

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 862**  
93RD GENERAL ASSEMBLY

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Reported from the Committee on Agriculture, Conservation, Parks and Natural Resources, April 3, 2006, with recommendation that the Senate Committee Substitute do pass.

4373S.02C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To amend chapter 260, RSMo, by adding thereto fourteen new sections relating to environmental covenants, with a severability clause.

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

Section A. Chapter 260, RSMo, is amended by adding thereto fourteen  
2 new sections, to be known as sections 260.1000, 260.1003, 260.1006, 260.1009,  
3 260.1012, 260.1015, 260.1018, 260.1021, 260.1024, 260.1027, 260.1030, 260.1033,  
4 260.1036, and 260.1039, to read as follows:

**260.1000. Sections 260.1000 to 260.1039 shall be known and may  
2 be cited as the "Uniform Environmental Covenants Act".**

**260.1003. As used in sections 260.1000 to 260.1039, the following  
2 terms shall mean:**

3 (1) "Activity and use limitations", restrictions or obligations with  
4 respect to real property created under sections 260.1000 to 260.1039;

5 (2) "Agency", the department of natural resources or any other  
6 state or federal agency that determines or approves the environmental  
7 response project under which the environmental covenant is created;

8 (3) "Common interest community", a condominium or other real  
9 property with respect to which a person, by virtue of the person's  
10 ownership of a parcel of real property, is obligated to pay property  
11 taxes, insurance premiums, maintenance, or improvement of other real  
12 property described in a recorded covenant that creates the common  
13 interest community;

14 (4) "Environmental covenant", a servitude arising under an  
15 environmental response project that imposes activity and use

16 limitations;

17 (5) "Environmental response project", a plan or work performed  
18 for environmental remediation of real property, and conducted:

19 (a) Under a federal or state program governing environmental  
20 remediation of real property, including the Missouri hazardous waste  
21 management law as specified in section 260.435;

22 (b) Incident to closure of a solid or hazardous waste management  
23 unit, if the closure is conducted with approval of the department; or

24 (c) Under a state voluntary clean-up program authorized in the  
25 Missouri hazardous waste management law as specified in section  
26 260.435;

27 For purposes of sections 260.1000 to 260.1039, "environmental response  
28 project" shall not include plans or work performed for environmental  
29 remediation of releases from aboveground storage tanks or  
30 underground storage tanks as defined in section 319.100, RSMo.

31 (6) "Holder", the grantee of an environmental covenant as  
32 specified in section 260.1006;

33 (7) "Owner", a person that owns a fee simple interest in real  
34 property that is subject to an environmental covenant;

35 (8) "Person", an individual, corporation, business trust, estate,  
36 trust, partnership, limited liability company, association, joint venture,  
37 public corporation, government, governmental subdivision, department,  
38 or instrumentality, public corporation, or any other legal or  
39 commercial entity;

40 (9) "Record", information that is inscribed on a tangible medium  
41 or that is stored in an electronic or other medium and is retrievable in  
42 perceivable form.

260.1006. 1. Any person, including a person that owns an interest  
2 in the real property involved in the environmental response project,  
3 the department, or a municipality or other unit of local government  
4 may be a holder in an environmental covenant. An environmental  
5 covenant may identify more than one holder. The interest of a holder  
6 is an interest in real property.

7 2. The rights of an agency under sections 260.1000 to 260.1039 or  
8 under an approved environmental covenant, other than as a holder, are  
9 not interests in real property.

10 3. An agency is bound by any obligations it assumes in an

11 environmental covenant, but an agency does not assume obligations  
12 merely by signing an environmental covenant. Any other person that  
13 signs an environmental covenant is bound by the obligations the person  
14 assumes in the covenant, but signing the covenant does not change  
15 obligations, rights, or protections granted or imposed under law other  
16 than sections 260.1000 to 260.1039 except as provided in the covenant.

17 4. The following rules apply to interests in real property in  
18 existence at the time an environmental covenant is created or amended:

19 (1) An interest that has priority under other law is not affected  
20 by an environmental covenant unless the person that owns the interest  
21 subordinates that interest to the covenant;

22 (2) Sections 260.1000 to 260.1039 do not require a person that  
23 owns a prior interest to subordinate that interest to an environmental  
24 covenant or to agree to be bound by the covenant;

25 (3) A subordination agreement may be contained in an  
26 environmental covenant covering real property or in a separate record.  
27 If the environmental covenant covers commonly owned property in a  
28 common interest community, in a record signed by any person  
29 authorized by the governing board of the owners' association;

30 (4) An agreement by a person to subordinate a prior interest to  
31 an environmental covenant affects the priority of that person's interest  
32 but does not by itself impose any affirmative obligation on the person  
33 with respect to the environmental covenant.

