization.

Officials of the **Office of the Secretary of State (SOS)** assume this bill would create the Environmental Hearing Commission within the Office of Administration and would instruct them to promulgate rules to implement this bill. The bill also affects Department of Natural Resources - Soil and Water Districts Commission, Petroleum Storage Tank Insurance Fund Board of Trustees, Safe Drinking Water Commission, Air Conservation Commission, Clean Water Commission, Hazardous Waste Management Commission, and Land Reclamation Commission. They could each choose to promulgate rules in the *Code of State Regulations* and the *Missouri Register* to explain the Environmental Hearing Commission. These rules could require as many as approximately 36 pages in the *Code of State Regulations*. For any given rule, roughly half again as many pages are published in the *Missouri Register* as in the *Code* because cost statements, fiscal notes and the like are not repeated in the *Code*. The estimated cost of a page in the *Missouri Register* is \$23. The estimated cost of a page in the *Code of State Regulations* is \$27. Actual costs could be more or less and costs in future years would depend upon frequency and length of rules filed, amended, rescinded or withdrawn.

$[(36 \times \$27) + (54 \times \$23) = \$2214]$

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 request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Office of Administration** assume this proposal establishes a new commission within the Office of Administration. Personnel for the Environmental Hearing Commission would include three commissioners with annual salaries of \$91,636, and support staff consisting of three Clerk Typist IIs and three Court Reporter IIs. Office equipment, supplies, office space, and a hearing room would be required for the Commission.

ASSUMPTION (continued)

Oversight uses the Office of Administration's merit system salary schedule for Clerk Typist II and Court Reporter II and has adjusted the costs for salaries accordingly. It is not necessary for an employee to have both a desk and systems furniture and Oversight has therefore deducted the cost of six (6) systems furniture sets and three (3) desks from equipment costs. Since systems furniture also come with a filing cabinet, Oversight has deducted 3 file cabinets from equipment costs. Oversight assumes it would not be necessary for all three clerk typists to travel if the Commission met in another location, and has therefore deducted the travel costs for two (2) clerks. Oversight also assumes it would not be necessary for all three clerk typists to have specialized internet law communications subscriptions and has therefore reduced the cost of these subscriptions by two (2) persons.

Officials from the **Department of Natural Resources** (DNR) assume this proposal would establish the Environmental Hearing Commission within the Office of Administration to hear appeals of decisions involving environmental permits, penalties, and orders. All authority to hear appeals of decisions currently granted to the Department of Natural Resources, the Air Conservation Commission, the Clean Water Commission, the Safe Drinking Water Commission, the Hazardous Waste Management Commission, the Land Reclamation Commission, the State Soil and Water Districts Commission, and the Petroleum Storage Tank Insurance Fund Board would be transferred to the Environmental Hearing Commission. The Environmental Hearing Commission would be able to stay any action pending its determination, and all its determinations are subject to judicial review.

Under current environmental law, the burden of proof lies with the appellant. This proposal would shift the burden of proof from the appellant to the department in all cases except in matters involving the denial of a permit, license, or registration. In appeals involving denial of permits, licenses, or registrations, the burden of proof is on the applicant. The department is unable to determine the amount of resources that would be necessary to meet this provision of the proposal. The department assumes that because the burden of proof shifts to the department, more appeals will be filed with the EHC. The department is also unable to determine the impact of the increased appeals.

Currently the department hires a hearing officer to hear appeals brought before the commissions. The department pays for the hearing officer and for all costs associated with those hearings. These costs vary depending on the complexity of the appeal. Therefore the department assumes there would be unknown savings from this part of the proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
GENERAL REVENUE FUND			
<u>Cost - Office of Administration</u>			
Personal Service (9 FTE)	(\$369,133)	(\$454,034)	(\$465,385)
Fringe Benefits	(\$125,874)	(\$154,826)	(\$158,696)
Expense and Equipment	(\$84,939)	(\$38,728)	(\$39,889)
Other - Rent	(\$37,030)	(\$37,030)	(\$37,030)
Total Cost - Office of Administration	<u>(\$616,976)</u>	<u>(\$684,618)</u>	<u>(\$701,000)</u>
TOTAL COST TO GENERAL REVENUE FUND	<u>(\$616,976)</u>	<u>(\$684,618)</u>	<u>(\$701,000)</u>
DNR DEDICATED FUNDS			
<u>Savings - Dept. of Natural Resources</u>			
Hearing Officer	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON DNR DEDICATED FUNDS	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
	<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 bill would establish the Environmental Hearing Commission within the Office of Administration to hear appeals of decisions involving environmental permits, penalties, and orders. Commissioners would be appointed by the Governor, approved by the Senate, and serve six-year staggered terms with no term limits. No more than three commissioners could serve concurrently, and at least one must be appointed by March 1, 2003. Commissioners must have knowledge of environmental issues and be attorneys admitted to practice in Missouri, but may not practice law during their terms of office. Commissioners must also recuse themselves from matters involving anyone from whom they received significant income during the two years prior to their appointment. Annual salary is established at \$91,636, with standard future adjustments.

All authority to hear appeals of decisions currently granted to the Department of Natural Resources, the Air Conservation Commission, the Clean Water Commission, the Safe Drinking Water Commission, the Hazardous Waste Management Commission, the Land Reclamation Commission, the State Soil and Water Districts Commission, and the Petroleum Storage Tank Insurance Fund Board would be transferred to the Environmental Hearing Commission. Commissioners must promulgate necessary procedural rules by August 28, 2003.

All decisions subject to appeal must include a notice of the right to appeal the decision to the Environmental Hearing Commission by filing a petition within 30 days of the decision. In appeals involving permits, licenses, or registrations, the burden of proof is on the applicant. In all other appeals, the burden of proof is on the department or the commission that made the original decision. The Environmental Hearing Commission may stay any action pending its determination, and all determinations are subject to judicial review.

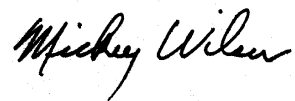
This legislation is not federally mandated, would not duplicate any other program and would require additional capital improvements or rental space.

SOURCES OF INFORMATION

State Courts Administrator
Office of Administration
Office of the Secretary of State
Department of Natural Resources

NOT RESPONDING

Office of the Attorney General
Office of the Governor

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

Mickey Wilson, CPA
Acting Director
January 25, 2002