

FIRST REGULAR SESSION

SENATE BILL NO. 398

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATORS GRIESHEIMER, STEELMAN, YECKEL, SHIELDS, VOGEL, CHAMPION,
KLINDT, DOLAN, KENNEDY, STOLL, CAUTHORN AND LOUDON.

Read 1st time February 3, 2003, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0985S.02I

AN ACT

To amend chapter 640, RSMo, by adding thereto seventeen new sections relating to the creation of the Missouri natural resources and environment commission.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 640, RSMo, is amended by adding thereto seventeen new sections, to be known as sections 640.300, 640.302, 640.304, 640.306, 640.308, 640.310, 640.312, 640.314, 640.316, 640.318, 640.320, 640.322, 640.324, 640.326, 640.328, 640.330, and 640.332, to read as follows:

640.300. 1. There is hereby created the "Missouri Natural Resources and Environment Commission", an instrumentality of this state, and a separate body corporate and politic, whose administrative domicile shall be deemed to be that of the department of natural resources.

2. The commission shall consist of five members, of which one shall be designated as the chair. Members shall be appointed by the governor with the advice and consent of the senate.

3. The members' terms of office shall be six years and shall continue in effect until their successors are selected and qualified, except that the terms of those first appointed shall be staggered to expire at intervals of two and four years after the date of appointment as designated by the governor at the time of appointment. Any appointed member may only serve a total of two full terms. If a vacancy occurs, the governor may appoint a member for the remaining portion of the unexpired term created by the vacancy. The governor may remove any appointed member for cause. No more than three of the members shall belong to the same political party. All members

shall be representative of the general interest of the public and shall have an interest in and knowledge of environmental matters. No member shall receive, or have received during the previous two years, a significant portion of his or her income directly or indirectly from permit holders or applicants for a permit pursuant to any federal water pollution control act as amended and as applicable to this state. All members shall file financial disclosure statements as provided pursuant to section 105.483, RSMo, and shall be subject to the conflict of interest requirements in section 105.462, RSMo.

4. Members of the commission shall receive an annual salary which shall be adjusted pursuant to section 105.005, RSMo, and such salary shall be commensurate with the salaries of the members of the Missouri public service commission.

640.302. All the rights, powers, and functions of the air conservation commission, chapter 643, RSMo; clean water commission, chapter 644, RSMo; hazardous waste commission, chapter 260, RSMo; land reclamation commission, chapter 444, RSMo; soil and water districts commission, chapter 257, RSMo; and safe drinking water commission, this chapter, are transferred by type I transfer to the Missouri natural resources and environment commission, and such other commissions are abolished and the members of such commissions are discharged.

640.304. The rights, powers, and functions of the director of the department of natural resources pursuant to sections 640.400 to 640.435, relating to groundwater resources, sections 260.100 to 260.345, RSMo, relating to solid waste, and sections 640.700 to 640.750, relating to water contamination are transferred by type I transfer pursuant to the reorganization act of 1974 to the Missouri natural resources and environment commission which is created pursuant to section 640.300.

640.306. The commission shall hold regular meetings on a monthly basis and may hold such additional meetings as the chair deems desirable at a place and time to be fixed by the chair. All powers and duties conferred upon members of the commission shall be exercised personally by the members and not by alternates or representatives. All official actions of the commission shall be taken at regular public meetings and hearings open to the public, except as provided pursuant to chapter 610, RSMo. The chair shall function as chief administrative officer for the commission and shall be responsible for all administrative matters, including but not limited to, setting the agenda for each meeting, developing the annual budget, personnel matters, case management and assignment, and all such other activities that are necessary for the operation of the commission.

