

**NOTE:** As provided in LFC policy, this report is intended only for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used for other purposes.

The most recent FIR version (in HTML & Adobe PDF formats) is available on the Legislative Website. The Adobe PDF version includes all attachments, whereas the HTML version does not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR: Picraux DATE TYPED: 3/12/03 HB 849 /aHJC

SHORT TITLE: Secretary of Environment Enforcement Powers SB \_\_\_\_\_

ANALYST: Maloy

### REVENUE

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative	Recurring	General Fund

Duplicates SB 519.

### SOURCES OF INFORMATION

Responses Received From  
 Office of the Attorney General  
 Energy, Minerals, and Natural Resources Department  
 State Highway and Transportation Department  
 Environment Department

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee has amended House Bill 849 to include two “appeals” processes. The administrative determinations of the Secretary may be appealed to the Secretary and a reconsideration hearing will be held. Determinations of the Secretary may also be appealed to District Court.

Addition of these appeal / due process layers is sound, and were initially recommended for inclusion in the bill.

#### Synopsis of Original Bill

House Bill 849 modifies the Radiation Protection Act (the Act) to give the Secretary of Environment emergency powers intended to allow a more timely and effective response to violations of the Act that present an imminent and substantial endangerment to human health or safety.

These emergency powers include:

1. Authorization to bring suit in district court to immediately restrain the person from the violation, and/or
2. Take other action, such as issuing an emergency order, seeking enforcement through the district court. If such an emergency order is violated, the violator may be assessed a penalty of \$15,000 per violation per day.

HB 849 also establishes “compliance orders” as a mechanism for dealing with non-emergency (no *imminent* harm to public safety required) violations. The bill provides that the Secretary of Environment may issue a compliance order, stating with reasonable specificity the nature of the violation and commanding compliance immediately, or within a specified time period, or assessing a civil penalty, or both. The Secretary may seek enforcement of such a compliance order in district court. If a civil penalty is assessed pursuant to a compliance order, the allowable penalty to be assessed in the order is capped at \$15,000 per violation, per day.

If an individual fails to comply with a compliance order, the Secretary may assess a civil penalty, also in the amount of \$15,000 per day for each violation of the order.

The bill provides that in determining the amount of a penalty to be assessed pursuant to a compliance order, the Secretary shall take into account the seriousness of the violation, any good-faith efforts to comply and any other relevant factors.

A compliance order becomes final unless, no later than 30 days after it is served, the person named in the order submits a written request to the Secretary for a public hearing. A recommendation shall be made by the hearing officer. However, the Secretary retains the authority to make the final decision.

Finally, HB 849 provides that knowing violations of the Act shall constitute a criminal misdemeanor, and may result in imprisonment of up-to one year and/or a fine of \$10,000. Also in this regard, a person knowingly making a false representation in an application, record, report or other such document filed or maintained pursuant to the Act, shall be guilty of a petty misdemeanor, and shall be subject to imprisonment of up-to 6 months and/or a fine of \$10,000.

### Significant Issues

The bill will increase the Secretary's discretion to issue emergency orders under the Radiation Protection Act. Currently, the law provides that the Secretary may order the impounding of the sources of radiation (this authority is preserved in the bill). If the bill becomes law, the Secretary may be able to more effectively address emergencies. In addition, the bill increases civil penalties, fines and criminal penalties. This may work to deter would-be violators, or as an incentive for a violator to take corrective action.

### **FISCAL IMPLICATIONS**

HB 849 expressly provides that penalties collected pursuant to an administrative order issued under this section shall be deposited in the state general fund. This revenue will be recurring.

The amount of revenue that may be generated is not known at this time.

**OTHER SUBSTANTIVE ISSUES**

1. There may be a need for more due process to be built into the “compliance order” challenge. Is the decision of the Secretary to be based on substantial evidence in the hearing record? Can a decision of the Secretary be appealed to district court?
2. This bill was initiated by the Environment Department.
3. According to the Environment Department, adding these teeth to the law is important. Radiation released into the air has the potential to be far more dangerous to public health than a majority of air pollutants now more regulated under existing law.
4. The International Commission on Radiological Protection has cited that the cancer and hereditary change effects resulting from unmitigated air radiological are significant for all members of the human population, but particularly to the young.

SJM/njw:pr:yr