

SS SCS HB 1251 -- NATURAL RESOURCES

This bill changes the laws regarding natural resources.

AUDITS OF SOLID WASTE DISTRICTS (Section 29.380, RSMo)

The bill specifies that the State Auditor must have the authority to audit solid waste management districts in the same manner as he or she may audit any state agency. Beginning August 28, 2012, the auditor must conduct an audit of each district and thereafter conduct an audit as he or she deems necessary.

LAND SURVEYS (Sections 59.319, 60.510 - 60.640, 60.560 - 60.595, 60.610, and 60.620)

The bill:

(1) Dissolves the State Land Survey Authority and the Land Survey Advisory Committee and establishes the Land Survey Program and the Land Survey Commission within the Department of Natural Resources;

(2) Revises the membership, terms, and duties of the commission;

(3) Creates the Missouri Land Survey Fund for the deposit of \$1 of the \$4 fee collected by every county recorder for recording any instrument which currently is deposited into the General Revenue Fund for use by the department;

(4) Expands the duties of the department by requiring it to restore, establish, maintain, and preserve Missouri state and county boundary markers and provide the framework for all geodetic positioning activities in the state;

(5) Requires the commission to recommend to the department a person to be selected and appointed State Land Surveyor instead of being appointed by the department. The State Land Surveyor will be the chief administrative officer of the program. He or she must be selected under the State Merit System on the basis of professional experience and registration; and

(6) Requires the commission to produce, by December 1, 2013, a report to the department and the General Assembly that recommends the appropriate administrative or overhead cost rate that will be charged to the program and includes all indirect services provided by the department, Division of Geology and Land Survey within the department, and the Office of Administration.

CHRISTIAN COUNTY DRINKING WATER SUPPLY LAKE AUTHORITY (Section 67.4505)

A county drinking water supply lake authority in Christian County is created to promote the general welfare and a safe drinking water supply through the construction, operation, and maintenance of a drinking water supply lake in the county.

#### STATE OIL AND GAS COUNCIL (Sections 259.010 - 259.070)

The bill changes the composition of the State Oil and Gas Council by adding a representative of the Missouri Independent Oil and Gas Association; specifying that the University of Missouri member must be the Professor of Petroleum Engineering from the Missouri University of Science and Technology; and adding two public members, one of whom must reside in a third or fourth classification county. The public members are to be appointed by the Governor with the advice and consent of the Senate. The council must meet at least once each quarter of the year; biennially review the state laws, rules, and regulations on oil and gas drilling; make any recommendations for necessary changes to the statutes; and amend the rules and regulations accordingly. The council may form an advisory committee to help it conduct the law review and make recommendations on appropriate fees or other funding mechanisms to support the oil and gas program efforts of the Division of Geology and Land Survey in the Department of Natural Resources.

#### SOLID WASTE LANDFILL FEES (Section 260.330)

Currently, the Department of Natural Resources cannot make an annual adjustment for inflation to the fees charged to the operator of a solid waste sanitary landfill, demolition landfill, or transfer station from October 1, 2005, to October 1, 2014, except for an adjustment in the amount needed to fund the operating costs of the department. The bill extends the prohibition on adjustments to October 1, 2017.

#### HAZARDOUS WASTE RULES (Section 260.373)

The bill authorizes the Hazardous Waste Commission to establish standards and guidelines through rules and regulations to ensure Missouri is in compliance with the federal Resource Conservation and Recovery Act (RCRA). The guidelines and standards cannot be any stricter than those required under RCRA nor can the commission enforce any provisions prior to the time required by the act with specified exceptions.

By December 31, 2013, the Department of Natural Resources must identify rules in Title 10, Division 25 of the Code of State Regulations that establish standards or guidelines that are inconsistent with the RCRA and file amendments with the Secretary of State to eliminate them. On December 31, 2015, any rule in

Title 10, Division 25 that establishes standards that are inconsistent with the RCRA will be null and void to the extent it is inconsistent. The department is prohibited from selectively excluding any rule or part of a rule promulgated by the commission from any authorization application package or program revision submitted to the United States Environmental Protection Agency.

