

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4213-10
Bill No.: SCS for HCS for HB 1277
Subject: Boards, Commissions, Committees, Councils; Environmental Protection; Fees;
Mining; Waste - Hazardous; Waste - Solid
Type: Original
Date: May 7, 2004

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
General Revenue	\$618,914	\$519,048	\$510,687
Total Estimated Net Effect on General Revenue Fund	\$618,914	\$519,048	\$510,687

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Hazardous Waste Remedial Fund	\$500,000	\$1,000,000	\$0
Hazardous Waste Fund	\$750,000	\$1,500,000	\$0
Reclamation Fund	(\$11,400)	(\$11,400)	(\$11,400)
DNR Dedicated Funds	(Unknown) to Unknown	(Unknown) to Unknown	(Unknown) to Unknown
Total Estimated Net Effect on Other State Funds	(Unknown) to Unknown exceeding \$1,238,600	(Unknown) to Unknown exceeding \$2,488,600	(Unknown exceeding \$11,400) to Unknown

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 15 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 **Department of Transportation, Department of Economic Development and Attorney General's Office** assume no fiscal impact.

Officials of the **Department of Revenue** assume this proposal establishes a commission to review fees and extends the hazardous waste fee through June 30, 2006. This proposal has no fiscal impact on the Department of Revenue.

Officials from the **Department of Natural Resources (DNR)** assume beginning July 1, 2004, a joint committee appointed by the Speaker of the House of Representatives and the President Pro Tem of the senate shall consider proposals for restructuring fees paid by hazardous waste generators and hazardous waste facilities. The HWP assumes staff time would be required to prepare and submit information that is requested from the joint committee, resulting in a shift of duties for HWP staff. The program is unable to estimate how much time will be necessary to prepare for committee requests.

This proposal would allow Missouri treatment storage and disposal facilities receiving hazardous waste from out of state generators to submit registration and reporting information and pay applicable fees on behalf of the out of state generators. This section of the proposal will not result in any fiscal impact to the department.

ASSUMPTION (continued)

This proposal extends the sunset date of the category fee and land disposal fees to June 30, 2006, except that the department shall levy and collect this fee for any hazardous waste generated prior to this date. Extension of the fees will not result in a fiscal impact.

Current statute provides revenue from the category fee and land disposal fee through January 1, 2005 (first six months of FY05). The proposed legislation would extend the sunset date of the category fee that support the hazardous waste program to June 30, 2006. Extension of the sunset for the category fee will continue the current revenue stream. This does not affect the department's authority regarding these issues. Therefore the department will not be impacted by this part of the proposal.

Current statute provides for 60 % of revenues to be deposited to the Hazardous Waste Remedial Fund and 40% deposited to the Hazardous Waste Fund. This proposal would require that category fees and land disposal fees be deposited 40% to the Hazardous Waste Remedial Fund and 60% to the Hazardous Waste Fund.

This proposal extends the sunset date of the land disposal fee and the category fee. Revenue received as a result of this legislation is projected to be \$500,000 to the Hazardous Waste Remedial Fund and \$750,000 to the Hazardous Waste Fund for the six month period of FY05 beginning January 1, 2005. The continued fee will generate about \$1 million annually into the Hazardous Waste Remedial Fund and \$1.5 million annually to the Hazardous Waste Fund.

Projected revenues for FY 2006 that would be generated are approximately \$2,351,053 in category fees (40% to HWRF and 60% to HWF) and \$142,045 in land disposal fees (40% HWRF and 60% to HWF).

The revenue will be used to support the regulation of hazardous wastes in the state of Missouri. Revenue from the category fee is a critical component of the funding that support the regulation , compliance and enforcement activities of the Hazardous Waste Program and Regional Offices. This funding also supports emergency response activities conducted by the Environmental Services Program.

Section 260.335, Changes allocation of solid waste management fund - HCS/HB 1536

Officials with the **Office of Administration - Division of Budget and Planning, Department of Revenue, Department of Conservation and State Treasurer's Office** assume no fiscal impact to their agencies.

ASSUMPTION (continued)

Officials with the **Department of Natural Resources (DNR)** assume this proposal does not change the current the amount of the revenue stream into the solid waste management fund. It does change the allocation of the solid waste management fund monies which will ensure sufficient funding for existing solid waste permitting, enforcement, inspection, oversight of financial assistance, and administration activities to the department and the Attorney General's office, as well as increased direct financial assistance to the solid waste management districts. No new FTEs will be created as a result of this proposed legislation.

