

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1639-02  
Bill No.: Perfected HCS for HB 1158  
Subject: Department of Natural Resources  
Type: Original  
Date: May 6, 2019

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

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
General Revenue	(\$76,454)	(\$83,323)	(\$84,068)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(\$76,454)</b>	<b>(\$83,323)</b>	<b>(\$84,068)</b>

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

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 8 pages.

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

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	1 FTE	1 FTE	1 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>1 FTE</b>	<b>1 FTE</b>	<b>1 FTE</b>

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

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

## FISCAL ANALYSIS

### ASSUMPTION

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

#### §640.019.1

As part of the Department's current general compliance assistance, permit engineering staff routinely provide guidance related to inquiries on permit needs and applicability as well as provide comment letters related to missing or incomplete information on permit applications a part of the permit review.

#### §640.019.2

This section requires the Department designate one or more staff to assist small businesses seeking permits. As the Department does not have the ability to determine if applicants fit the definition of a small business as outlined in 640.019.5 of this legislation, it is unknown if the Department would have the staff and resources to meet the requirements of this subsection. If additional resource were necessary, costs, for example, for an Environmental Specialist III position are estimated below:

1 FTE; Environmental Specialist III

PS = \$51,816 annual salary  
Fringe = \$32,416 (FY19 62.56%)  
E&E = \$10,002 (one-time \$7,630 + on-going \$2,372)  
Indirect = \$26,018 (FY19 27.61%)  
Total = \$120,252

**Oversight** does not have information to the contrary, so will reflect the additional FTE as assumed by DNR.

**DNR** notes providing general assistance to questions and assisting in completing an application are two different types of assistance. Assisting in completing applications takes on another role putting Department staff in a position where they may be required to attest to the accuracy and completeness of the application (the role consultants currently have). Having two different groups of staff (permitting/engineering staff and permit assistance staff) involved in the permitting process, could create a situation where some Department staff may attest to the information in an application while others are reviewing the application and potentially finding areas of concern.

ASSUMPTION (continued)

This would create an apparent internal conflict challenging the ability to carry out the core functions that the Department was created to undertake (protection of human health and the environment). An engineering certification is required when submitting an application for many of the different permit types including Solid Waste and Hazardous Waste disposal and processing facilities.

§640.019.3

This section requires examples of completed and approved permit applications be posted on the Department's website. All Department-issued permits are public documents and are available on the Department's website but each are unique and site specific.

§640.019.4

The term "assistance" is not defined. 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.

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 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.

ASSUMPTION (continued)

"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."

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.

As the type and size of a business is not relative to specific permit types (applications), 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 various funds.

§640.019.5

Further 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. For example, to limit liability, many landfills are permitted under an LLC showing limited assets and staff (less than 25) but are supported through resources and decision making by parent companies employing thousands of staff and billions of dollars in resources.

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
- 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)

ASSUMPTION (continued)

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
<b>GENERAL REVENUE FUND</b>			
<u>Cost - DNR p. 3</u>			
Personal Services	(\$43,180)	(\$52,334)	(\$52,858)
Fringe Benefit	(\$23,667)	(\$28,558)	(\$28,718)
Expense and Equipment	<u>(\$9,607)</u>	<u>(\$2,431)</u>	<u>(\$2,492)</u>
<u>Total Costs - DNR</u>	<u>(\$76,454)</u>	<u>(\$83,323)</u>	<u>(\$84,068)</u>
FTE Change - DNR	1 FTE	1 FTE	1 FTE
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>(\$76,454)</u></b>	<b><u>(\$83,323)</u></b>	<b><u>(\$84,068)</u></b>
Estimated Net FTE Change to the General Revenue Fund	1 FTE	1 FTE	1 FTE
<b>VARIOUS STATE DNR FUNDS</b>			
<u>Cost - DNR - additional costs to assist permit applicants p. 6</u>	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Loss - DNR - reduced permit fees p. 6</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON VARIOUS STATE DNR FUNDS</b>	<b>(Unknown - Could exceed <u>\$100,000</u>)</b>	<b>(Unknown - Could exceed <u>\$100,000</u>)</b>	<b>(Unknown - Could exceed <u>\$100,000</u>)</b>
<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

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 small business 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.

### SOURCES OF INFORMATION

Department of Natural Resources



Kyle Rieman  
Director  
May 6, 2019

Ross Strobe  
Assistant Director  
May 6, 2019