

HCS HB 1854 -- NATURAL RESOURCES

SPONSOR: Bivins

COMMITTEE ACTION: Voted "do pass" by the Special Committee on Energy and Environment by a vote of 9 to 2.

This substitute changes the laws regarding natural resources.

DAM AND RESERVOIR SAFETY

The substitute:

(1) Revises the membership of the Dam and Reservoir Safety Council by requiring a registered geologist with experience on dam safety to serve in place of an engineering geologist and requiring that one member be an owner of a regulated high hazard dam;

(2) Revises the definition of "dam" to include structures that are 25 feet or more in height with a storage volume of at least 50 acre-feet of water;

(3) Defines "high hazard" as dams where the loss of human life is probable or expected if the dam were to fail. High hazard dams will be regulated with construction and operating permits;

(4) Requires the owner of a dam to register with the Department of Natural Resources by providing specified information on the ownership interests and nature of the dam. This registration process will supersede the registration and safety permit process in effect prior to August 28, 2008. Owners of dams must register within six months after August 28, 2008, unless their safety or registration permit issued prior to that date is still in effect;

(5) Requires the owner of a high hazard dam to obtain an operating permit from the department. Owners of high hazard dams must apply for an operating permit within one year after August 28, 2008, or at another time specified by the council. Owners of dams regulated under the Federal Power Act must apply for an operating permit no later than three months after August 28, 2008. If the classification status of a dam changes, it will be immediately subject to the requirements of the new classification. Ownership transfers must be reported to the Chief Engineer of the Dam and Reservoir Safety Program within the department in order to remove the obligations under Chapter 236, RSMo. The council is authorized to establish rules concerning the operation and inspection of high hazard dams;

(6) Requires high hazard dams to be inspected in order to

receive an operating permit. Inspection fees will be \$450 per year for high hazard dams. Agricultural dams, certain dams used for fireclay quarry reclamation, and any dam providing 30 or less megawatts of power that emits water fully contained on federal property with no permanent structures are exempt from the inspection fees. The council is authorized to establish inspection and construction fees for dams licensed under the Federal Power Act;

(7) Requires dams regulated under the Federal Power Act to be inspected yearly and requires 24-hour monitoring of Taum Sauk Dam. Other high hazard dams must be inspected at least once every three years;

(8) Assesses a permit application review fee of \$3,000 or 1% of the cost of a new high hazard dam constructed after August 28, 2008, and specifies the deadlines for all inspection and application fees;

(9) Requires a geologic report to accompany an application for a construction permit for a high hazard dam;

(10) Creates the Dam and Reservoir Fee Subaccount in the Natural Resources Protection Fund for the administration and enforcement of Chapter 236 for the deposit of moneys from inspection and construction permits and other sources; and

(11) Imposes a penalty of between \$500 and \$10,000, confinement in the county jail for at least 30 days to not more than one year, or both for violating the operating permit provisions of the substitute.

MANUFACTURER RESPONSIBILITY AND CONSUMER CONVENIENCE EQUIPMENT COLLECTION AND RECOVERY ACT

The substitute establishes the Manufacturer Responsibility and Consumer Convenience Equipment Collection and Recovery Act which requires manufacturers to develop recovery plans for certain equipment such as televisions and computers. The substitute does not apply to motor vehicles, telephones, or property that are recovered based on contractual provisions. The department must approve the recovery plans before televisions and computers may be sold in Missouri. The Attorney General may enforce the provisions of the substitute by injunction. If federal law establishes a national program for the collection and recycling of computer equipment, the department may adopt an agency statement that interprets the federal law as preemptive over the state statutes.

SURFACE MINING AND GRAVEL EXCAVATION

The Land Reclamation Commission is required to establish an administrative process to identify which land areas are unsuitable for all or certain types of surface mines. Any person may petition the commission to have a decision reviewed. Criteria for allowing surface mining and criteria involving the types of land useable for surface mining are specified in the substitute.

Any surface mine operator must send, by certified mail, a notice of intent to operate a surface mine to individuals who own property across a river or stream or on the other side of a right-of-way from the proposed mine plan area. These provisions do not apply to any land where a surface mining operation was in existence or applied for before August 28, 2008.

All new surface mining permit applications must contain an environmental impact assessment, and any explosives used by surface mining operations must be handled in accordance with existing state and federal laws and regulations established by the commission. Requirements for the notice of blasting, recording of information, types of explosives, and fire certification for those conducting blasting are specified.

