

SS#2 SCS HCS HB 89 -- NATURAL RESOURCES

This bill changes the laws regarding natural resources.

STATE DEPARTMENT TRANSPARENCY (Section 37.970, RSMo)

The bill 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 with reports and other information being 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 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)

A county drinking water supply lake authority is established in Sullivan County which is to be a body corporate and politic and a political subdivision of this state. Its income and property will be exempt from state and local taxation. The bill:

(1) 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 at least 25 years of age and have been registered to vote in Missouri and lived in the county for more than five years;

(2) 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. The authority may designate the secretary to act in lieu of an executive director;

(3) 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;

(4) Prohibits an authority member from participating in any decisions or deliberations concerning issues in which he or she has a direct financial interest;

(5) 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; disburse funds and set salaries of its employees; fix rates, fees, and charges for the use of any projects and property owned, leased, operated, or managed by the authority; adopt, alter, or repeal its own governing bylaws and rules; sell and supply water; construct, own, and operate infrastructure projects; issue revenue bonds; and adopt tax increment financing within its boundaries;

(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 must issue a report of its findings to the General Assembly by December 31, 2011.

PUBLIC WATER SUPPLY DISTRICT DIRECTORS (Section 247.060)

The bill:

(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. Currently, members must serve without compensation;

(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 the member 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 in 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.

STATE PARKS EARNINGS FUND (Section 253.090)

Any moneys remaining in the State Parks Earnings Fund at the end of the biennium will not revert to the credit of the General Revenue Fund.

PRIVATE LANDOWNER PROTECTION ACT (Section 442.014)

The Private Landowner Protection Act is established which allows for the creation and enforcement of conservation easements designed to protect the environment or preserve certain historical, architectural, archaeological, 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 affected by a conservation easement unless the owner is a party to the easement or consents to it. A conservation easement will be valid in a number of situations that are specified in the bill 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 on their successors, of a conservation easement.

MINING PERMITS (Sections 444.771 and 444.773)

The Department of Natural Resources and the Land Reclamation Commission within the department are prohibited from issuing a surface mining or a water or air quality permit to any person whose mine plan boundary is within 1,000 feet of any property where an accredited school has been located for at least five years prior to the permit application. This provision does not apply to a request for an expansion to an existing mine or to any underground mining operation.

Currently, the commission may deny a surface mining permit if it finds in any hearing, based on competent and substantial scientific evidence, that the interested party's health, safety, or livelihood would be unduly impaired by the issuance of the permit. The bill specifies that it must be in a public hearing and removes the provision placing the burden of proof on the permit applicant.

CLEANFIELDS RENEWABLE ENERGY DEMONSTRATION PROJECTS (Section 620.2300)

An owner of a park consisting of at least 50 contiguous acres in which the 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 submit an application to the Department of Economic Development to establish a cleanfields renewable energy demonstration 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 double 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.

APPEALS TO THE 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 bill 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 on whether or not to hold a hearing on an appeal request. The bill 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 bill prohibits a cause of action or appeal arising out of a finding, order, decision, or assessment of a state regulatory environmental commission from accruing in any court unless the party has already filed a notice of appeal with the Administrative Hearing Commission and received a final decision from the environmental commission 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 a 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.

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 STATE SERVICES (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 benefits to Missourians. The committee must specifically 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 - 643.080, 643.191, 643.225, 643.232, 643.237, and 643.240 - 643.250)

The bill:

(1) Expands the citation range of statutes in Chapter 643 that refer to the regulation of air quality and the 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 any 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 commission or department director has probable cause to believe is an air contaminant source;

(3) Adds renovation or demolition projects to the list of plans 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) Removes the provisions exempting certain individuals who are subject to EPA and OSHA asbestos regulations from certain state asbestos requirements for asbestos certification and registration upon application to the department director and submitting a \$250 fee;

(7) 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 or demolition 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;

(8) Removes the notification requirements for an asbestos abatement project of a magnitude of less than 160 square feet or 260 linear feet but greater than 10 square feet or 16 linear feet;

(9) Requires the analysis of asbestos air samples to be conducted according to EPA or OSHA standards. Currently, the analysis must be conducted according to OSHA standards;

(10) 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;

(11) 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; and

(12) Repeals provisions exempting state asbestos abatement projects for single-family, owner-occupied dwellings, and vacant public or privately owned residential buildings of four units or less that are being demolished for public health, safety, or welfare purposes from certain requirements.

JUDICIAL REVIEW OF CERTAIN ENVIRONMENTAL-RELATED DECISIONS (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 bill removes the expiration date on the public notice requirements of the Clean Water Commission within the Department of Natural Resources 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 department director must conduct a comprehensive review of the water pollution fee structure including input from stakeholders and submit a report to the General Assembly by December 31, 2012, including the findings and a recommended plan for the fee structure. The plan must include timelines for permit issuance, expedited permits, and recommendations for improved services.

CLEAN WATER COMMISSION PERMITS AND APPEALS (Section 644.051)

The bill:

(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 the Department of Natural Resources 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 term or condition of the permit;

(2) Specifies that in matters heard by the commission, the burden of proof is on the department or the commission that issued the finding, order, decision, or assessment being appealed except in a matter involving the denial of a permit, license, or registration when the burden of proof is on the applicant;

(3) Allows a permit to be modified, reissued, or terminated at the request of the permit holder. A request 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 ON CERTAIN SANITARY SEWER OR TREATMENT SYSTEMS (Section 644.145)

The Department of Natural Resources must 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 when issuing permits under Chapter 644 or when enforcing state or federal laws. If the department fails to make a determination, the proposed permit or decision will be void and unenforceable. The bill specifies the criteria that the department must use in determining if a permit or decision is affordable. A department's finding may be appealed to the Clean Water Commission.

PRIVATE SEPTIC SYSTEMS (Sections 701.033 and 701.058)

The Department of Health and Senior Services is authorized to provide technical assistance and guidance to a local administrative authority on the regulation and enforcement of standards for individual on-site sewage disposal systems. 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 bill 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 provisions of the bill are nonseverable; and if any provision is found to be invalid for any reason, the remaining provisions, except for those regarding cleanfields renewable energy demonstration projects, will be invalid.

The bill contains an emergency clause for the provisions regarding state department transparency, county drinking water supply lake authority, real-time bacterial water quality testing, State Parks Earnings Fund, mining permits, cleanfields renewable energy demonstration projects, environmental permits, notification of public health risks, consolidation of state services, judicial review of certain environmental-related decisions, clean water notice requirements and fees, Clean Water Commission permits and appeals, affordability determinations on certain sanitary sewer or treatment systems, private septic systems, and the Missouri Energy Task Force.