

# Journal of Environmental and Sustainability Law

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Missouri Environmental Law and Policy Review  
Volume 9  
Issue 2 2001-2002

Article 8

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2002

## Legislative Update

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### Recommended Citation

*Legislative Update*, 9 Mo. Env'tl. L. & Pol'y Rev. 109 (2002)

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## LEGISLATIVE UPDATE

### ***SB 0971 – Required Mandatory Risk Assessment and Cost-Benefit Analysis For all Regulations Promulgated by the Department of Natural Resources*** Sponsored by Senators John Cauthorn, Bill Foster, and Sarah Steelman

A bill currently under the consideration in Missouri's Senate would require Missouri's Department of Natural Resources ("MDNR") to provide proof that the regulations it promulgates are in Missouri's best interest.

Senate Bill No. 971, if enacted will amend Chapter 640 of the Revised Statutes of Missouri, adding two new sections to be known as §§ 640.012 & 640.014. The proposed statutes require that all regulations promulgated by the MDNR be based on "sound scientific evidence." In addition, the MDNR must prepare a cost-benefit analysis and a risk assessment for each regulation or action. Any cost-benefit analysis and risk assessment prepared by the MDNR will be required to include seven components: (1) an estimate and explanation of the risk to public health and/or the environment posed by the new regulation or action; (2) identification of the specific sources relied upon for the risk assessment; (3) any assumptions made or uncertainties encountered in conducting the cost-benefit analysis; (4) the expected benefit of the regulation or action, including any expected public health or environmental risk reduction; (5) the details associated with the regulation or action, as well as the cost of not adopting the regulation or taking the covered action; (6) a description of any significant risks that will arise as a result of adopting the regulation or taking the covered action; and (7) any available alternatives that would produce comparable results, along with the relative benefits and costs of adopting those measures instead.

The MDNR is required to use the best available scientific information, within reason, and develop its cost-benefit analysis and risk assessment using scientifically objective and unbiased standards. After creating the analysis and assessment, notice must be published in at least one major newspaper and on the Internet that they are available for public inspection. Further, both documents must be made available to the public via the Internet. The notice period will last for 60 days, during which period the MDNR must reply to any significant comments prior to promulgation of the rule or regulation.

After this 60-day period, and concurrently with the filing of the proposed regulation pursuant to Missouri's Administrative Procedure Act, both the analysis and assessment must also be filed with the joint committee on administrative rules. Anyone who conducts an independent risk assessment or cost-benefit analysis can submit it to the appropriate commission or the MDNR for its records. The MDNR must consider independent assessments and analysis, along with all other relevant evidence, when promulgating its regulations.

Any regulations promulgated by the MDNR without a risk assessment or cost-benefit analysis will be void, unless an emergency need exists requiring immediate action in order to protect public health and welfare. In any suit challenging a regulation, the new amendments place the burden of proof on the MDNR to show that regulation is necessary to prevent specific circumstances or conditions causing harm to human health and the environment.

The last action taken by the Senate regarding these amendments was on February 14, 2002, when the Senate Commerce & Environment Committee voted "Do Pass."

STEVEN J. BLAIR

### ***SB 881 – Creation of Environmental Hearing Commission*** Sponsored by Senator Sarah Steelman

Senate Bill No. 881 creates the Environmental Hearing Commission (EHC) by adding six provisions to Chap 640, RSMo. The purpose of the EHC is to hear appeals of decisions involving environmental orders, permits, and penalties. Currently, appeals of this nature are heard by one of the following agencies: the Department of Natural Resources (DNR), the Air Conservation Commission, the Clean Water Commission, the Safe Drinking Water Commission, the State Soil and Water Districts Commission, the Hazardous Waste Management Commission, the Land Reclamation Commission, and the Petroleum Storage Tank Insurance Fund Board, respectively. Under S.B. 811, the EHC will have authority to review decisions made by the aforementioned Commissions and the DNR. The provisions of Chapter 536 of the Revised Statutes

of Missouri. will govern general procedural matters of the EHC. Specifically, the DNR or the Commission making the initial ruling will have the burden of proof on matters before the EHC. On the other hand, an applicant that has been denied a permit, license, or registration will have the burden of proof. Final decisions of the EHC are subject to judicial review.