640.308. The commission may hire up to five full-time equivalent staff. Such staff shall be hired only if there is an elimination in corresponding staff positions for

department of natural resources' staff to offset the hiring of such technical advisory staff. For fiscal years 2004-2008, the air pollution control fund, hazardous waste fund, water pollution control fund, solid waste management fund, natural resources protection fund, natural resources protection fund-water pollution permit fees subaccount, natural resources protection fund-air pollution permit fees subaccount, soil and water sales tax fund, the mined land reclamation fund, and natural resources revolving services fund shall each transfer one hundred fifty thousand dollars annually, upon appropriation, to the commission for personal service and expense and equipment.

640.310. The commission is hereby granted and shall have the authority to exercise all powers necessary or appropriate to carry out and effectuate its purposes pursuant to the provisions of this chapter and chapters 257, 260, 444, 643, and 644, RSMo, as amended, including, but not limited to, the following:

- (1) To sue and be sued;
- (2) To employ managers and other employees and retain or contract with engineers, architects, accountants, financial consultants, attorneys, and such other persons, firms, or corporations who are necessary in its judgment to carry out its duties, and to fix the compensation thereof, consistent with available appropriations; and
- (3) To settle and compromise any claim or cause of action brought by, on behalf of, or against the commission.

640.312. Any suit, claim, rule, regulation, or any other act of the department of natural resources pursuant to this chapter, the hazardous waste management commission in chapter 260, RSMo, the state soil and water districts commission in chapter 278, RSMo, the petroleum storage tank insurance fund board in chapter 319, RSMo, the land reclamation commission in chapter 444, RSMo, the safe drinking water commission in this chapter, the air conservation commission in chapter 643, RSMo, and the clean water commission in chapter 644, RSMo, which is in effect on the day before August 28, 2003, pursuant to the laws and regulations in effect on that date shall continue in effect on and after that date and shall not lapse.

640.314. 1. All authority to hear appeals of findings, orders, decisions, or assessments on permits, licenses, registrations, administrative penalties, civil penalties, abatement orders, emergency orders, and any other actions that is granted to the director of the department of natural resources pursuant to this chapter, the hazardous waste management commission in chapter 260, RSMo, the state soil and water districts commission in chapter 278, RSMo, the petroleum storage tank insurance fund board in chapter 319, RSMo, the land reclamation commission in

chapter 444, RSMo, the safe drinking water commission in this chapter, the air conservation commission in chapter 643, RSMo, and the clean water commission in chapter 644, RSMo, is transferred to the commission on August 28, 2003.

2. Any appeals pending before the department of natural resources pursuant to this chapter, the hazardous waste management commission in chapter 260, RSMo, the state soil and water districts commission in chapter 278, RSMo, the petroleum storage tank insurance fund board in chapter 319, RSMo, the land reclamation commission in chapter 444, RSMo, the safe drinking water commission in this chapter, the air conservation commission in chapter 643, RSMo, and the clean water commission in chapter 644, RSMo, which have not been decided on or before August 28, 2003, shall be transferred to the commission for decision or other appropriate action.

640.316. Except as otherwise provided by law, any person or entity aggrieved by an action taken by the department or its agents that participated in the proceeding before the department shall have the right to appeal to the commission from any finding, order, decision, or assessment for which the authority to hear appeals was transferred to the commission pursuant to section 640.314. Participation in the proceeding means an affirmative act involving the submission of comments or information concerning the subject matter, and includes but is not limited to, filing comments on a proposed action or making comments at a public meeting. Notice of such decision shall be sent to all persons or entities that participated in the proceeding as set forth in section 640.322. Any such aggrieved person or entity may file an appeal with the commission within thirty days after valid service and receipt of any such finding, order, decision, or assessment.

640.318. 1. For the purpose of determining whether documents are filed within the time allowed by law, documents transmitted to the commission by registered mail or certified mail shall be deemed filed with the commission as of the date shown on the United States Post Office records of such registration or certification and mailing. If the document is sent by any method other than registered mail or certified mail, the commission shall deem it to be filed on the date the commission receives it. When the last day prescribed for performing any act prescribed by this chapter or chapter 536, RSMo, or the commission falls on a Saturday, Sunday, or a legal holiday in this state, the performance of such act shall be timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

2. The commission may promulgate rules and regulations that provide for the filing of documents with the commission by electronic facsimile transmission.