In FY04 the department received \$725,272 General Revenue dollars for solid waste management activities. The proposed reallocation of the Solid Waste Management Fund would result in a savings for that amount to the General Revenue Fund.

There has been an annual increase of approximately 2% in the amount of revenue collected and deposited into the solid waste management fund each year. This increase is due to a typical increase in the generation of solid waste each year and the increase in the general price level as measured by the Consumer Price Index for All Urban Consumers for the United States - the basis on which the tonnage fee is calculated each year.

For purposes of this proposal, DNR assumes annual disposal of 5,502,500 tons at a disposal rate of \$2.04 per ton. The revenue deposited into the Solid Waste Management Fund would be \$11,000,598. Under the restructuring of the distribution of the fund, \$800,000 dollars will be allocated for the Market Development Program (under the Environmental Improvement & Energy Resources Authority) leaving \$10,200,598 to be distributed between the department and the solid waste management districts. \$4,284,251 (42%) will be allocated to the department and the remaining \$5,916,347 (58%) will be allocated to the districts. There will be no funds for project grants during FY 2005; however, as fund revenues increase in future years, money could be available for solid waste project grants.

DNR's current appropriations for the solid waste activities of permitting, inspections, enforcement, grants management, and administration and related fund transfers is \$4.4 million; under this bill that amount would be reduced to \$4.28 million. Under current law the district's allocation for this amount money would total \$5.5 million (50% distribution formula plus \$400,000 district operations matching grants); under this proposal that amount would increase to 58% (\$5.92 million). The department's reduction in funding will result in a loss of 2 FTE. The dollar amount of this reduction in FTE totals \$140,405 (\$70,000 - PS, \$22,260 - FB, \$48,145 - related on-going expenses)

ASSUMPTION (continued)

**RSMo 260.335 - current distribution
(based on revenues of \$11,000,598)**

Market Development (EI ERA) 10% \$1,000,000

Solid waste activities of enforcement,
inspections, grants management &
oversight, resource planning, and
administration 25% \$2,500,150

Grants to solid waste management
districts 50% \$5,000,299

Waste reduction & recycling
grants and district operations
grants 25% \$2,500,149

**RSMo 260.335 – HB 1536 distribution
(based on revenues of \$11,000,598)**

Market Development (EI ERA) 10% \$800,000

Department solid waste activities
of permitting, enforcement,
inspections, district grants mgmt.
& oversight, resource planning &
administration 42% \$4,284,251

Grants to solid waste management
districts (includes district
operations grants) 58% \$5,916,347

ASSUMPTION (continued)

Allocation of Revenues into the Solid Waste Management Fund		\$11,000,598
	FTE	Allocations
Market Development Program		\$ 800,000
Solid Waste Management Program	40.52	\$ 2,269,912
DNR Regional Offices	12.08	\$ 891,874
Environmental Services Program	.96	\$ 83,409
Geological Survey & Resource Assessment Division	3.00	\$ 164,745
Environmental Investigator	.40	\$ 29,659
Hazardous Waste Program	1.04	\$ 17,656
Attorney General's Office		\$ 47,749
Fund Transfers & HB 13/HB 5 Leases / Contract Audits		\$ 767,247
Contract Audits		\$ 12,000
Department Totals	58.00	\$ 4,284,251
Solid Waste Management Districts		\$ 5,916,347
Total Fund Expenditures		\$11,000,598

Sections 444.762, 444.765, 444.767, 444.770 & 444.787 - Gravel Removal & Power to Regulate Mining - HCS/HB 1567 & 1602

HB 1567

Officials with the **Department of Natural Resources** assume under this proposal, mining less than 2,000 tons will be exempt from permitting. The Land Reclamation Program has 94 permits under 5,000 tons with a permit fee of \$300 each. It is unknown how many of these permits mine less than 2,000 tons per year. The department assumes 40% of the permits are issued to facilities mining less than 2000 tons and therefore expect a loss of \$11,400 in revenue. The department will no longer issue these permits; however, the complaint follow-ups, technical assistance, and possibly enforcement, are still required.

HB 1602

Officials with the **Attorney General's Office** assume that any potential costs arising from this proposal can be absorbed with existing resources.

