

HCS HB 1871 -- ENVIRONMENTAL PROTECTION

SPONSOR: Bivins (Schoeller)

COMMITTEE ACTION: Voted "do pass" by the Committee on Energy and Environment by a vote of 9 to 0.

This substitute changes the laws regarding environmentally sustainable construction for state-funded buildings, the Underground Storage Tank Operator Training Program, record requests to the Department of Natural Resources, water well regulations, and environmental audits and establishes the Property Assessment Clean Energy Act and the Missouri Soil Enrichment Initiative.

ENVIRONMENTALLY SUSTAINABLE CONSTRUCTION FOR STATE-FUNDED BUILDINGS

The substitute:

(1) Requires all major state-funded facility projects to be designed, constructed, and at least certified as receiving two globes using the Green Globes Rating System or the Silver standard as established by the Leadership in Energy and Environmental Design (LEED);

(2) Defines "major facility project" as a state-funded new construction project with more than 5,000 square footage, a renovation project involving more than 50% of the square footage or occupancy displacement, or a commercial interior fit-out project with more than 7,000 square feet of leasable area;

(3) Exempts a correctional facility constructed for the departments of Corrections or Mental Health and certain buildings that do not have air conditioning from the provisions of the substitute;

(4) Allows the Office of Administration to petition the General Assembly to require all major facility projects to be certified to a high-performance building rating system standard in addition to or in lieu of the systems in these provisions;

(5) Requires all facilities which were certified at the LEED Silver or two globes standard or higher to be inspected by a third-party commissioning agent, at a minimum, in the fifth, tenth, and fifteenth year following certification and the agent to report its findings to the Office of Administration and the department occupying the facility;

(6) Requires the Office of Administration to develop and

implement a process to monitor and evaluate the energy and environmental benefits of each project; and

(7) Requires the Office of Administration to submit a report regarding major facility projects to the House of Representatives and the Senate committees on Energy and Environment.

#### PROPERTY ASSESSMENT CLEAN ENERGY ACT

The Property Assessment Clean Energy Act is established which:

(1) Authorizes one or more municipalities to form a clean energy development board to establish a property assessed clean energy program to finance energy efficiency or renewable energy improvement projects. A property owner can apply to the board to finance the costs of the project through annual special assessments levied under an assessment contract;

(2) Requires each board to consist of at least three members. The number of board members and their terms are to be specified in the ordinance or order establishing the board. If only one municipality is participating in the board, the chief elected officer will appoint board members with the consent of the governing body. If more than one municipality is participating, members will be appointed in a manner agreed to by all participating municipalities;

(3) Requires the board to be a separate body politic and corporate and have all powers necessary to carry out the provisions of the substitute;

(4) Requires the board, by July 1 of each year, to submit a report with the state Environmental Improvement and Energy Resources Authority (EIERA) and each municipality that participated in the formation of the board. The report must include a brief description of each project financed by the board, the amount of assessments due and the amount collected, the board's administrative costs, the estimated cumulative energy savings from the projects financed during the year and to date, the estimated cumulative energy produced by all renewable energy improvements financed during the year and to date, and any other financial information required by EIERA's rules or regulations;

(5) Specifies that no lawsuit to set aside the formation or to otherwise question the proceedings related to the formation of the board may be brought after 60 days from the effective date of the ordinance establishing the board. No lawsuit can be brought to set aside the approval of a project, an assessment contract, or a special assessment after 60 days from the date that the assessment contract is executed;

(6) Specifies the contractual requirements for any assessment contract between the board and the benefitted property owner or owners;

(7) Specifies that the total special assessments levied against a property under an assessment contract cannot exceed the total cost of the project including any required energy audits and inspections;

(8) Requires the board to provide a copy of the assessment contract to the local county assessor and collector, as well as ensure that a copy of the assessment contract is recorded with the county recorder of deeds;

(9) Specifies that the special assessments agreed to under the contract will be a lien on the property against which it is assessed by the board. The assessments will be collected by the county collector in the same manner as other real property taxes;

(10) Authorizes the board to establish application requirements and the criteria for project financing approval to effectively administer the program and ration available funding among projects. The board may require an initial energy audit as a prerequisite to financing and inspections to verify completion of the project;

(11) Authorizes the board to finance any number of projects to be installed within a single parcel of property or within a unified development consisting of multiple adjoining parcels of property through a clean energy conduit financing rather than through a property assessed clean energy program. Clean energy conduit financing must consist of the issuance of bonds payable from the special assessment revenues collected under an assessment contract with the participating property owners;

(12) Authorizes the board to issue bonds payable from the special assessment revenues generated by assessment contracts and any other revenues. The state or municipality is not liable for any bonds issued by a board;

(13) Authorizes the Director of the Department of Economic Development to allocate any portion of the state's residual share of the national qualified energy conservation bond limitation under the federal Internal Revenue Code for these purposes to the EIERA, any clean energy development board, the state, any political subdivision, instrumentality, or any other corporate or politic body; and

(14) Creates the Property Assessed Clean Energy Local Finance Fund for the EIERA to loan funds, when available, to clean energy

development boards for the establishment and operation of property assessed clean energy programs. The fund will consist of grants, contributions, or other moneys received by the authority from the federal government or other sources, the proceeds of any revenue bonds or other obligations issued by the authority for the fund, revenues received from loan agreements, and any other funds designated by the EIERA for this purpose. The EIERA may enter into loan agreements with a board for financing the development and marketing of the programs.

