



**Fiscal Note Request HB0709, As Introduced**

(continued)

individual or small business and to ensure documentation is adequate to certify that the claimed private response costs are 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 percent 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 2004) 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 709. 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:

	FY 2004 <u>Difference</u>	FY 2005 <u>Difference</u>
<b>DEQ (40)</b>		
FTE	0.50	0.50
<u>Expenditures:</u>		
Personal Services	\$18,779	\$18,779
Operating Expenses	<u>8,923</u>	<u>6,923</u>
TOTAL	\$27,202	\$25,702
<u>Funding of Expenditures:</u>		
State Special Revenue (02)	\$27,702	\$25,702
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>		
State Special Revenue (02)	(\$27,702)	(\$25,702)

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 with 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.

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TECHNICAL NOTES: (continued)

2. Section 5(5) provides that the DEQ may accept claims for private response costs until it files an action or issues an order to recover state remedial action costs. The department is not authorized to issue an order to pay state remedial action costs.
3. Section 8 amends 75-10-719, MCA, which allows DEQ to settle with persons who owe only a small portion of the state's remedial action costs by paying two or four times the person's reasonably projected liability. Sections 8(5) and 8(6) would include private response costs in this settlement provision. This would thus preclude settlement for private response costs unless the defendant were willing to settle the private response cost by two or four times the amount of the private response costs.
4. Section 10(6)(d) creates a lien for orphan share monies expended. The bill's amendments provide that the lien begins when private response costs are incurred and continues until private response costs are recovered. However, section 6(1) provides that the DEQ cannot use orphan share monies to reimburse private response costs.