

HCS SCS SB 230 -- NATURAL RESOURCES

SPONSOR: Lager (Ruzicka)

COMMITTEE ACTION: Voted "do pass" by the Committee on Tourism and Natural Resources by a vote of 16 to 0.

This substitute changes the laws regarding natural resources.

STATE DEPARTMENT TRANSPARENCY (Section 37.970, RSMo)

The substitute specifies that it must be the policy of each state department to carry out its duties with full transparency to the public and any data collected must be available to the public in a timely fashion and reports and other information must be easily accessible to the public. Each department must broadly interpret any request for information under the Open Meetings and Records Law, commonly known as the Sunshine Law, and must respond accordingly regardless of the format in which the request is made. Any failure to release the information will be considered a policy violation and constitute a breach of the public's trust.

COUNTY DRINKING WATER SUPPLY LAKE AUTHORITY (Sections 67.4500 - 67.4520)

The substitute establishes a county drinking water supply lake authority in Sullivan County. The substitute:

(1) Allows the authority to acquire, own, construct, lease, and maintain recreational or water quality projects; acquire, own, lease, or sell property to fulfill the purposes of the authority; enter into contracts; sue and be sued; accept gifts, grants, loans, or contributions; employ staff or contract with independent contractors for needed services; disperse funds and set salaries of its employees; fix rates, fees, and charges for the use of any projects and property owned, leased, or managed by the authority; adopt, alter, or repeal its own governing bylaws and rules; sell and supply water; issue revenue bonds; and adopt tax increment financing within its boundaries;

(2) Specifies that the authority must consist of between six and 30 members appointed by the members of the water commission owning the reservoir. The members will serve six-year terms with the initial members being appointed to staggered terms. A member of the authority must be over 25 years of age and have been registered to vote in Missouri and lived in the county for more than five years;

(3) Requires the water commission, by resolution, to establish a date and time for the initial meeting of the authority. At the

initial meeting, and annually thereafter, the authority must elect from its members a chairman and vice-chairman and appoint a secretary and a treasurer. The authority may appoint an executive director who must not be a member of the authority and who will serve at the authority's pleasure;

(4) Requires each member of the authority to execute a surety bond in the amount of \$50,000 or the authority chairman must execute a blanket bond covering each member and the employees or other officers of the authority;

(5) Prohibits an authority member from participating in any decisions or deliberations concerning issues where the authority member has a direct financial interest;

(6) Allows the state or any political subdivision or municipal corporation to transfer possession or control of any property to the authority;

(7) Allows the state or any political subdivision to appropriate, allocate, and expend funds for the benefit of the authority; and

(8) Authorizes the authority to exercise all zoning and planning powers that are granted to cities, towns, and villages except that the authority cannot exercise the powers within the limits of any city, town, or village that has adopted a city plan before August 28, 2011.

#### REAL-TIME BACTERIAL WATER QUALITY TESTING (Section 192.1250)

The Department of Health and Senior Services must examine the feasibility of implementing a real-time water quality testing system for measuring the bacterial water quality at state-owned public beaches and report to the General Assembly by December 31, 2011.

#### PUBLIC WATER SUPPLY DISTRICTS BOARD OF DIRECTORS (Section 247.060)

The substitute:

(1) Allows each member of a public water supply district board to receive a fee of up to \$100 for attending each regularly or specially called board meeting. A member can receive payment for up to two meetings per month except in a first classification county where a member can receive payment for up to four meetings per month. No member can be paid for attending more than one board meeting per week;

(2) Allows the president of a board to receive an additional \$50 for attending each regularly or specially called board meeting but prohibits him or her from receiving the additional fee for attending more than two meetings per month;

(3) Specifies that a member will be reimbursed for any actual expenditures in the performance of his or her duties on behalf of the district;

(4) Prohibits a member from receiving any attendance fees or additional compensation until he or she has completed a minimum of six hours of training regarding the responsibilities of the board and its members in specified areas including the basics of water treatment and distribution; budgeting and rates; planning; and the Open Meetings and Records Law, commonly known as the Sunshine Law;

(5) Specifies that the circuit court of the county having jurisdiction over the district is authorized to:

(a) Suspend any member from exercising his or her office when it appears that he or she has abused his or her trust or become disqualified;

(b) Remove any member upon proof or conviction of gross misconduct or disqualification for his or her office; or

(c) Restrain and prevent any alienation of property of the district by members in certain specified cases; and

(6) Specifies that the jurisdiction conferred by these provisions must be exercised upon petition by any member or at the instance of any 10 voters residing in the district who join the petition. The petition must be heard in a summary manner after 10 days' written notice to the member or officer who is the subject of the complaint.