The EHC office will be established in Jefferson City, but hearings may be conducted in appropriate offices throughout the state. In addition to the responsibility of appellate review, the EHC would be given the authority to stay or suspend the actions of the DNR or other Commissions within the scope of Chapter 640, Revised Statutes of Missouri. The EHC also has authority to establish methods and means for electronic filing of documents.

The EHC will be comprised of three commissioners appointed by the Governor with the advice and consent of the Senate. The Commissioners will serve six-year terms and will not be term-limited. In addition, the terms of the Commissioners will be staggered, although no more than three Commissioners may serve at one time. To be eligible for the EHC, the prospective Commissioners must be licensed to practice law in Missouri and have an interest in and knowledge of environmental issues.

Funding necessary for the EHC is estimated to be \$616,976 (Fiscal Year 2003), \$684,618 (Fiscal Year 2004), and \$701,000 (Fiscal Year 2005), respectively. The funding will come from General Revenue funds. Most of the costs of the EHC will be associated with the general establishment and operation of the EHC. The fiscal analysis also predicts that the DNR and individual commissions will incur some costs as a result of S.B. 811, although the amounts are unknown.

S.B. 811 was reported out of the Senate Commerce and Environment Committee on January 31, 2002, with a "Do Pass" recommendation. After several minor amendments, it was placed on the Informal Calendar for Perfection on February 26, 2002, where it currently stands.

GARY R. LONG

***HB1472 – Biodiesel Fuel for State Vehicles***  
Sponsored by Representative James Whorton

On January 1, 2002, HB1472, entitled "Biodiesel Fuel" was introduced and read for the first time in the Missouri House of Representatives. The bill, if passed, will amend chapter 414 of the Missouri Revised Statutes. HB1472 requires that on or before October 1, 2003, the Missouri Department of Transportation implement a program whereby its vehicle fleet and heavy equipment that use diesel fuel use fuel with at least the biodiesel content of "B-20." "Biodiesel", as defined in the bill, means fuel as defined in ASTM Standard PS121 (See [www.astm.org](http://www.astm.org)). "B-20", as defined in the bill, means a blend of twenty percent by volume biodiesel fuel and eighty percent by volume petroleum-based diesel fuel.

The bill sets forth two goals. First, the bill proposes that on or before July 1, 2004, at least fifty percent of the department's vehicle fleet and heavy equipment that use diesel fuel shall use fuel with at least the biodiesel content of B-20, if such fuel is commercially available. Second, the bill proposes that on or before July 1, 2005, at least seventy-five percent of the department's vehicle fleet and heavy equipment that use diesel fuel shall use fuel with at least the biodiesel content of B-20, if such fuel is commercially available. The blended biodiesel fuel shall be presumed to be commercially available if the incremental cost of such fuel is not more than twenty-five cents. "Incremental cost," as defined in the bill, means the difference in cost between blended biodiesel fuel and conventional petroleum-based diesel fuel at the time the blended fuel is purchased.

The bill does not intend to create a state requirement for biodiesel fuel in excess of the requirements of the federal National Energy Policy Act of 1992 (*see* 42 U.S.C. §§ 13251, 13257(o)). The bill also states that to the maximum extent practicable, the department shall obtain funding for the incremental cost of the blended biodiesel fuel from the biodiesel fuel revolving fund established in Mo. Rev. Stat. § 414.407. Furthermore, the director of the Missouri department of transportation may promulgate any rules necessary to carry out the provisions of the bill, so long as those rules are promulgated pursuant to chapter 536 of the Missouri Revised Statutes.

On February 14, 2002, the House Committee on Environment and Energy voted "do pass" on HB1472. The estimated cost to the Road Fund is \$0 in Fiscal Year 2003, \$0 in Fiscal Year 2004, and \$607,125 in Fiscal Year 2005. As of February 25, 2002, the bill is in front the House Committee for Fiscal Review and Government Reform.

SCOTT S. SMITH

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