

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1310-03  
Bill No.: SCS for HB 571  
Subject: Fees; Fire Protection; Public Safety Department  
Type: Original  
Date: May 5, 2017

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Bill Summary: This proposal relates to natural resources.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
<b>Total Estimated Net Effect on General Revenue</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Explosives Safety Fund	\$33,000 up to \$60,500	\$66,000 up to \$121,000	\$66,000 up to \$121,000
Solid Waste Management Fund	\$1,410,342	(\$615,785)	(\$620,980)
<b>Total Estimated Net Effect on Other State Funds</b>	<b>\$1,443,342 up to \$1,470,842</b>	<b>(\$549,785) to (\$362,785)</b>	<b>(\$554,980) to (\$499,980)</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 10 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
Solid Waste Management Fund	6 FTE	6 FTE	6 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>6 FTE</b>	<b>6 FTE</b>	<b>6 FTE</b>

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### §206.244:

Officials from the **Department of Natural Resources (DNR)** state this bill provides authority for the department to promulgate rules by June 1, 2018 applicable to Coal Combustion Residuals (CCR) surface impoundments including a provision to assess a one-time fee of \$1,600 per surficial acre for CCR surface impoundments, and promulgate CCR landfill rules establishing a process for assessing and collecting an annual fee not to exceed \$500 per acre for acres not officially closed for CCR landfills no later than June 1, 2019.

Due to the catastrophic collapse of large volume surface impoundments the U.S. Environmental Protection Agency (EPA) published the final order of rulemaking for the "Disposal of Coal Combustion Residuals from Electric Utilities" on April 17, 2015. This federal CCR rule governs disposal and management of fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from the combustion of coal at electric utilities. This rule finalizes national minimum criteria for existing and new CCR landfills and surface impoundments which are similar to those for municipal solid waste landfills. These include:

- Location restrictions
- Requirements for composite liners and leachate collection systems
- Criteria addressing the structural integrity of CCR surface impoundments
- Air quality criteria
- Stormwater control criteria
- Inspection requirements
- Groundwater monitoring and corrective action requirements
- Closure and post-closure requirements
- Recordkeeping requirements
- Criteria for beneficial use of CCR

Missouri is the 12th largest coal energy producing state in the U.S. The final rule allows for self-implementation and self-reporting via the Internet by owners/operators of utility waste landfills and surface impoundments. Because of the nature and volume of these waste materials, ground and surface water can become contaminated if the waste materials are mismanaged and a public nuisance can be created through improper handling and disposal of the mountains of fly ash generated each year by these facilities.

ASSUMPTION (continued)

The federal CCR rule is self-implementing; no federal or state permit is required of a CCR landfill or surface impoundment to operate. Owner/operators are expected to maintain operational transparency through disclosure of certain information on a publicly accessible Internet website. Such information must demonstrate compliance with the federal rule. Presently, the Missouri Solid Waste Management Law and implementing regulations provide specific design and operational requirements for CCR landfills, commonly referred to as utility waste landfills (10 CSR 80-11.010 Utility Waste Landfill Design and Operation) along with limited provisions governing closure of CCR surface impoundments (10 CSR 80-2.020(9)(A)7).

The current Missouri CCR law and regulations fall short of equivalency with this new federal rule. Absent revision to the current state law and regulations, enforcement authority would pass from the state to the federal government. Any action brought in regard to a CCR landfill or CCR surface impoundment would be in the form of a citizen lawsuit in the federal court system. Missouri may only seek determinations of noncompliance with the federal rules and subsequent corrective actions from a noncompliant owner/operator polluting within Missouri's boundaries by filing suit as a "Missouri citizen" in federal court.

The bill appears to provide authority to the department to promulgate rules addressing both CCR landfills and surface impoundments. Once rules are promulgated, Missouri Department of Natural Resources staff would be responsible for oversight, implementation, and enforcement of the regulations adopted.

Based on information compiled by department staff, there are currently nineteen (19) operating utilities in Missouri which have coal-fired power plants. An EPA assessment of CCR surface impoundments in each state identified thirty-five (35) CCR impoundments at fourteen (14) sites in Missouri (not all plant sites have surface impoundments).

The department assumes that department staff would be responsible for oversight, inspections, closure and all associated activities for these 35 existing CCR impoundments. In addition to existing facilities, department staff would be responsible for review and approval of proposed new facilities, as well as expansion of existing facilities.

The WIIN Act advises that if Missouri does not set up a state CCR permitting program, EPA must administer the program themselves.

The proposed section 260.244 requires the department to draft rules consistent with the federal CFR. The department assumes that the legislature intends the department to promulgate rules for all types of CCR units.