ASSUMPTION (continued)

Officials with the **Department of Natural Resources** assume this provision of the proposal prevents the department from requiring permits at construction sites. DNR currently does not require permits at construction sites; therefore, no direct fiscal impact would be anticipated.

Officials with the **Office of Administration - Division of Design and Construction, Department of Transportation** and **Department of Conservation** assume no fiscal impact to their agencies.

Sections 621.015, 621, 250 & 640.013 (SB 949) - Transfers hearings on environmental issues to the Administrative Hearing Commission

Officials of the **Office of State Courts Administrator, Department of Transportation, and 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 proposal transfers authority to hear appeals on Department of Natural Resources, Hazardous Waste Management Commission, Soil and Water Districts Commission, Land Reclamation Commission, Safe Drinking Water Commission, Air Conservation Commission and the Clean Water Commission appeals of findings, orders, decisions or assessments on permits, licenses, registrations administrative penalties, civil penalties, abatement orders, emergency orders and any other appeal actions granted to the Commission. All these agencies may promulgate rules to enact this legislation. These rules could require as many as approximately 96 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. [(96x\$27)+(144x\$23)=\$5,904]

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 Administrative Hearing Commission (AHC)** assume this proposal adds a fourth commissioner to the Administrative Hearing Commission. The commissioner's salary is currently \$91,637, with fringe benefit costs of \$47,834. The

ASSUMPTION (continued)

Administrative Hearing Commission has also added an increase in E&E for the cost of supplies, increased postage in providing legal notice to many parties, and out of town hearings. There may be cost savings associated with moving the hearing function from its present location. Section 640.805.5 states that the AHC will promulgate rules regarding these hearings. The AHC currently has rules that apply to their cases and would add any new ones as necessary.

Officials from the **Department of Natural Resources** (DNR) assume this proposal would transfer all authority to hear appeals granted in Chapters 260, 244, 640, 643, and 644 RSMo to the Administrative Hearing Commission. The authority to render final decisions after hearing on appeals heard by the administrative hearing commission shall remain with the commissions.

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.

The proposal requires the cost of the environmental appeals to be paid from the respective funds of affected commissions. If the costs for hearing the appeals before the Administrative Hearing Commission are consistent with the costs currently incurred by the commissions; the department assumes there would not be fiscal impact from this portion of the proposal. However, if appeal hearings brought before the Administrative Hearing Commission result in increased costs additional resources would have to be requested.

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 assumes that because the burden of proof shifts to the department, more appeals could be filed with the AHC. The department is also unable to determine the impact of the increased appeals.

<u>FISCAL IMPACT - State Government</u>	FY 2005	FY 2006	FY 2007
GENERAL REVENUE			
<u>Savings</u> - Program costs previously allocated to Solid Waste Management Fund	<u>\$725,272</u>	<u>\$725,272</u>	<u>\$725,272</u>
<u>Cost</u> - Office of Administration			
Personal Service (1 FTE)	(\$58,318)	(\$119,552)	(\$122,541)
Fringe Benefits	(\$30,917)	(\$63,380)	(\$64,964)
Expense and Equipment	(\$17,123)	(\$26,292)	(\$27,080)
Total Cost - Office of Administration	<u>(\$106,358)</u>	<u>(\$206,224)</u>	<u>(\$214,585)</u>
ESTIMATED NET EFFECT GENERAL REVENUE	<u>\$618,914</u>	<u>\$519,048</u>	<u>\$510,687</u>
HAZARDOUS WASTE REMEDIAL FUND			
<u>Income</u> - DNR			
Hazardous Waste Remedial Fund	\$500,000	\$1,000,000	\$0
Hazardous Waste Fund	<u>\$750,000</u>	<u>\$1,500,000</u>	<u>\$0</u>
NET ESTIMATED EFFECT ON HAZARDOUS WASTE REMEDIAL FUND	<u>\$1,250,000</u>	<u>\$2,500,000</u>	<u>\$0</u>
RECLAMATION FUND			
<u>Cost</u> - Loss of Small Operator Permits	<u>(\$11,400)</u>	<u>(\$11,400)</u>	<u>(\$11,400)</u>
NET ESTIMATED EFFECT ON RECLAMATION FUND	<u>(\$11,400)</u>	<u>(\$11,400)</u>	<u>(\$11,400)</u>

DNR DEDICATED FUNDS	FY 2005	FY 2006	FY 2007
----------------------------	----------------	----------------	----------------