#### TRANSPORTATION OF RADIOACTIVE WASTE (Section 260.392)

The method by which fees for transporting radioactive waste by truck are assessed is revised. Currently, a fee of \$1,800 is charged for each cask transported through or within the state by truck of high-level radioactive waste, transuranic radioactive waste, spent nuclear fuel, or highway route controlled quantity shipments, and all casks are subject to a surcharge of \$25 per mile for every mile over 200 miles traveled within the state. The bill assesses the fee and surcharge based on each truck rather than on each cask.

#### COLLECTION OF HAZARDOUS MATERIALS FEES (Section 292.606)

Currently, the collection of fees for hazardous substances in the workplace that fund the Missouri Emergency Response Commission is authorized until August 28, 2012. The bill extends the authorization until August 28, 2018.

Beginning January 1, 2013, any employer required to report information regarding the properties and nature of the hazardous substances that he or she stores, uses, or produces to the local fire protection service, the Department of Public Safety, and the local emergency planning committee, known as Tier II filers, may request the commission to distribute the report to the local emergency planning committee and fire department by paying an additional \$10 fee for each facility listed. The fee is to be deposited into the Chemical Emergency Preparedness Fund and cannot be applied to the employer's fee cap.

#### RECREATIONAL OFF-HIGHWAY VEHICLES (Sections 301.010 and 304.033)

The bill:

- (1) Revises the definition of "recreational off-highway vehicle" by increasing the maximum width of a recreational off-highway vehicle from 60 inches to 64 inches and the maximum unladen dry weight of a vehicle from 1,850 pounds to 2,000 pounds;
- (2) Allows the following recreational off-highway vehicles to be operated upon the highways of this state:

(a) Vehicles owned and operated by a governmental entity for official use;

(b) Vehicles operated for agricultural purposes or industrial on-premises purposes;

(c) Vehicles operated within three miles of the operator's primary residence. This provision does not authorize the operation in a municipality unless it is authorized by the municipality;

(d) Vehicles operated occasionally by handicapped persons for short distances only on the state's secondary roads; and

(e) Vehicles issued a special permit by the governing body of a city or a county to a licensed driver for special use of the vehicle on highways within the city or county limits. A \$15 fee may be collected and retained by the city or county for the permit;

(3) Prohibits a person from operating a recreational off-highway vehicle within any stream or river with the exception of an operator who owns the property, has permission to be on the property through which the waterway flows, or is fording it at a road crossing; and

(4) Requires a person operating a recreational off-highway vehicle on a highway under these provisions to have a valid operator's or chauffeur's license with certain specified exceptions, to display a lighted headlamp and a lighted tail lamp, and to wear a seat belt and the vehicle to be equipped with a roll bar or roll cage construction to reduce the risk of injury to an occupant of the vehicle in case of the vehicle's rollover.

#### USE OF MUNICIPAL STREETS (Section 304.120)

A municipality must allow at least one route, with lawful traffic movement and access from both directions, to be used by commercial vehicles to access any roads in the state highway system. No ordinance can deny the use of commercial vehicles on all routes within the municipality.

#### MISSOURI PROPANE EDUCATION AND RESEARCH COUNCIL (Sections 414.530 - 414.570)

Currently, there are three options that require a referendum to be held to abolish the Missouri Propane Education and Research Council and the fee for odorized propane. The bill removes the option of the Director of the Division of Energy within the Department of Natural Resources to do so on his or her own

initiative.

Currently, a vacancy on the council is allowed to be filled by the remaining members of the council, subject to the approval of the division director. The bill removes the requirement that the division director approve the appointment and requires the council to fill vacancies after a public nomination process but allows the division director to reject any appointment.

