

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3339-02
Bill No.: SCS for SB 881
Subject: Administration, Office of; Environmental Protection; Administrative Law
Type: Original
Date: February 1, 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) to Unknown	(Unknown) to Unknown	(Unknown) to Unknown
Total Estimated Net Effect on <u>All</u> State Funds*	(\$616,976)	(\$684,618)	(\$701,000)

* Does not include unknown fiscal impact to DNR Dedicated Funds.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
	\$0	\$0	\$0
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

In response to a similar proposal, officials of the **Office of State Courts Administrator** and the **Governor's Office** assume this proposal would have no fiscal impact on their respective offices.

In response to a similar proposal, 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costs could be more or less and costs in future years would depend upon frequency and length of rules filed, amended, rescinded or withdrawn.
[(36x\$27)+(54x\$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.

In response to a similar proposal, officials of the **Commissioner of 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.

In response to a similar proposal, officials from the **Department of Natural Resources (DNR)** assume this proposal would shift the responsibility to hear appeals on all actions granted to the director of the DNR and the different commissions within DNR to the newly created Environmental Hearing Commission. 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.

DNR officials state that 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. The Department is unable to determine the amount of resources that would be necessary to meet this provision of the proposal. The Department is also unable to determine the amount of increased appeals that could be brought before the Environmental Hearing Commission because of the shift in the burden of proof to the Department.

Oversight assumes it is not possible to predict an increase or a decrease in the number of cases heard by the Environmental Hearing Commission as compared to cases currently heard by the Director of the Department of Natural Resources and the different commissions within Department of Natural Resources. Oversight assumes there could be a reduction or an increase in the amount of resources needed by the Department of Natural Resources to process such cases. Oversight has ranged the impact of this proposal to DNR Dedicated Funds from Unknown Cost to Unknown Savings.

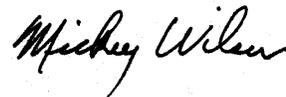
DESCRIPTION

This bill establishes the Environmental Hearing Commission within the Office of Administration to hear appeals of decisions involving environmental permits, penalties, and orders. Commissioners are appointed by the Governor, approved by the Senate, and serve six-year staggered terms with no term limits. No more than three commissioners can serve concurrently, and all must be appointed within six months of the effective date of this proposal. They 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 is 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.



Mickey Wilson, CPA
Acting Director
February 1, 2002

L.R. No. 3339-02
Bill No. SCS for SB 881
Page 6 of 6
February 1, 2002

SS:LR:OD (12/00)