#### CASH TRANSACTIONS BY THE DEPARTMENT OF NATURAL RESOURCES (Sections 253.082, 256.055, and 640.045)

Upon a request from the Director of the Department of Natural Resources, the substitute authorizes the Commissioner of the Office of Administration to provide funds in an amount not to exceed \$500 each to the division directors of State Parks and Geology and Land Survey and to any other division within the department to be placed in a revolving fund for the purpose of cash transactions involving the sale of items made by that division.

#### STATE PARKS EARNINGS FUND (Section 253.090)

The State Treasurer is authorized to deposit all of the moneys in the State Park Earnings Fund in any of the qualified depositories of the state and requires all these deposits to be secured in a manner provided by law relative to state deposits. Any interest earned on these deposits must be credited to the fund, and any moneys remaining in the fund at the end of the biennium will not revert to the credit of the General Revenue Fund.

BATTERY AND HAZARDOUS WASTE FEES (Sections 260.262, 260.380, and 260.475)

The provisions regarding the 50-cent fee that is collected on the retail sale of a lead-acid battery as well as the fees for any hazardous waste generated are extended from June 30, 2011, and December 31, 2011, respectively to December 31, 2013.

DISPOSAL OF USED TIRES (Section 260.269)

The state or any political subdivision or agency of the state is allowed to transfer possession and ownership of used tires, scrap tires, or tire shred to any in-state private entity to be lawfully disposed of or recycled if the tires or shred are not burned as fuel, except in a permitted facility, or disposed of in a landfill. The cost of transferring the tires or shred must be less than the cost the state, political subdivision, or agency would have otherwise incurred had it disposed of the tires or shred. The private entity must pay for the transportation of the used tires it receives.

DRY-CLEANING FACILITIES (Section 260.965)

The expiration date of the provisions regarding the regulation of dry-cleaning facilities and their operations is extended from August 28, 2012, to December 31, 2017.

UNDERGROUND STORAGE TANK OPERATOR TRAINING PROGRAM (Section 319.130)

On or before April 1, 2012, the board of trustees of the Petroleum Storage Tank Insurance Fund must hold one or more public hearings to determine whether to establish and fund an underground storage tank operator training program. The substitute specifies the criteria the board must consider when making its decision. If after conducting the hearing, a majority of the board votes to establish and fund a program, the program at a minimum must:

- (1) Meet federal requirements;
- (2) Be developed in collaboration with the departments of

Natural Resources and Agriculture, the board's advisory committee, and affected members of the private sector;

- (3) Be offered at no cost to the required participants;
- (4) Specify standards, reporting, and documentation requirements; and
- (5) Be established by rule.

The board can contract with one or more third parties to establish the program; and it can, at any time, be modified or eliminated by the board by rule. Any records regarding the program must be made public and readily available to the Department of Natural Resources.

#### MOTOR FUEL TAX (Section 319.132)

The substitute adds to the list of activities for which the board of trustees of the Petroleum Storage Tank Insurance Fund can assess a surcharge to include the inspection fees paid on any petroleum product which is shipped outside Missouri for use, sale or distribution, credit, or refund and all provisions governing the administration, collection, and enforcement of the state motor fuel tax.

#### MOTOR FUEL MEASURING DEVICES (Section 414.072 and Section 1)

The manufacturer's expiration date on motor fuel pump nozzles, hoses, and hose breakaway equipment must not be the sole factor in requiring their repair or replacement or in issuing a fine, penalty, or punishment by the state or any political subdivision. The manufacturer's expiration date on these items cannot impose any new or additional liability on the state, political subdivisions, motor fuel retailers, wholesalers, suppliers, and distributors as well as the retailers and wholesalers of the devices and equipment.

