

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1639-01
Bill No.: HB 1158
Subject: Department of Natural Resources
Type: Original
Date: March 22, 2019

Bill Summary: This proposal requires the Department of Natural Resources to assist permit applicants throughout the permitting process.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Various State DNR Funds	(Unknown - Greater than \$100,000)	(Unknown - Greater than \$100,000)	(Unknown - Greater than \$100,000)
Total Estimated Net Effect on <u>Other</u> State Funds	(Unknown - Greater than \$100,000)	(Unknown - Greater than \$100,000)	(Unknown - Greater than \$100,000)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on FTE	0	0	0

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Natural Resources (DNR)** state the following regarding this proposal:

§640.019.1

Due to the number of permits issued and the many different types of permits, a single Department staff person would not be able to maintain the variety of skill sets, training disciplines, and knowledge necessary to competently provide assistance in completing all types of permit applications issued by the Department.

Further, Section 640.018, RSMo, subsection 2. requires the following: "...The review of documents, plans, specifications, and designs sealed by a registered professional engineer for an applicant shall be conducted by a registered professional engineer or an engineering intern on behalf of the department." So, at a minimum the Department staff who would carry out these proposed roles would need to have a Professional Engineering license and be licensed to practice in Missouri. As an example of the complexity of the permit universe, construction permit applications include plans and specifications as part of the application. The application itself does not require a professional engineer for completion; however, the plans and specifications require a professional engineer by law for completion.

§640.019.2

Defining "applicant" may be necessary to avoid confusion on whether an individual company is the applicant or a parent company who may operate in many different locations. The language ". . .or any other reason, . . ." is ambiguous as it does not clarify what these reasons could be. This would potentially allow permit applicants to seek and pay for assistance outside the Department, as those applicants may determine the cost to use a consultant is lower than the annual cost for a permit fee from the Department. This could result in the Department receiving no fees from that permit.

In general, the associated consulting fees for development of designs, operating plans and other associated documents to support a permit application far exceed the application fees and cost recovery associated with the Department's review. Application fees and cost recovery ensure that appropriately skilled and trained staff are available to conduct timely reviews of permit applications and provide general compliance assistance.

ASSUMPTION (continued)

If the traditional roles of consulting engineers and contractors (those who routinely assist in completing applications and advising applicants) are shifted to the Department, the fees paid to support those activities would need to be significantly increased to support the additional required services. This would impact small businesses (consulting engineers and contractors) who would lose business as the Department takes over their traditional role. Further, it appears this proposal would shift the Department's role from the core function of ensuring protection of human health and the environment to that of a consulting service.

Technical assistance that the Department could provide should not and legally and ethically cannot rise to the level of the Department acting as an agent for an applicant. Without better definition of technical assistance or applicant, an unsophisticated applicant may expect (or demand) that the Department complete or perform work on the applicant's behalf as part of assisting the completion of an application form. That expectation rises to a conflict of interest and is otherwise prohibited by executive order and law, but is not acknowledged as a valid exception to "failing to provide the assistance required."

Finally, the language is vague as to important operational characteristics; to wit: who determines the assistance provided "fail[s] to provide the assistance required," what level of assistance is required and/or sufficient, the scope of time wherein assistance could be provided; whether once assistance is being provided and an applicant declines to follow assistance or recommendations, whether the applicant can then argue that the Department failed, etc.

If permits fees are not collected, there would not be sufficient funding to retain current staffing levels for permit application assistance and issuance, compliance assistance, enforcement, investigations, inspections, monitoring, and assessment and data management.

Upon further inquiry, DNR noted the legislation does not define "permit" nor "applicant" so based on broad assumptions, below are the funds potentially impacted. In addition, the Department is unable to determine how many applicants may assert provisions of the bill as it is currently written and withhold permit fees designated to go into these funds.

Funds Potentially Impacted

- 0140 Federal Fund (would be unable to provide state match due to loss of fee funds)
- 0568 Water Pollution Permit Fee (includes administrative fees for Drinking Water and Clean Water, Stormwater fees, and Rural Water and Sewer fees)
- 0569 Scrap Tire
- 0570 Solid Waste Management
- 0584 Asbestos Fee

ASSUMPTION (continued)

- 0586 Underground Storage Tanks Registration
- 0594 Air Pollution Permit Fee
- 0656 Environmental Radiation Monitoring fund (licenses issued)
- 0676 Hazardous Waste Fees
- 0679 Safe Drinking Water (only applies if Operator Certification is considered in the permitting process)

Based on information provided by DNR, **Oversight** notes the following FY 2018 revenues from permits towards these funds:

Fund Number	Fund Name	Permit Revenues
0568	Water Pollution Permit Fee	\$5,630,167.11
0570	Solid Waste Management	\$38,000.00
0575	Metallic Minerals Waste Management	\$75,000.00
0586	Underground Storage Tank Registration	\$48,480.00
0594	Air Pollution Permit Fee	\$578,176.45
0656	Environmental Radiation Monitoring Fund	\$139,850.00
0660	Groundwater Protection	\$746,412.15
0676	Hazardous Waste Fund	\$675,581.27
0906	Mined Land Reclamation	\$682,261.55
	Total	\$8,613,928.53

Oversight notes, for example, if 1.5% of permit fees were lost due to this proposal, the loss is estimated at \$129,209 ($\$8,613,928.53 \times .015$).

Oversight does not have information to the contrary in regards to DNR's assumptions. Oversight assumes there will be an "Unknown" negative impact to DNR to various funds due to the potential loss of permit fees as a result of this proposal that could exceed \$100,000.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
VARIOUS STATE DNR FUNDS			
<u>Cost</u> - DNR - additional costs to assist permit applicants	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Loss</u> - DNR - reduced permit fees	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON VARIOUS STATE DNR FUNDS	(Unknown - Greater than <u>\$100,000</u>)	(Unknown - Greater than <u>\$100,000</u>)	(Unknown - Greater than <u>\$100,000</u>)
<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Small businesses applying to DNR for a permit could be impacted by this proposal.

FISCAL DESCRIPTION

This bill requires the Department of Natural Resources to provide assistance to permit applicants throughout the permitting process by designating one person who is trained in the process to assist applicants. If the department fails to provide the required assistance, the department must reduce the fees associated with each permit it issues to the applicant by an amount equal to the costs the applicant incurred to seek assistance from outside sources.

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

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SOURCES OF INFORMATION

Department of Natural Resources



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