

HCS HB 880 -- DEPARTMENT OF NATURAL RESOURCES

SPONSOR: Guernsey

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Agri-Business by a vote of 12 to 2.

This substitute changes the laws regarding the Department of Natural Resources. In its main provisions, the substitute:

- (1) Authorizes the Department of Natural Resources to submit fingerprints to the State Highway Patrol for the purpose of checking the criminal history of a person seeking the issuance or renewal of a license, permit, certificate, or registration of authority;
- (2) Prohibits the Department of Agriculture from using more than 10% of the moneys in the Land Survey Fund for administrative expenses;
- (3) Transfers all powers, duties, and functions of the Land Survey Program within the Department of Natural Resources to the Department of Agriculture by type 1 transfer;
- (4) Specifies that if the Land Survey Program headquarters are located in any building owned by a state agency or department, the program cannot be liable to that agency or department for rent or other costs associated with the office space and designates the building that holds the permanent headquarters of the program as the "Robert E. Myers Building";
- (5) Renames the Department of Natural Resources Revolving Services Fund as the Department of Agriculture Revolving Services Fund and transfers the balance of the funds from the reproduction and sale of land survey documents into the newly created fund;
- (6) Requires a county commission in a county with a county health center board to have the board's approval on any proposed order, ordinance, rule, or regulations relating to public health or the environment;
- (7) Specifies that the county commission, with the approval of the county health center board, in regards to any order, ordinance, rule, or regulation relating to the production, harvesting, storage, drying, or raising of agricultural commodities must:
  - (a) Not assess a fee greater than \$200;
  - (b) Be administered by county staff who are certified as

concentrated animal feeding operators by the Department of Natural Resources; and

(c) Not impose requirements on land application that are more stringent than the requirements imposed by a permit issued by the department;

(8) Requires one member of the Dam and Reservoir Safety Council within the Department of Natural Resources to be from each of the state's five United States Congressional districts with the highest number of dams and requires the council to prepare and present an annual report to the General Assembly by December 31;

(9) Authorizes the State Treasurer to deposit all of the moneys in the State Park Earnings Fund into any qualified depository of the state and requires the deposits to be secured in a manner provided by law. Any interest earned on the deposits must be credited to the fund;

(10) Requires the Industrial Minerals Advisory Council within the Department of Natural Resources to prepare and present an annual report to the General Assembly by December 31;

(11) Repeals the requirement to file a disclosure form when seeking a renewal permit for a commercial solid waste processing facility or a solid waste disposal area;

(12) Modifies the information required in the disclosure statement for an entity seeking a permit for a commercial waste processing facility or a solid waste disposal area;

(13) Requires, upon request from the department director, a permit applicant, any person that could reasonably be expected to be involved in the management activities of the solid waste disposal area or solid waste processing facility, or anyone with a controlling interest in a permittee to submit to a criminal background check;

(14) Requires anyone who must file a disclosure statement to provide any assistance or information requested by the department director or the State Highway Patrol and to cooperate in any investigation or hearing conducted by the director. If the person does not cooperate or provide information, the permit may be denied or revoked;

(15) Requires an applicant to submit any additional information or change in information to the department within 30 days. Failure to provide the information may result in revocation, denial or conditional granting of the permit if the director notifies the

permittee or applicant of his intention to do so;

(16) Specifies the people who are exempt from the requirement to file a disclosure statement;

(17) Requires permittees to annually update the disclosure form;

(18) Exempts political subdivisions from the requirement to file and update a disclosure form;

(19) Requires any permit applicant to disclose any final administrative, civil or criminal adjudication in the state related to solid waste. If the department finds there is a continuing pattern of violations, it may deny the application;

(20) Requires the City of Blue Springs to put any intention to expand solid waste collection services into an area where the collection of solid waste is currently being provided by one or more private entities to a vote of the people in the area where the city intends to expand;

(21) Authorizes the Director of the Department of Natural Resources to conduct a comprehensive review, with stakeholder input, of the fee structures for the generation of hazardous waste, clean water permits, and air pollution control permits. Upon completion of the review of a fee structure, the department will submit its proposed changes to the respective commission for its review. The commission must follow specified steps in adopting the recommendations changes and establishing the changes into rules;