<u>Savings</u> - Dept. of Natural Resources Hearing Officer	Unknown	Unknown	Unknown
--	---------	---------	---------

<u>Cost</u> - Dept. of Natural Resources Shift in burden of proof to DNR	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
---	------------------	------------------	------------------

ESTIMATED NET EFFECT ON DNR DEDICATED FUNDS	<u>(Unknown) - Unknown</u>	<u>(Unknown) - Unknown</u>	<u>(Unknown)- Unknown</u>
--	---------------------------------------	---------------------------------------	--------------------------------------

<u>FISCAL IMPACT - Local Government</u>	FY 2005	FY 2006	FY 2007
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Registered hazardous waste generators subject to the land disposal fee tax would be impacted. There would be no change to the current system, except that the obligation to pay these fees would be extended beyond January 1, 2005. Under current law, there is no obligations for these people to pay fees after that date.

This proposal would allow Missouri treatment storage and disposal facilities receiving hazardous waste from out of state generators to submit registration and reporting information and pay registration fees on behalf of the out of state generators. Since it is unknown how many treatment, storage, and disposal facilities will choose to register and pay applicable fees on behalf of out of state generators, economic impact cannot be adequately determined.

Section 260.335, Changes allocation of solid waste management fund - HCS/HB 1536

Maintaining the state's EPA Subtitle D authorization will prevent some landfills from shutting down in some areas of the state (largely the southeastern portion and particularly in the St. Louis urban area) as these landfills reach capacity and the department can authorize expansion or replacement. Adequate in-state capacity helps to keep the cost of solid waste management affordable for Missouri Citizens and businesses.

FISCAL IMPACT - Small Business (continued)

Enforcement of the state's solid waste law and rules provides a level playing field for those who properly dispose of and handle solid waste by removing any economic benefit from those who dispose of or handle solid waste illegally. Increased emphasis on waste reduction and reuse saves many businesses money in disposal costs and, ultimately, creates jobs in other areas of the industry.

Continued emphasis (at both the state and local level) on preventing and prosecuting those who illegally dump or handle their waste will increase business for waste haulers, transfer stations and landfills, as those previous violators turn to proper disposal methods for their solid waste. Removing and keeping trash out of Missouri's roadsides, ditches, lakes, and waterways will benefit property values and tourism.

.
Sections 444.762, 444.765, 444.767, 444.770 & 444.787 - Gravel Removal and Power to Regulate Mining - HCS/HB 1567 & 1602

Yes. Sand and gravel operators under 2,000 tons will not be required to purchase a permit.

DESCRIPTION

Beginning July 1, 2004, this portion of the proposal requires a joint committee appointed by the Speaker of the House of Representatives and the President Pro Tem of the Senate to consider proposals for restructuring the fees paid by hazardous waste generators and hazardous waste facilities. The committee will consider options for expanding the fee structure to more fairly apportion the cost of services provided among those that benefit from the services. The committee will submit a report with its recommendations for changes to the Governor, the House of Representatives, and the Senate no later than December 31, 2004.

The proposal also allows Missouri treatment, storage, and disposal facilities that receive hazardous material from out-of-state generators to submit registration and reporting information in a format prescribed by the Department of Natural Resources describing the types and quantities of hazardous waste received from the out-of-state generator. As long as the facility submits this information to the department, the out-of-state generator will not be required to do so. The facility is also responsible for paying all fees and taxes on behalf of the out-of-state generator.

The proposal revises the percent amounts on the two funds regarding moneys collected or received by the department. Forty percent will go to the Hazardous Waste Remedial Fund, and 60% will go to the Hazardous Waste Fund. This fee will expire June 30, 2006, except that the

DESCRIPTION (continued)

department will levy and collect this fee for any hazardous waste generated prior to the date and reported to the department.

This portion of the proposal contains an emergency clause.

Section 260.335, Changes allocation of solid waste management fund - HCS/HB 1536

This portion of the proposal revises provisions relating to allocation of revenues deposited into the Solid Waste Management Fund each fiscal year. Up to 43% of the revenues will be dedicated to the elimination of illegal solid waste disposal, to identify and prosecute persons disposing of solid waste illegally, to conduct solid waste permitting activities, and to administer grants and perform other duties imposed in Sections 260.200 - 260.345, RSMo, and Section 260.432. At least 57% of the revenues will be allocated through grants to participating cities, counties, and districts.