#### MISSOURI SOIL ENRICHMENT INITIATIVE

The substitute establishes the Missouri Soil Enrichment Initiative which requires all commercial and local government-owned composting facilities in operation prior to January 1, 2011, to register with the Department of Natural Resources by January 31, 2011, and pay an annual fee. Composting facilities commencing operations after January 1, 2011, must register with the department prior to accepting or composting any organic material. The registration must be renewed annually and include documentation showing that the facility is in compliance with all applicable permits.

The department must maintain a registry of all commercial facilities and local government-owned compost facilities which is easily accessible to the public on its web site, identify registered facilities by location, and collect a specified fee based on the facility's acreage. All fees must be deposited into the Solid Waste Management Fund and used for activities of the Solid Waste Management Program. Municipally owned composting facilities will not be required to pay a fee.

Each commercial facility must file an annual report with the department containing certain specified information, submit a statement certifying that the facility and any affiliated transfer facility is being operated in a manner that prevents nuisances and minimizes anaerobic conditions, and pay the annual fee.

#### UNDERGROUND STORAGE TANK OPERATOR TRAINING PROGRAM

The Board of Trustees of the Petroleum Storage Tank Insurance Fund is required by rule, in collaboration with the Department of Agriculture and affected private citizens, to create, fund, and maintain an underground storage tank operator program that satisfies at a minimum the federal training requirements for the program. The program must be offered at no cost to required participants, and the board is required to only meet the requirements of the substitute after holding a public hearing and determining by a vote that state action is required.

The department must disregard the manufacturer's expiration date of motor fuel measuring devices and dispensing equipment, if any, and must instead continue to require the replacement only when it fails inspection. The expiration date must not impose any new or additional liability on motor fuel retailers or wholesalers.

Any modification to the way motor fuel is measured or dispensed in a retail sale is prohibited by state rule or the automatic adoption of national standards or rules unless the modification is specifically authorized and mandated by state law.

#### RECORD REQUESTS TO THE DEPARTMENT OF NATURAL RESOURCES

The substitute specifies that it is the policy of the Department of Natural Resources to carry out its mission with full transparency to the public and must make environmental data collected in the course of its duties available to the public in a timely fashion and the results of any environmental testing activities easily accessible.

The department must broadly interpret any request for information under the Open Meetings and Records Law, commonly known as the Sunshine Law:

- (1) Even if the request does not use the words "sunshine request," "open records request," "public records request," or any similar wording;
- (2) Even if it is only an inquiry into if the data or information exists; and
- (3) Regardless of the format in which the request is made.

In addition to any other applicable violation of law, any failure to release the information will be considered a violation of the department's policy and will constitute a breach of the public's trust. These requirements are not to be construed to limit or exceed the requirements of the Sunshine Law.

#### WATER WELL REGULATIONS

The substitute specifies that any water system that serves a charitable or benevolent organization that does not regularly serve an average of 100 people or more at least 60 days out of the year and does not serve a school or day-care facility will be exempt from all rules relating to well construction except those applying to multifamily wells unless it is determined to present a threat to groundwater or public health.

If a water system incurs three or more total coliform maximum

contaminant level violations in a 12-month period or one acute maximum contaminant level violation, the owner must either provide an alternative source of water, eliminate the source of the contamination, or provide specified treatment of the viruses.

#### ENVIRONMENTAL AUDITS

A company may conduct a voluntary environmental audit in order to discover and correct noncompliance with environmental regulations. If a company complies with the voluntary audit requirement, it will be exempt from certain types of criminal and administrative penalties and may keep its voluntary audit report confidential. However, any environmental audit report can be made available by court order or subpoena; and 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 and not through a legally mandated monitoring or sampling requirement;
- (2) Disclose its specific noncompliance in writing to the Department of Natural Resources within 21 days or a shorter period of time as required by law;
- (3) Discover and disclose the potential noncompliance to the department prior to the commencement of a federal, state, or local department inspection or investigation;
- (4) Correct any noncompliance within 60 days or a shorter period of time as determined by the department;
- (5) Agree to take steps acceptable to the department director to prevent a recurrence of the noncompliance;
- (6) Document that the specific noncompliance or a closed related noncompliance has not occurred within the previous three years or within the past five years as part of a pattern at multiple facilities owned or operated by the company;
- (7) Prove that the noncompliance did not result in actual harm or present an imminent and substantial endangerment to human health or the environment or did not violate any judicial or administrative order or consent agreement; and
- (8) Cooperate as requested by the department and provide any necessary information.

The department cannot disclose any audit report information relating to scientific and technological innovations in which the

owner has a proprietary interest of any information that is otherwise protected from disclosure by law.

FISCAL NOTE: No impact on General Revenue Fund in FY 2011, FY 2012, and FY 2013. Estimated Effect on Other State Funds of a cost of Unknown to an income of Unknown in FY 2011, FY 2012, and FY 2013.

PROPOSERS: Supporters say that composting is one of the most successful types of recycling in Missouri but the Department of Natural Resources has no way to track the number of facilities, what types of materials are being composted, how much compost the facilities are producing, or the percentage of waste that is being diverted from landfills. The registry will help the department collect accurate data on composting.

Testifying for the bill were Representative Schoeller; Gary Ryan, Missouri Recycling Association; and Patrick Geraty, St. Louis Composting, Incorporated.

OPPOSERS: There was no opposition voiced to the committee.

OTHERS: Others testifying on the bill say the department should be given inspection and oversight authority. The department is facing budget concerns and will not be able to absorb the new program into current staffing levels. Concerns were expressed about the effect the requirements will have on small composters.

Testifying on the bill was Department of Natural Resources.