(22) Specifies that if the General Assembly does not disapprove the rules setting out any new fee structure in the manner specified, it will take effect on January 1 of the next odd-numbered year;

(23) Repeals the provision requiring hazardous waste facility owners to obtain a permit for post closure activities;

(24) Repeals the provision requiring hazardous waste facilities to submit a profile of the environmental and economic characteristics of the area including the extent of any air pollution, groundwater contamination and health characteristics, when applying for or renewing a hazardous waste facility permit;

(25) Repeals the provision requiring the Department of Natural Resources to conduct a five-year review of certain permitted hazardous waste facilities;

(26) Repeals the provision that prohibits the Department of

Natural Resources from issuing a license or permit to anyone who is determined to habitually engage in hazardous waste management practices that pose a threat to human health or the environment;

(27) Transfers the Petroleum Storage Tank Insurance Fund Board of Trustees from the Department of Natural Resources to the Department of Insurance, Financial Institutions, and Professional Registration by a Type III transfer;

(28) Specifies that in all civil actions involving claims arising from the ownership, maintenance, management, or control of underground hard rock mining or hard rock milling sites that ceased operations prior to January 1, 1975, or arising from chat or tailings generated at those sites, brought against a person or entity alleged to have owned, maintained, managed, or controlled the sites, chat, or tailings at any time, the person or entity is exempt from punitive or exemplary damages to all claims related in any way to the ownership, maintenance, management, or control of the sites, chat, or tailings, as long as the person or entity or its employee, agent, owner, parent, subsidiary, or any related company has made or is making a good faith effort to remediate the sites;

(29) Specifies that evidence may be introduced to demonstrate a good faith effort to remediate; however, substantial compliance with an order or permit issued by or negotiated with the state or the United States concerning remediation or closure will be deemed to be a good faith effort to remediate. The exemption from punitive damages does not apply if the trier of fact finds that the injury that is the subject of the civil action is attended by circumstances of fraud, malice, or willful and wanton conduct;

(30) Specifies that when a good faith effort to remediate a site has not been made or the injury is found to be attended by circumstances of fraud, malice, or willful and wanton conduct, the total of any awards of punitive or exemplary damages must not exceed \$500,000 in the aggregate to all defendants in the civil action. One half of the awards for punitive or exemplary damages must be paid into the Missouri Lead Abatement Loan Fund;

(31) Allows an applicant for multiple permits or certifications to directly petition the Director of the Department of Natural Resources for a unified permit schedule and to obtain the permits or certifications in a coordinated and streamlined process;

(32) Requires the director to develop and implement a process to coordinate the processing of multiple permits, certifications or permit modifications from a single applicant;

(33) Creates the Department of Natural Resources Revolving Fund for all funds received by the department from specified services and specifies what the funds can be used for;

(34) Requires Missouri state parks' designated swim beaches to utilize a standard that measures E. coli using the federal Environmental Protection Agency's Method 1603, or an equivalent method that measures culturable E. coli, at a geometric mean based on weekly sampling over a 30-day period of a specified number of forming units. If a beach exceeds the established geometric mean standard, the Department of Natural Resources must post signs stating "Swimming is Not Recommended." The department reserves the right to close a beach in the event of a documented health risk;

(35) Modifies natural resources damages as follows:

(a) It is the policy of the state to acquire land for future generations; and

(b) Any claim of natural resource damages against a potentially responsible party for a release must be offset by a credit for the full value of any economic and ecological benefits to the state and its citizens of any land or other property rights donated by that potentially responsible party or its predecessor. The substitute specifies how to determine the economic and ecological benefits of any land or other property rights;

(36) Specifies that the natural resources trustee designated by the Governor is not to transfer any authority to assess or recover damages to natural resources to any federal or other trustee of natural resources;

(37) Allows the county commission in a county where a concentrated animal feeding operation is located to recommend, based on review of the site plan, an increase of up to 50% of the buffer distance;

(38) Specifies the time frame for the submission and rejection of the recommendation by the department;