Currently, the council must submit a budget plan to the division director at the beginning of each fiscal period, and the division director must approve or recommend changes to the budget after a public comment period. The bill requires the budget plan to be submitted for public comment at least 30 days prior to the beginning of each fiscal period and requires the council to approve or modify the budget after the public comment period but allows the division director to reject the council's budget or modifications.

The bill removes the authority of the division director to require additional reports from the council at his or her discretion beyond what is already required under current law.

The authority to establish an alternative means to collect the odorized propane fee and set late payment charges is currently given to the division director. The bill transfers this authority to the council. The interest rate charged for late payments may not exceed the legal rate for judgments.

The bill removes the provisions that allow the National Propane Education and Research Council to coordinate its operations with Missouri's council and that authorize Missouri's council to keep funds from a federal rebate on propane fees collected by the national council.

#### USE OF STATE PARK ROADS (Section 577.073)

Currently, a person is prohibited from conducting commercial activities or using any facilities, buildings, trails, roads, or other property within a state park without the written permission or a concession contract with the Department of Natural Resources. The bill allows the normal and customary use of state park public roads by commercial organizations to transport persons or vehicles, including canoes, without the department's written permission.

#### ADMINISTRATIVE HEARING COMMISSION (Section 621.250)

Currently, the Administrative Hearing Commission is required to hold a hearing and make a recommended decision on an appeal of a

decision made by an environmental commission within 60 days of the filing date. The bill allows the commission to hold a hearing within 90 days of the filing date and requires the commission to issue a recommended decision within 120 days after the date on which the notice of appeal is filed. The time periods may be extended at the discretion of the permittee as petitioner or intervenor in the appeal.

Currently, an environmental commission must issue its final decision with regard to an appeal that went to the commission within 90 days of the date the appeal was filed. The bill extends this time frame to 180 days but it may be extended at the sole discretion of the permittee as petitioner or intervenor in the appeal.

#### ISSUANCE OF ENVIRONMENTAL PERMITS (Section 640.018)

Currently, if state law requires the Department of Natural Resources to issue an environmental permit within a certain timeframe and the department fails to do so, it must issue the permit on the first day following the expiration of the timeframe. The bill revises this provision so that the requirement to automatically issue the permit applies only upon the request of the permit applicant.

#### SAFE DRINKING WATER ACT FEES (Section 640.100)

The provisions authorizing the Department of Natural Resources to impose an annual fee for each customer service connection with a public water system to fund the enforcement of the requirements of the federal Safe Drinking Water Act are extended from September 1, 2012, to September 1, 2017.

#### JUDICIAL REVIEW OF ENVIRONMENTAL PERMITS (Sections 643.130 and 644.071)

Currently, any action filed in a court of law seeking judicial review of a final decision made by the Director of the Department of Natural Resources, the Air Conservation Commission, or the Clean Water Commission must be filed in the court of appeals instead of in the circuit court. The bill requires only an action seeking judicial review of a final decision on specified permits or permit applications to be made in the court of appeals.

#### ASBESTOS ABATEMENT (Section 643.225)

Certain businesses that regularly engage in asbestos abatement at their locations are exempted from certain asbestos-related state requirements if they are subject to specified federal laws

relating to construction work and asbestos. The exemption applies to state requirements for the certification of certain individuals for asbestos-related work, accreditation for asbestos-related training programs, registration as an asbestos abatement contractor, and notification of specified information to the Department of Natural Resources for certain size asbestos abatement or demolition projects.

To receive the exemption, a business must submit to the department director information about its asbestos-related employee training to meet federal requirements and the type of asbestos abatement projects that constitute its normal operations. If the department determines that the entity does not qualify for the exemption, it may deny the exemption but must notify the entity of the denial within 180 days of the receipt of the application. An entity whose exemption is denied may appeal to the commission within 30 days of the notice of denial.

An exempted entity must submit a one-time fee of \$250 and must submit documentation of any significant change as it occurs in its asbestos-related training program. An entity that is approved for an exemption before August 28, 2012, will be exempt from the fee but must submit any significant change as it occurs in its training program.

