

HCS HB 955 -- NATURAL RESOURCES

SPONSOR: Ross

COMMITTEE ACTION: Voted "Do Pass with Amendments" by the Standing Committee on Conservation and Natural Resources by a vote of 8 to 4. Voted "Do Pass with HCS" by the Select Committee on Agriculture by a vote of 7 to 4.

This bill changes the laws regarding natural resources. In its main provisions, the bill:

- (1) States that nothing in the provisions of the bill should be construed to limit or expand any public easement for navigational or recreational purposes as described in *Elder v. Delcour*, if the right exists on a watercourse;
- (2) Specifies that the riparian owner has the right to the natural flow of the natural watercourse including its volume and purity, except as affected by the reasonable use by other riparian owners;
- (3) Specifies that the riparian owner has title in fee to the low water mark of a navigable watercourse of the state or a public navigable watercourse and to the thread of a nonnavigable watercourse;
- (4) Specifies that the riparian owner has the right of access to the water from his or her frontage including the right to wharf out, provided that he or she does not interfere with the public's right of navigation and floatage;
- (5) Specifies that the riparian rights or regulations must not attach to artificial watercourses such as farm ponds or dug drains, but must attach to artificially enlarged watercourses such as reservoirs in streams or rivers;
- (6) Specifies that if a watercourse is navigable, the bed of the watercourse below the low water mark belongs to the state. A riparian owner along a navigable watercourse of the state or a public navigable watercourse owns only to the water's edge at its low water mark;
- (7) Specifies that if a watercourse is nonnavigable, the bed of the watercourse belongs to the riparian owner of the land if the watercourse is bounded on both sides by the same owner's land and if a nonnavigable watercourse is the dividing line between land owners, the owner of each side owns to the thread of the watercourse;

(8) Specifies that no adjoining parts of a watercourse are to be considered navigable unless they are deemed navigable by a Missouri court;

(9) Specifies that accretions along a watercourse belong to the riparian owner where the accretions were deposited. However, no owner may claim title to any land added by accretion caused by an artificial condition he or she created;

(10) Specifies that the ways in which ownership to land washed away by a navigable watercourse of the state or a public navigable watercourse may be transferred and reacquired;

(11) Specifies that the line between counties divided by a navigable watercourse of the state or a public navigable watercourse must be the thread of the watercourse. A slow, imperceptible and gradual change of the watercourse must change the county line, but a sudden change by avulsion must not;

(12) Specifies that if a defendant in a private nuisance action demonstrates substantial compliance with orders or permits issued by the Department of Natural Resources, the United States Environmental Protection Agency, the United States Army Corps of Engineers, or the Office of the Attorney General, the activity or use of property must not be deemed a nuisance. These provisions must not apply to any subsurface smoldering event in St. Louis County;

(13) Removes the Clean Water Commission's authority to approve stream or wetland mitigation used in connection with certain water quality certifications; and

(14) Prohibits any state agency from creating, purchasing, participating in, or requiring the acquisition of any credit, mitigation credit, or offset credit as a condition of the issuance extension, or termination of a permit.

PROPOSERS: Supporters say that currently all of Missouri's water boundary law is found in case law. The bill would codify these provisions and make it easier to find. The bill protects companies from nuisance lawsuits when they are complying with environmental permits and orders. When a company is complying with all of the requirements placed on it, it should not be penalized.

Testifying for the bill were Representative Ross; Missouri Chamber of Commerce and Industry; Joseph E. Clayton; Missouri Society of Professional Surveyors; and Swallow Tail, LLC.

OPPOSERS: Those who oppose the bill say that the bill only

codifies portions of water law and; therefore, is confusing as to what case law may still apply and if some case law is negated. One area of concern is the recreational easement for floaters. The bill also would take away a court's ability to determine if a company is causing a nuisance and reducing the quality of life for those living around it.

Testifying against the bill were Missouri Association of Trial Attorneys; Margaret Beckerman; Robert Bass; Larry Helms; Stan Wallach; Edward Smith, Missouri Coalition for the Environment; Connor Chapman; Dawn Chapman; Doyle Isom Jr.; Richard Orr; Gale Thackrey, Franciscan Sisters of Mary; Michelle Lambeth, Missouri Canoe and Floaters Association; The Nature Conservancy; Debi Disser; and Karen Nickel.