(39) Changes the requirements for neighbor notification for Class I concentrated animal feeding operations. Currently neighbor notification is required before filing an application for a construction permit. The notification will be required before filing for an operating permit;

(40) Requires the Missouri Weatherization Policy Advisory Council within the Department of Natural Resources to prepare and present an annual report to the General Assembly by December 31;

(41) Requires any recipient of a grant or other funds from the Weatherization Assistance Program for Low-Income Persons within the Department of Natural Resources to attend a financial planning or budgeting course from a local community action group, community college, or school before receiving the grant or funds;

(42) Requires the department to allow an appropriate schedule of compliance for a permittee to make upgrades or changes to its facilities that are necessary to meet new water quality requirements. The department must incorporate new water quality requirements into an existing permit at the time of renewal unless there is a compelling reason to implement the requirements earlier through permit modifications. All new permit applicants may be required to meet new water quality standards or classifications;

(43) Repeals the requirement for certain wastewater discharges to obtain a construction permit. It is unlawful for a person to construct, build, replace or make a major modification to a point source that is principally designed to discharge human sewage unless the person obtains a construction permit from the Clean Water Commission within the Department of Natural Resources;

(44) Requires any point source that proposes to construct an earthen storage structure for domestic, agricultural, or industrial process wastewater to obtain a construction permit. All other construction-related activities are exempt from the permit requirement but are subject to specified conditions;

(45) Authorizes the Director of the Department of Natural Resources to grant provisional variances when it is determined that compliance with the limitations in the clean water law or the related rules and regulations are due to conditions beyond reasonable control and will result in an unreasonable hardship that exists solely because of the regulatory requirement and costs of compliance are substantial and certain;

(46) Specifies the effects the director must consider when granting the variance to temperature requirements;

(47) Specifies that a variance will be granted for 45 days and may be extended by the director for an additional 45 days, but a variance cannot last longer than 90 days in one calendar year;

(48) Specifies the application process for a variance and requires a \$250 fee with each petition. The director must investigate each petition and take action within 14 days of its receipt;

(49) Specifies that if the director grants a provisional variance, he or she must notify the petitioner and file a written copy of the

decision with the Clean Water Commission. The commission must maintain copies of all provisional variances;

(50) Repeals the provisions requiring the Department of Natural Resources to assess the transportation system serving a proposed hazardous waste facility;

(51) Requires the Division of State Parks within the Department of Natural Resources to hold a stakeholder meeting in each park district once a year. A stakeholder may petition the director of State Parks regarding any policy or park issue that has been presented to the relevant facility manager and district supervisor;

(52) Specifies how the Director of the Division of State Parks must respond to the petitions, including time frames. The decision of the division director will be final and not subject to review;

(53) Requires the Department of Natural Resources, by December 1, 2013, and annually thereafter, to develop a list of all documents it uses in determining the issuance and conditions of environmental permits, certifications, or modifications under state statute or authority delegated by other state or federal agencies. The department must provide the list and all documents referenced to the Joint Committee on Administrative Rules within the General Assembly for a review, in consultation with the department, to determine if the documents should be subject to the rulemaking process; and

(54) Specifies that the limitations on mining, air quality or water quality permits near accredited schools do not apply to Cape Girardeau County.

The provisions of the substitute regarding the clean water permitting fee structure contain an emergency clause.

PROPONENTS: Supporters say that the bill creates efficiencies within the Department of Natural Resources by combining and eliminating boards and commissions. The department is a very large, highly regulatory department that affects many people and businesses in Missouri. The department needs to work better with the people and businesses it regulates.

Testifying for the bill were Representative Guernsey and Missouri Society of Professional Surveyors.

OPPONENTS: Those who oppose the bill say that the Well Drillers Protection Act and the Well Installation Board should not be placed under the Safe Drinking Water Commission because the laws governing wells and drinking water are very different.

Testifying against the bill was Lindell Lindsay, Missouri Water Well Association.

OTHERS: Others testifying on the bill say that it has many good provisions that will promote government efficiency; however, moving the Well Installation Board will remove protections and industry input from groundwater protection.

Testifying on the bill were Missouri Farm Bureau; and Missouri Corn Growers Association.