640.320. 1. All matters heard by the commission pursuant to this chapter shall

be governed by the provisions of chapter 536, RSMo. The commission shall maintain a transcript of all testimony and proceedings in hearings governed by this section, and copies thereof shall be made available to any interested person upon the payment of a fee which shall in no case exceed the reasonable cost of preparation and supplies.

2. Decisions of the commission pursuant to this section shall be rendered within sixty days of the completion of the hearing.

3. The commission shall adopt a system, categorized by subject matter, for maintaining any significant final written decisions it renders on appeals. These decisions shall be available for public inspection upon request. Copies shall be provided upon payment of a reasonable fee. The commission shall develop by December 31, 2004, a system for the electronic distribution of such decisions. The commission may contract with commercial vendors for such services.

4. In the event the person filing the appeal prevails in any dispute pursuant to this section, interest payable to the prevailing party shall be allowed upon any amount found to have been wrongfully collected or erroneously paid at the rate determined pursuant to section 32.065, RSMo.

5. Hearings conducted pursuant to section 640.314 shall be conducted before a panel of at least one commissioner. The membership of the panel shall be determined by the chair. The chair may serve as a member of any panel.

6. No hearing provided for in section 640.314 shall be held less than twenty days after the issuance of a notice of said hearing except with the consent of all parties. Hearings before the commission may be held in the county where the situs of the matter in issue is located or, by mutual agreement of the parties, in any county in the state or any city not within a county.

7. Formal procedural requirements shall not be required of any notice of appeal filed pursuant to any provision of law relating to the commission.

8. All testimony in any hearing shall be under oath and a commissioner may administer oaths or affirmations to any witness.

9. It shall not be necessary for a person to be represented by counsel to institute any such proceeding, and the commission shall adopt rules and procedures which shall facilitate the filing and processing of such complaints without formal representation.

640.322. Any finding, order, decision, or assessment by the director of the department of natural resources or the commission shall contain a notice of the right of appeal in substantially the following language:

"If you were adversely affected by this decision, you may appeal to the natural resources and environment commission. To appeal, you must file a petition with the

commission within thirty days after valid service and receipt of the decision. If you send any such petition by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the commission."

640.324. Except as otherwise provided by law, all final decisions of the commission shall be subject to judicial review as provided in and subject to the provisions of sections 536.100 to 536.140, RSMo.

640.326. The commission may grant variances, order the issuance of permits, amend or revise conditions in permits, and remand matters back to the department of natural resources. The commission may stay or suspend any action of the department of natural resources pending the commission's findings and determination in the cause. The commission may condition the issuance of such order in any manner, including the posting of a bond or other security in such amount as the commission deems necessary to adequately protect the public interest.

640.328. Information obtained by the commission pursuant to any law, rule, or regulation, order or condition adopted or issued thereunder, or any investigation authorized thereby, shall be available to the public unless:

- (1) Nondisclosure is requested in writing;
- (2) Such information constitutes trade secrets or information which is entitled to confidential treatment in order to protect any plan, process, tool, mechanism, or compound which is known only to the person claiming confidential treatment and confidential treatment is necessary to protect such person's trade, business, or manufacturing process;
- (3) Such disclosure will result in an unreasonable threat to the health of humans or the environment; and
- (4) Disclosure is not required under state statute or federal act.

640.330. In all matters heard by the commission pursuant to section 640.314, the burden of proof shall be a preponderance of the evidence and shall be upon the agency that issued the finding, order, decision, or assessment being appealed, except that in matters involving the denial of a permit, license, or registration, the burden of proof by a preponderance of evidence shall be on the applicant for such permit, license, or registration.

640.332. The commission shall promulgate rules for the implementation of the provisions of sections 640.300 to 640.332. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This

section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

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