A representative of the department must be allowed, without prior notice, to attend, monitor, and evaluate any asbestos-related training program of an exempted entity.

WATER POLLUTION CONTROL (Sections 644.016, 644.026, 644.051, and 644.145)

The bill:

(1) Requires the Clean Water Commission to allow anyone who provided written comments or oral testimony on a proposed rule an opportunity to respond to the proposed order of rulemaking or the department's response to comments made during the public meeting or during the public notice comment period at any public meeting to vote on an order or rulemaking or other commission policy;

(2) Removes the requirement for public input from permit holders and potential applicants prior to the commission developing or renewing a general permit or a permit by rule for an aquaculture facility;

(3) Removes the provision specifying that an aquaculture facility only needs a general permit unless the applicant requests a site-specific permit;

(4) Requires an application for a renewal of a site-specific operating permit to be filed at least 180 days before the permit expires. An application to renew coverage under a general permit must be submitted at least 30 days before the permit expires unless the permittee is otherwise notified by the Director of the Department of Natural Resources that an earlier application must be made;

(5) Specifies that a general permit may be applied for and issued electronically once that option is made available by the department director;

(6) Specifies the time frame for department review and issuance of general permits. When there is no public participation required, the department must issue or deny an initial general permit within 60 days of receipt of the application and must issue or deny a renewal general permit within 60 days of the receipt of the application or the finalization of a new general permit, whichever is later. When public participation is required, the department's review time frame is increased to 90 days;

(7) Requires, beginning January 1, 2013, the department to implement a public participation process that complies with specified minimum requirements prior to the development of a new general permit or the reissuance of a general permit for aquaculture, land disturbance requiring a stormwater permit, or the reissuance of a general permit under which 50 or more permits were issued during the immediately preceding five-year period for a designated category of water contaminant sources;

(8) Requires the department to also make a finding of affordability when issuing or enforcing a water pollution control permit for a combined or separate sanitary sewer system or publicly owned treatment works and for a designated category of water containment sources for a stormwater sewer system;

(9) Authorizes an exception to the affordability finding requirement for collection system extension permits, National Pollution Discharge Elimination System operating permit renewals that include no new environmental requirements, and when the permit applicant certifies that the permit requirements are affordable to implement or otherwise waives the requirement for an affordability finding. The exception for an applicant to certify that the requirements are affordable or to waive the affordability requirement does not apply to a community with less than 3,300 residents; and

(10) Requires the department to offer the permittee an opportunity to review a draft of the department's affordability



finding and to suggest changes and provide additional supporting information. Reasonable time spent preparing a draft affordability finding must be allowed in addition to the department's required deadlines for making permitting decisions.

#### PRESSURE VESSELS (Section 650.230)

Currently, certain sized pressure vessels are exempt from state regulation. The bill revises the exemptions.

#### ANEMOMETER TOWERS (Section 701.550)

The bill requires an anemometer tower, which is a wind speed testing tower, that is located outside of a municipality's boundaries, is 50 feet or more in height, and whose appearance is not otherwise mandated by state or federal law to have certain safety markings. The top third of the tower must be painted in equal, alternating bands of aviation orange and white, each outside guy wire must have two attached marker balls, the vegetation around guy wire anchor points must contrast with surrounding vegetation, and guy wires must have safety sleeves. If the adjacent land is grazed, the area surrounding the anchor point must be fenced. An owner of an anemometer tower in existence as of August 28, 2012, is given until January 1, 2014, to comply with these requirements. A violation of these provisions is a class B misdemeanor.

#### RECYCLING TARGETS FOR NEWSPAPER PUBLISHERS (Section 260.255)

Currently, a newspaper publisher with an average daily distribution of greater than 15,000 copies is required to meet targeted recycled content usage each year and to report to the Department of Natural Resources the total number of tons of newsprint used during the past year and if it met the recycle target or why it failed to do so. The bill repeals this requirement.

The provisions of the bill regarding the use of state park roads contain an emergency clause.