ASSUMPTION (continued)

This proposed bill appears to grant authority and require the amendment and promulgation of rules applicable to CCR landfills a.k.a. Utility Waste Landfills under the current Missouri Solid Waste Management Law (RSMo. 260.200-260.345). The proposed language appears to address cost recovery for closure of CCR units and other requirements of contents of a State CCR regulatory program equivalent with 40 CFR Part 257 and in compliance with 40 CFR Part 256 Guidelines for Development and Implementation of State Solid Waste Management Plans (specifically Subpart C- Solid Waste Disposal Programs).

This bill provides authority for the department to promulgate rules by June 1, 2018 applicable to Coal Combustion Residuals (CCR) surface impoundments including a provision to assess a one-time fee of \$1600 per surficial acre for CCR surface impoundments, and no later than June 1, 2019 promulgate CCR landfill rules establishing a process for assessing and collecting an annual fee not to exceed \$500 per acre for those acres not officially closed. Further, the bill requires that every five years the department convene a task force including industry representatives to evaluate the sufficiency and level of fees assessed by the department under this bill language.

The department has projected annual contractual costs of approximately \$656,587 for the first 3 years to assess and properly close all ash pond impoundments.

260.242- Section is to be repealed.

This section is no longer applicable as it exempts a specific facility from the solid waste management law and regulations and fails to comply with the beneficial use determination requirements contained in 40 CFR Part 257. Further, the only known facility that this exemption applies to, Underground Services Company (USC) Briarcliff, indicated on 11/4/2016 that all CCR placement activities are complete and the exemption is no longer necessary.

**Impoundment Closures**

The department would procure contractual services for the impoundment work which is estimated to last three to five years. This work consists of evaluation and impoundment pond closures at each of the 35 CCR impoundments identified by EPA in Missouri.

**Project Manager/Engineer Contractor**

15,152 initial hours (over 3 years) X \$130/hour = \$1,969,760.00

\$1,969,760.00/3 years = \$656,587 annually

ASSUMPTION (continued)

CCR Program Implementation

In order to fully implement the permitting program as required by the federal CCR rule it's estimated that the department would require a total of 6 FTE.

<u>Position</u>		<u>FTE</u>	<u>Duties</u>
Environmental Engineer I/II	-	2	Permit modifications, groundwater monitoring reviews, groundwater corrective action planning and oversight, Inspections, website review, new cell construction review and analysis
Env. Specialist I/II/III	-	1	Groundwater monitoring, groundwater report reviews, inspections as needed
Env. Specialist I/II/III	-	2	quarterly inspections for each of the 35 ponds, beneficial use inspections, investigation efforts
Geologist I/II/III	-	1	Groundwater monitoring, groundwater corrective action

Program Implementation expense and equipment is itemized on the fiscal impact spreadsheet. All standard expense and equipment items would be required for each of these new positions as listed.

Revenues

In FY 2018

1,246.07 (Impoundment Surficial Acres ) x \$1,600 (per Impoundment Surficial Acre)  
= \$1,993,712

In FY 2018-2020

1,141 (Landfill Acres not officially closed) x \$500 (per Landfill Acre not officially closed)  
= \$570,500 (annually)

ASSUMPTION (continued)

§319.318:

Officials from the **Department of Public Safety - Division of Fire Safety (DPS)** state they are charged with administering the Missouri Explosives Safety Act which regulates and provides oversight of all above-ground blasting conducted in our State. This industry was impacted by the economic downturn in 2009-2010, and program revenues have never regained their strength. As a result, the program has struggled with a poor fund balance while supporting 2 FTE: a blast-safety investigator and one clerical position.

RSMo 319.318 4 (3) allows for the increase in fees per ton of explosives used from \$2.00 to up to \$7.50 per ton used. This fee would be established by rule, and shall be no greater than the cost to administer the program.

The Missouri Blast Safety Board and the Division of Fire Safety staff agree to an initial increase to \$5.00 per ton used in order to cover the cost of administering the program. This legislation exempts surface coal mining companies in 319.318 4. (3). DPS states an average of 21,924 tons is used annually. This fee increase would be additional revenue annually to the Explosives Safety Fund (0804). The proposed legislation does allow for an increase up to \$7.50 per ton, should the cost of administering the program justify such an increase in future years.

This increase would require a rule change. Due to the time frame involved in the promulgated rule process, the Division projects additional revenues in FY18 for only 6 months.

This proposed legislation would have on-going benefits to the Division of Fire Safety in order to ensure the continuance of the Explosives Safety program. Without the passage of this legislation, the Division of Fire Safety will not have the revenues to support the program moving past FY18. Current fund balance is at \$83,851, with additional FY17 revenues projected at \$20,000. Annual program expenses average \$143,482, inclusive of fringe.