Any automatic volumetric correction device for measuring certain motor fuel sold at retail fueling facilities is prohibited by state rule or national standards or rules unless specifically authorized and required by state law.

Only the Department of Natural Resources is authorized to set stage 1 and 2 motor fuel vapor recovery fees which must be uniform across the state and which cannot be changed by a political subdivision or local law enforcement agency.

#### PRIVATE LANDOWNER PROTECTION ACT (Section 442.014)

The substitute establishes the Private Landowner Protection Act which allows for the creation and enforcement of conservation easements designed to protect the environment or preserve certain historical or cultural aspects of real property. An easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements; and a court may modify or terminate an easement based on the principles of law and equity.

An existing real property interest is not impaired by an easement unless the owner is a party to the conservation easement or consents to it. A conservation easement will be valid in a number of situations that are specified in the substitute which are not recognized by common law. Retroactive application is mandated to the extent allowed by state and federal law but cannot place any additional burden or obligation on any grantor or grantee, or their successors, of a conservation easement.

#### CLEANSFIELD RENEWABLE ENERGY DEMONSTRATION PROJECT (Section 620.2300)

An owner of a park which consists of at least 50 acres in which property is subject to remediation under a clean-up program supervised by the Department of Natural Resources or the United States Environmental Protection Agency may seek to establish a cleansfields renewable energy demonstration project by submitting an application to the Department of Economic Development for certification of the project. The department must review all project applications and, in consultation with the Department of Natural Resources, verify satisfaction of all requirements. If the Department of Economic Development approves a project application, it must forward the application and approval to the Missouri Public Service Commission. Upon receipt of the application and approval, the commission must assign twice the credit to any electric power, renewable energy, renewable energy credits, or any successor credit generated from certain renewable energy resources or certain electric power generated off-site by utilizing biomass fuel or renewable energy resources.

#### ADMINISTRATIVE HEARING COMMISSION (Section 621.250)

Currently, any party who is affected by a finding, order, decision, or assessment made by a state regulatory environmental commission may file an appeal with the Administrative Hearing Commission. The substitute specifies that the party must be aggrieved or adversely affected by the finding, order, decision, or assessment in order to file an appeal.

Currently, the commission has discretion as to whether or not to hold a hearing on an appeal request. The substitute requires the

commission to hold a hearing and make a recommended decision within 60 days of the date of the request or make a recommended decision within the 60-day period based on the stipulation of the parties, consent order, or agreed settlement or by the disposition in the nature of default judgment, judgment on the pleadings, or summary determination. The commission must issue its final decision on an appeal of a decision by the Director of the Department of Natural Resources within 90 days of the date the notice of appeal is filed.

The substitute prohibits a cause of action or appeal arising out of a finding, order, decision, or assessment of a regulatory environmental commission from accruing in any court unless the party has already filed a notice of appeal and received a final decision in accordance with these provisions.

#### ENVIRONMENTAL PERMITS (Section 640.018)

In any case in which the Department of Natural Resources has not issued a permit or made a permit decision by the expiration of the statutorily required time frame, the permit must be issued as of the first day following the expiration if all the necessary information has been submitted for the application and the department has had the information for the duration of the required time frame.

All engineering plans, specifications, and designs prepared by a registered professional engineer that are submitted to the department as part of a permit application or modification must include a statement that the plans, specifications, and designs were prepared in accordance with all applicable requirements and must be sealed by the registered professional engineer. The department must use the complete, sealed plans, specifications, and designs as submitted in addition to a permit application or other relevant information, documents, and materials in developing comments on the engineering submittals and in determining whether to issue or deny a permit. The review of documents, plans, specifications, and designs sealed by a registered professional engineer must be conducted by a registered professional engineer or an engineering intern on behalf of the department.

The department must designate a supervisory registered professional engineer for permitting purposes in environmental programs. Any applicant receiving written comments on an engineering submittal may request a determination from the department's supervisory engineer as to a final disposition of the department's comments. The supervisory engineer must inform the applicant of a preliminary decision within 15 days of the request and must make a final determination within 30 days.