The substitute allows a property owner, an operator conducting gravel removal at the request of a property owner, or a political subdivision who contracts with an operator for excavation to remove and sell excess gravel without a permit if the primary purpose for removal is to manage seasonal gravel accretion on property not used primarily for gravel mining. Gravel removal cannot be conducted from March 15 through June 1 and must be performed solely on the property owner's or political subdivision's property and not within a distance to be determined by the commission of any building, structure, highway, road, bridge, viaduct, water or sewer line, and pipeline or utility line. Property owners and operators must follow the departmental guidelines regarding surface mining and gravel removal.

Property owners are limited to selling less than 5,000 tons of gravel annually with a 1,500 ton per-site limitation and are required to notify the department before any person or operator conducts gravel removal from his or her property if it is intended to be sold commercially. Notification will include the nature of the activity, the county and stream name in which the site is located, and the property owner's name. Any future commercial gravel mining activities at the site will not require the property owner to renotify the department. Any operator conducting gravel removal at the request of the property owner who removes more than 5,000 tons of sand and gravel material within a calendar year must have a watershed management practice plan approved by the commission. The application must be accompanied by a \$300 fee and must contain the name of the

watershed from which the operator will be conducting the removal, the location where the sand and gravel will be removed, and the description of the vehicles and equipment that will be used for the removal.

Any person filing a complaint with the department for an alleged violation must identify himself or herself by name and telephone number; specify the date and location of the violation; and provide adequate information as determined by the department of the violation. Any records, statements, or communications submitted by any person to the department will be confidential and used solely by the department to investigate the alleged violation.

ENVIRONMENTAL PERMITS

The substitute allows the department to implement a unified permit schedule process for applicants who need multiple permits for a similar activity or project. The department may waive otherwise applicable procedural requirements for permits and establish a schedule for issuing permits to an applicant. Considerations for determining the timing of the unified permit schedule are specified in the substitute. Public comment periods and substantive legal requirements cannot be waived by the department to facilitate the new scheduling process.

ENVIRONMENTAL AUDITS

Companies are allowed to conduct voluntary environmental audits in order to discover and correct noncompliance with environmental regulations. If a company complies with the voluntary audit requirements, it will be exempt from certain types of criminal and administrative penalties and may keep its voluntary audit reports confidential. Companies will not be exempt from any tort actions by private parties. In order to comply with the voluntary audit requirements, a company must:

- (1) Discover noncompliance during a voluntary environmental audit or through a compliance management system;
- (2) Disclose its noncompliance to the department within 21 days;
- (3) Make the disclosure prior to any legal actions or regulatory investigations concerning the audit;
- (4) Correct any noncompliance within 60 days or as determined by the department;
- (5) Agree to take steps to prevent future noncompliance with environmental regulations;

(6) Document that the reported noncompliance was not part of a pattern and that a similar noncompliance did not occur in the previous three years or within the past five years at another facility owned by the company;

(7) Prove that the noncompliance did not cause actual harm or violate an administrative order or agreement; and

(8) Provide certain specified information to the department.

The department cannot disclose any audit report information relating to scientific and technological innovations in which the owner has a proprietary interest that is protected from disclosure by law.

AIR AND WATER QUALITY PERMITS

Recycling companies that convert animal parts into petroleum are prohibited from retaining their air or water quality permits issued by the department if they violate at least six times in a 12-month period or 12 times in a 36-month period Section 643.151 or Section 644.076 or any odor rule enacted by the department. If a company violates state air, water, odor, or pollution requirements more than once during a 36-month period, it will be subject to a penalty of not less than \$10,000 nor more than \$30,000 for each violation per day.

TRASH AND WASTE COLLECTION

St. Louis County is prohibited from enacting any ordinance governing trash and waste collection in unincorporated areas of the county without submitting the proposal to voters.

The substitute contains an emergency clause for the provisions regarding trash and waste collection in St. Louis County.

FISCAL NOTE: Estimated Cost on General Revenue Fund of \$135,263 in FY 2009, \$143,936 in FY 2010, and \$151,344 in FY 2011. No impact on Other State Funds in FY 2009, FY 2010, and FY 2011.

PROPOSERS: Supporters say that the bill creates an incentive for industries to conduct environmental audits and solve problems voluntarily. The bill codifies existing practices and policies of the Department of Natural Resources and does not grant immunity for actual damages caused by the violation of environmental laws or regulations.

Testifying for the bill were Representative Bivins; Associated Industries of Missouri; Missouri Chamber of Commerce and Industry; and American Council of Engineering Companies of

Missouri.

OPPONENTS: Those who oppose the bill say that it is unnecessary, and the federal Environmental Protection Agency prefers audit policies to be administered by state agencies and not codified in state statute.

Testifying against the bill were Office of the Attorney General, Missouri Sierra Club, and Missouri Conservation and Environmental Alliance.