

FISCAL NOTE

Bill #: HB0209

Title: Revise remedial action upon release of hazardous substance laws

Primary Sponsor: Christopher Harris

Status: Second Reading

Sponsor signature

Date

Chuck Swysgood, Budget Director

Date

Fiscal Summary

	<u>FY2002 Difference</u>	<u>FY2003 Difference</u>
Expenditures:		
State Special Revenue	\$29,202	\$25,702
Revenue:	0	0
Net Impact on General Fund Balance:	0	0

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget	X		Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached	X		Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

Department of Environmental Quality

1. DEQ will notice potentially liable persons (PLPs) at one new CECRA site per year with impacts to private water supplies or air contamination.
2. An average CECRA site with impacted water supplies or contaminated air encompasses an area with potential impacts to approximately 300 individuals or small businesses [based on four sites to date where the potential for private response costs existed].
3. DEQ will notify persons with private response claims by running a weekly display ad in the local newspaper for one month at a cost of \$208.
4. A 0.50 FTE staff position (grade 15) will handle the additional new workload of processing private claims generated by the requirements of HB 209 that have not previously been a part of CECRA.
 - a. DEQ will implement either interim or final actions prior to initiating a cost recovery action. Private response costs would no longer be necessary once an interim or final action is in place.
 - b. Up to 100 persons will respond to notices prior to a cost recovery action, claiming that they are an individual or small business, and that they have a private response cost claim, based on the department's experience at the Bozeman Solvent site.

- c. The DEQ project manager will spend a little over a day per claim (totaling 1,020 hours) investigating and certifying these initial claims to determine whether the claimant is a qualifying individual or small business and to ensure documentation is adequate to certify that the claimed private response costs are actual, reasonable and necessary, and to determine that additional insurance claims have not been paid.
- d. No follow-up private response cost claims will be submitted.
- e. To support the 0.50 FTE, operating expenses include indirect costs at 23% equaling \$4,319 and \$2,604 in operating expenses for supplies, telephone, travel, newspaper notices described above, etc., as well as one-time-only (FY 2002) expenses of \$1,500 for furniture and \$2,000 for a computer.
5. No new claimants will come forward after the initial 100 are identified.
6. DEQ may be required to file and conduct cost recovery court actions to force the liable party to reimburse department costs relative to this obligation under HB 209. It is difficult to predict the level of effort and costs associated with such an action. Similarly the department may be sued over its findings on what costs are actual, and reasonable. The frequency of such action is also not predictable. If either of these two events were to occur, the department may incur significant legal costs above those currently budgeted.

FISCAL IMPACT:

	FY2002 <u>Difference</u>	FY2003 <u>Difference</u>
FTE	0.50	0.50

Expenditures:

Personal Services	18,779	18,779
Operating Expenses	<u>10,423</u>	<u>6,923</u>
TOTAL	\$29,202	\$25,702

Funding:

State Special Revenue (02)	29,202	\$25,702
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Revenues:

	0	0
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Net Impact to Fund Balance (Revenue minus Expenditure):

State Special Revenue (02)	(\$29,202)	(\$25,702)
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

A county or local government, which is determined to be a potentially liable person under this bill, would be impacted.

LONG-RANGE IMPACTS:

This fiscal impact will continue indefinitely into the future.

TECHNICAL NOTES:

1. Section 5(1) requires the Department of Environmental Quality to include in any order it issues a requirement that the potentially liable person reimburse other private parties for private response costs. This may be in violation of the constitutional separation of powers doctrine, because it requires an executive branch agency to adjudicate disputes, a function that is traditionally reserved to the judicial branch.
2. Section 5(1) requires that, if the Department of Environmental Quality files to collect its remedial action costs, it must include in the cost any certified private response costs. The filing of a suit to collect money for a private party, from another private party, may be outside the police power of the state and, therefore, unconstitutional.