These requirements cannot be construed to require plans or other submittals to the department that come under a general permit or an application for a site specific permit to be prepared by a registered professional engineer unless otherwise required by state or federal law.

#### WATER WELL REGULATIONS (Section 640.116)

Any water system that exclusively serves a charitable or benevolent organization will be exempt from all rules relating to well construction except those applying to a multifamily well unless the well or pump installation for the well is determined to present a threat to groundwater or public health. A water system cannot be exempt if it regularly serves an average of 100 people or more for at least 60 days of the year or if it serves a school or daycare facility.

If a system has three or more violations of the total coliform maximum contaminant level in a 12-month period or one acute violation of the maximum contaminant level, the system's owner must provide an alternative source of water, eliminate the source of contamination, or provide treatment that reliably achieves at least 99.99% treatment of the viruses.

No facility can be required to replace, change, upgrade, or alter an existing well constructed prior to August 28, 2011, unless the well is determined to present a threat to groundwater or public health or contains certain contaminant levels.

#### NOTIFICATION OF PUBLIC HEALTH RISKS (Section 640.128)

The Department of Natural Resources must immediately notify the local public health authority and the Department of Health and Senior Services if it receives water quality test results voluntarily conducted and submitted by a permitted entity that indicate a potential risk to public health.

#### CONSOLIDATION OF SERVICES REPORT (Section 640.850)

The Governor must convene a committee consisting of representatives from the departments of Agriculture, Conservation, Economic Development, Health and Senior Services, and Natural Resources to evaluate ways to consolidate services with the goal of improving efficiency and reducing costs while optimizing the benefits to Missourians. The committee must review the transfer of the Division of Energy from the Department of Natural Resources to the Department of Economic Development and the consolidation of laboratory testing for water quality under the Department of Health and Senior Services and must provide recommendations to the Governor and the General Assembly

by December 31, 2011.

ASBESTOS AND AIR QUALITY (Sections 643.020 - 643.250)

The substitute:

(1) Expands the citation range of statutes in Chapter 643 that refer to the regulation of air quality and responsibilities of the Air Conservation Commission within the Department of Natural Resources in numerous provisions and corrects a federal law reference for asbestos requirements under United States Occupational Safety and Health Administration (OSHA) regulations;

(2) Authorizes the commission or its authorized representative to enter upon public or private property having material information relevant to an air contaminant source. Currently, it may only enter upon public or private property which the department director has probable cause to believe is an air contaminant source;

(3) Adds renovation or demolition to the list of projects that the commission has authority to require corrective measures be taken to protect public health and the environment as it relates to asbestos abatement;

(4) Removes the option to complete an annual refresher course that is accredited by the United States Environmental Protection Agency (EPA) in order to qualify for a renewal of an asbestos-related certificate. Currently, an individual must complete an annual course that is accredited by the EPA or the State of Missouri;

(5) Reduces from 24 months to 12 months, the amount of time after the expiration of a certificate in which an individual must complete the annual refresher course or retake the original training course;

(6) Specifies that the fee for the renewal of an asbestos-related certificate will only apply to a worker class certificate;

(7) Removes the exemption from certain state asbestos requirements for asbestos certification and registration for certain persons who are subject to EPA and OSHA asbestos regulations;

(8) Reduces from at least 20 working days to at least 10 working days the period of time that a person must submit an application to the department in advance of an asbestos abatement project. The application must include a copy of an asbestos inspection

survey for the structure which includes, but is not limited to, sample analysis results, quantities of asbestos materials identified, and documentation that the inspection was conducted by a certified asbestos inspector;

(9) Removes the notification requirements for an asbestos abatement project of a magnitude of less than 160 square feet but greater than 10 square feet or 16 linear feet;

(10) Allows the analysis of asbestos air samples to be conducted according to EPA standards as well as OSHA standards;

(11) Requires asbestos abatement projects of a magnitude of greater than or equal to 160 square feet or 260 linear feet or 35 cubic feet or all regulated demolition projects to be subject to inspection. Currently, projects greater than or equal to 10 square feet or 16 linear feet must be inspected; and

(12) Removes the requirement that any civil penalty paid for asbestos-related violations be deposited into the Natural Resources Protection Fund - Air Pollution Asbestos Fee Subaccount.