Sixty percent of the revenue generated within each region will be allocated to the cities and counties of the district or to persons or entities providing solid waste management, waste reduction, or recycling services in these cities and counties. Each district will receive a minimum of \$75,000.

Up to \$400,000 of the moneys allocated will be made available for solid waste management districts to apply to the department for a three-to-one matching grant of up to \$20,000 per district per year to be used for the purpose of solid waste district operations.

Any remaining moneys in the fund will be used to provide grants for statewide solid waste management planning or research projects including contracted services.

If moneys owed are not transmitted in the time frame established by the rule promulgated, interest will be imposed at the rate of 10% per annum from the prescribed due date until payment is actually made. These interest amounts will be deposited to the credit of the fund.

Sections 444.762, 444.765, 444.767, 444.770 & 444.787 - Gravel Removal and Power to Regulate Mining - HCS/HB 1567 & 1602

HB 1567

This portion of the substitute defines "noncommercial operator" as it relates to the removal of seasonal gravel accretion on privately owned land not primarily used for surface mining.

DESCRIPTION (continued)

Noncommercial operators or operators performing work at the request of a property owner can remove seasonal gravel if the mining is conducted in accordance with guidelines established by the Department of Natural Resources. An operator or owner can sell or barter the extracted materials.

HB 1602

This portion of the proposal changes the laws regarding the Land Reclamation Act.

The proposal:

- (1) Clarifies that the act does not regulate the excavation of minerals or fill dirt from construction sites;
- (2) Defines the terms "commercial purpose," "construction," "excavation," "fill dirt," "land improvement," "mining," "public entity," "quarry," and "surface mining";
- (3) Specifies that the Land Reclamation Commission in the Department of Natural Resources has no authority to regulate the excavation of minerals or fill dirt for construction;
- (4) Utilizes the powers authorized by the bill to promote the reclamation of land subjected to disturbance by surface mining and to promote and protect the health, safety, and general welfare of the people of this state in relation to surface mining;
- (5) Specifies that no one will be required to obtain a permit for the purpose of moving minerals or fill dirt within the confines of real property where excavation occurs or to remove minerals or fill dirt from the real property as incidental to the primary purpose of construction;
- (6) Authorizes the commission to determine whether an activity on real property constitutes surface mining that requires a permit. If a permit is required, the owner of the property will be notified by a letter stating the reasons for the determination. If the staff director of the commission and the owner disagree with the findings, the owner can request a hearing before the commission at its next regular meeting; and a written determination will be issued within 30 calendar days. The determination can be appealed with the burden of proof on the director and the commission; and

DESCRIPTION (continued)

(7) Allows additional penalties to be levied at the discretion of the court for up to double the cumulative total of penalties authorized for a violation of operation without a permit which constitutes fraud and the court imposes civil penalties for the violation.

Sections 621.015, 621, 250 & 640.013 (SB 949) - Transfers hearings on environmental issues to the Administrative Hearing Commission

Under this act, appeals of environmental issues would be conducted by the Administrative Hearing Commission (AHC). The Commission is expanded from three to four members.

Under this act, a petition for hearing before the AHC must be filed within 30 days. All findings, orders, decisions and assessments must have language notifying the parties of their rights to appeal for a hearing before the AHC. Matters heard by the AHC will be governed by the provisions of Chapter 536, RSMo. These matters shall take precedence over all other matters heard by the AHC. Decisions shall be rendered within 60 days of the completion of the hearing. Transcripts of hearings must be retained by the AHC and the decisions made must be made available to the public.

Under this act, all decisions of the AHC shall be subject to judicial review and that right shall be available to Department of Natural Resources and any other commission aggrieved by the AHC's final decision.

In all matters heard by the AHC pursuant to this act, the burden of proof shall be on the applicant on the appeal of a denial of a request for a permit, license or registration and the burden of proof shall be on the challenger or petitioner on the appeal of a granting of a request.

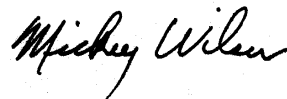
The effective date of this section is January 1, 2005.

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

L.R. No. 4213-10
Bill No. SCS for HCS for HB 1277
Page 15 of 15
May 7, 2004

SOURCES OF INFORMATION

Department of Natural Resources
Department of Revenue
Department of Transportation
Office of Administration -
 Division of Budget and Planning
State Treasurer's Office
Secretary of State's Office

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

Mickey Wilson, CPA
Director
May 7, 2004