

Harmful Sections in Necessary DNR Fee Renewal Bills HB 631 and HB 779

Removing “nonpoint source” from definition of water pollution Only in HB 631

The specific language in the bill that threatens weakened water protections as well as possible “de-delegation” is on Page 61 of SCS HCS HB 631. It modifies Section 644.016(25) by removing “nonpoint source” pollution from the definition of “Water contaminant source”:

(25) "Water contaminant source", the point or points of discharge from a single tract of property on which is located any installation, operation or condition which includes any point source defined in sections 644.006 to 644.141 [and nonpoint source pursuant to any federal water pollution control act,] which causes or permits a water contaminant therefrom to enter waters of the state either directly or indirectly

If this bill passes this language redefining "water contaminant source," it opens the door to an EPA takeover of all water pollution control programs in Missouri. EPA would write permits, enforce regulations, and prosecute violations throughout the state. DNR would lose funding it currently uses to administer these programs, likely causing layoffs of state employees and the elimination of entire offices within DNR. This takeover is referred to as "dedelegation," and is viewed by environmentalists and industry alike as a nuclear option. It is a drastic measure, and one not easily reversed. After dedelegation, Missouri clean water permits would be written by federal bureaucrats without the valuable on-the-ground local knowledge that DNR has cultivated.

If DNR declined to permit non-point (or "non-point") sources like CAFOs, land disturbance, and other such issues, it limits, or potentially eliminates, public notice that these activities are taking place. In addition, this law would gut DNR's ability to address major pollution issues like the Gulf hypoxic zone, nutrient pollution in Missouri rivers and lakes, and sediment pollution. That jeopardizes not only Missouri's water quality but our relationships with other states that are participating in the Gulf Hypoxia Task Force.

Drastic changes that threaten a federal government takeover of Missouri's water pollution controls should not be buried in a routine bill intended to maintain DNR's essential functions. The state of Missouri is obligated to enforce federal law concerning water pollution, including nonpoint source water pollution. We urge the Senate to remove this section of the bill and pass a "clean" bill to maintain DNR's fee structure and funding and keep permitting and enforcement authority in Missouri, where it belongs.

Neither this section nor the language on “guidance” should be in a necessary bill to renew DNR fees, but of the two sections this section on “nonpoint source” water pollution is the most dangerous to the agency and the well- being of Missourians. Therefore, as written, HB 631 is the most dangerous of the two bills.

Harmful Parts of Necessary DNR Fee Renewal Bills HB 631 and HB 779

Prohibiting use of “guidance” for permitting or regulatory action In both HB 631 and HB 779

The specific language of the bill that could hurt DNR’s ability to enforce state and federal environmental rules is the proposed section 640.023 in both bills. It states:

“Notwithstanding any provision of Law to the contrary, the department of natural resources shall not take any permitting or regulatory action based solely on guidance that has not been promulgated as a regulation, unless such use of guidance is agreed to by the permittee or person subject to such regulatory action.”

The purpose of guidance is to provide a regulatory body with new information that may help the body carry out their mission and mandates. Sometimes guidance is giving agencies information to help them prepare for changes that are already coming from the federal government. There also could be times of emergency when guidance could be needed to protect the public quickly.

The bill does not specify if this applies just to internal DNR guidance, or else also to guidance from the EPA. EPA guidance can be used to clear up gray areas of the law and make it clear what the regulation means in terms of implementation. In some circumstances EPA guidance does have the force of law, as determined by the United States Supreme Court ruling *Kisor versus Wilkie* (2019). Basically, if you have a memo from an assistant administrator or the EPA administrator interpreting on an ambiguous regulation, and that memo is related to the EPA’s subject matter expertise and was published after the agency reflected on the purpose of the statute and regulation, that’s binding law. Given this Supreme Court case, if section 640.023 stays in the bill and passes, it could create some difficult and unnecessary legal issues.

It is not the present policy of the DNR to lean on guidance to make binding regulatory or permitting action. Section 640.023 would not change that policy – but it would unnecessarily tie the hands of the DNR to protect the public and the environment and may lead to unneeded headaches regarding interpretations of potentially binding EPA guidance decisions.

Neither this section nor the language on “nonpoint source” water pollution in HB 631 should be in a necessary bill to renew DNR fees, but of the two sections, the section on “nonpoint source” water pollution is the most dangerous to the agency and the well- being of Missourians. Therefore, as written, HB 631 is the most dangerous of the two bills.