#### JUDICIAL REVIEW (Sections 643.130 and 644.071)

Any action seeking judicial review of a final decision made by the Air Conservation Commission, the Clean Water Commission, or the Director of the Department of Natural Resources must be filed in a court of appeals instead of a circuit court.

#### CLEAN WATER NOTICE REQUIREMENTS AND FEES (Sections 644.036 and 644.054)

The substitute removes the expiration date on the public notice requirements of the Clean Water Commission of the State of Missouri when listing any impaired waters of the state under Section 303(d) of the federal Clean Water Act.

The commission's authority to charge fees for construction permits, operating permits, and operator's certifications related to water pollution control is extended from December 31, 2010, to September 1, 2013.

The Director of the Department of Natural Resources must conduct a comprehensive review of the water pollution fee structure including input from stakeholders. The department director must submit a report to the General Assembly by December 31, 2012, including the findings and a recommended plan for the fee structure.

## CLEAN WATER COMMISSION PERMITS AND APPEALS (Section 644.051)

The substitute:

(1) Allows a potential permit applicant to appeal the terms and conditions of a water pollution control general permit template to the Clean Water Commission within 30 days of the issuance of the template by the department if the applicant can demonstrate that he or she is or may be adversely affected by any permit, term, or condition;

(2) Specifies that the permit applicant has the burden of proof only for an appeal relating to the denial of a permit, license, or registration; but for all other appeals, the commission will have the burden of proof. Currently, the burden of proof in an appeal hearing regarding the issuance of a water pollution control permit is on the permit applicant;

(3) Authorizes the department to modify, reissue, or terminate a water pollution control permit at the request of the permit holder. All requests must be in writing and contain facts or reasons in support of the request; and

(4) Requires the department to implement permit shield provisions that are equivalent to the provisions implemented pursuant to federal law.

## AFFORDABILITY DETERMINATIONS (Section 644.145)

The substitute requires the department to make a determination regarding the affordability to communities and their residents of permit requirements and other department decisions related to combined or separate sanitary sewer systems or publicly-owned treatment works. The affordability determination must be made prior to issuing a permit or rendering a decision. If the department fails to make a determination, the permit or decision will be void and unenforceable. The substitute specifies the criteria that the department must follow when making a determination.

## PRIVATE SEPTIC SYSTEMS (Sections 701.033 and 701.058)

The Department of Health and Senior Services is authorized to provide technical assistance, guidance, and oversight to a local authority that administers and enforces individual on-site sewage disposal system standards. The department may provide this assistance at the request of the local government or in any case where the department determines that its intervention is necessary to prevent a violation of state law.

The departments of Natural Resources and Health and Senior Services must jointly hold stakeholder meetings to gather data and information regarding permits and inspections for on-site sewage disposal systems and submit a report to the General Assembly by December 31, 2011.

#### MISSOURI ENERGY TASK FORCE (Section 386.850)

The substitute repeals the provisions requiring the Missouri Energy Task Force within the Missouri Public Service Commission to reconvene at least one time a year and issue a status report to the Governor and General Assembly by December 31 of each year.

The substitute contains an emergency clause for the provisions regarding the battery and hazardous waste fees, cleansfield renewable energy demonstration project, and clean water notice requirements and fees.

FISCAL NOTE: Estimated Net Cost on General Revenue Fund of \$619,514 to Unknown in FY 2012, \$685,086 to Unknown in FY 2013, and \$692,312 to Unknown in FY 2014. Estimated Net Income on Other State Funds of \$561,196 in FY 2012, \$1,200,633 to \$1,141,668 in FY 2013, and \$1,798,175 to \$1,739,300 in FY 2014.

PROPONENTS: Supporters say that the bill allows the state to give scrap tires or shred to private companies to use in their products. Currently, Missouri Vocational Enterprises provides scrap tires to the power plant at the University of Missouri and transports the excess tires to a landfill in Kansas. The bill gives the state an additional option.

Testifying for the bill were Senator Lager; and Advantage Capital.

OPPONENTS: There was no opposition voiced to the committee.