**Oversight** will reflect the anticipated \$3 per ton increase in the fee as estimated by the Division of Fire Safety of approximately \$66,000 (21,924 x \$3) and \$33,000 in FY 2018 for 6 months. For fiscal note purposes, Oversight will also reflect the new ceiling of \$7.50 per ton fee; however new language is added in the proposal stating “the fee established by rule shall not yield revenue greater than the cost of administering sections 319.300 to 319.345.” The new ceiling of \$7.50 would be a \$5.50 per ton increase over the current \$2.00 fee. Therefore, using DPS’ estimated tonnage of 21,924, this would yield an additional \$121,000 in fees annually.

ASSUMPTION (continued)

Bill as a whole:

According to officials from the **Office of the Secretary of State (SOS)**, many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what our office can sustain with our core budget. Therefore, we reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

**Oversight** assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Officials from the **Joint Committee on Administrative Rules** state this legislation is not anticipated to cause a fiscal impact beyond its current appropriation.

§319.337 & 537.535,- public or private nuisances:

In response to a similar proposal from this year, SB 76, officials from the **Office of the Attorney General** assumed that any potential costs arising from this proposal can be absorbed with existing resources.

In response to a similar proposal from this year, SB 76, officials from the **Office of the State Courts Administrator** assume no fiscal impact to their respective agencies from this proposal.

**This proposal could increase Total State Revenues.**



<u>FISCAL IMPACT - State Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
<b>EXPLOSIVES SAFETY FUND</b>			
<u>Income</u> - DPS - \$319.318 - increasing the fee per ton of explosives used from \$2 to \$5, with the possibility of up to \$7.50	\$33,000 <u>up to \$60,500</u>	\$66,000 <u>up to \$121,000</u>	\$66,000 <u>up to \$121,000</u>
<b>ESTIMATED NET EFFECT TO THE EXPLOSIVES SAFETY FUND</b>	<b>\$33,000</b> <b><u>up to \$60,500</u></b>	<b>\$66,000</b> <b><u>up to \$121,000</u></b>	<b>\$66,000</b> <b><u>up to \$121,000</u></b>
<b>SOLID WASTE MANAGEMENT FUND (CCR Subaccount)</b>			
<u>Income</u> - Impoundment Fee (\$1,600/acre)	\$1,993,712	\$0	\$0
<u>Income</u> - Landfill Fee (\$500/acre)	\$570,500	\$570,500	\$570,500
<u>Costs</u> - DNR			
Personal Service (6 FTE)	(\$275,550)	(\$333,967)	(\$337,306)
Fringe Benefits	(\$133,599)	(\$161,303)	(\$162,298)
Professional Services (contractual)	(\$656,587)	(\$656,587)	(\$656,587)
Expense & Equipment	<u>(\$88,134)</u>	<u>(\$34,428)</u>	<u>(\$35,289)</u>
<u>Total Costs</u> - DNR	(\$1,153,870)	(\$1,186,285)	(\$1,191,480)
FTE Change - DNR	6 FTE	6 FTE	6 FTE
<b>ESTIMATED NET EFFECT TO THE SOLID WASTE MANAGEMENT FUND (CCR Subaccount)</b>	<b><u>\$1,410,342</u></b>	<b><u>(\$615,785)</u></b>	<b><u>(\$620,980)</u></b>
Estimated Net FTE Change for the Solid Waste Management Fund	6 FTE	6 FTE	6 FTE
 <u>FISCAL IMPACT - Local Government</u>			
	FY 2018 (10 Mo.)	FY 2019	FY 2020
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

FISCAL IMPACT - Small Business

Small businesses that use explosives would have to pay more in fees to the Division of Fire Safety as a result of this proposal.

FISCAL DESCRIPTION

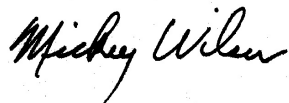
The Department of Natural Resources shall have authority to promulgate rules for the management and risk-based closure of coal combustion residual (CCR) surface impoundments and CCR landfills.

Currently, the fee paid to the Division of Fire Safety for using explosives may be set by rule, but shall not exceed \$2 per ton. Under this act, the fee shall not exceed \$7.50 per ton and any fee established by rule shall not yield revenue greater than the cost of administering the Missouri Blasting Safety Act. This legislation exempts surface coal mining companies in 319.318 4. (3).

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Public Safety - Division of Fire Safety  
Department of Natural Resources  
Office of the State Courts Administrator  
Attorney General's Office



Mickey Wilson, CPA  
Director  
May 5, 2017

Ross Strobe  
Assistant Director  
May 5, 2017