260.1009. 1. An environmental covenant must:

2 (1) State that the instrument is an environmental covenant  
3 executed under sections 260.1000 to 260.1039;

4 (2) Contain a legally sufficient description of the real property  
5 subject to the covenant;

6 (3) Describe the activity and use limitations on the real property;

7 (4) Identify every holder;

8 (5) Be signed by the agency, every holder, and unless waived by  
9 the agency, every owner of the fee simple of the real property subject  
10 to the covenant; and

11 (6) Identify the name and location of any administrative record  
12 for the environmental response project reflected in the environmental  
13 response project reflected in the environmental covenant.

14 2. In addition to the information required by subsection 1 of this

15 section, an environmental covenant may contain other information,  
16 restrictions, and requirements agreed to by the persons who signed it,  
17 including any:

18 (1) Requirements for notice following transfer of a specified  
19 interest in, or concerning proposed changes in use of, applications for  
20 building permits for, or proposals for any site work affecting the  
21 contamination on, the property subject to the covenant;

22 (2) Requirements for periodic reporting describing compliance  
23 with the covenant;

24 (3) Rights of access to the property granted in connection with  
25 implementation or enforcement of the covenant;

26 (4) A brief narrative description of the contamination and  
27 remedy, including the contaminants of concern, the pathways of  
28 exposure, limits on exposure, and the location and extent of the  
29 contamination;

30 (5) Limitation on amendment or termination of the covenant in  
31 addition to those contained in sections 260.1024 and 260.1027; and

32 (6) Rights of the holder in addition to its right to enforce the  
33 covenant under section 260.1030.

34 3. In addition to other conditions for its approval of an  
35 environmental covenant, the agency may require those persons  
36 specified by the agency who have interests in the real property to sign  
37 the covenant.

260.1012. 1. An environmental covenant that complies with  
2 sections 260.1000 to 260.1039 runs with the land.

3 2. An environmental covenant that is otherwise effective is valid  
4 and enforceable even if:

5 (1) It is not appurtenant to an interest in real property;

6 (2) It can be or has been assigned to a person other than the  
7 original holder;

8 (3) It is not of a character that has been recognized traditionally  
9 at common law;

10 (4) It imposes a negative burden;

11 (5) It imposes an affirmative obligation on a person having an  
12 interest in the real property or on the holder;

13 (6) The benefit or burden does not touch or concern real  
14 property;

15           **(7) There is no privity of estate or contract;**

16           **(8) The holder dies, ceases to exist, resigns, or is replaced; or**

17           **(9) The owner of an interest subject to the environmental**  
18 **covenant and the holder are the same person.**

19           **3. An instrument that creates restrictions or obligations with**  
20 **respect to real property that would qualify as activity and use**  
21 **limitations except for the fact that the instrument was recorded before**  
22 **the effective date of sections 260.1000 to 260.1039 is not invalid or**  
23 **unenforceable because of the limitations on enforcement of interests**  
24 **described in subsection 2 of this section or because it was identified as**  
25 **an easement, servitude, deed restriction, or other interest. Sections**  
26 **260.1000 to 260.1039 do not apply in any other respect to such an**  
27 **instrument.**

28           **4. Sections 260.1000 to 260.1039 do not invalidate or render**  
29 **unenforceable any interest, whether designated as an environmental**  
30 **covenant or other interest, that is otherwise enforceable under the law**  
31 **of this state.**

**260.1015. Sections 260.1000 to 260.1039 do not authorize a use of**  
2 **real property that is otherwise prohibited by zoning, by law other than**  
3 **sections 260.1000 to 260.1039 regulating use of real property, or by a**  
4 **recorded instrument that has priority over the environmental covenant.**  
5 **An environmental covenant may prohibit or restrict uses of real**  
6 **property which are authorized by zoning or by law other than sections**  
7 **260.1000 to 260.1039.**

**260.1018. 1. A copy of an environmental covenant shall be**  
2 **provided by the persons and in the manner required by the agency to:**

3           **(1) Each person that signed the covenant;**

4           **(2) Each person holding a recorded interest in the real property**  
5 **subject to the covenant;**

6           **(3) Each person in possession of the real property subject to the**  
7 **covenant;**

8           **(4) Each municipality or other unit of local government in which**  
9 **real property subject to the covenant is located; and**

10           **(5) Any other person the agency requires.**

11           **2. The validity of a covenant is not affected by failure to provide**  
12 **a copy of the covenant as required under this section.**

**260.1021. 1. An environmental covenant and any amendment or**

2 termination of the covenant must be recorded in every county in which  
3 any portion of the real property subject to the covenant is located. For  
4 purposes of indexing, a holder shall be treated as a grantee.

5 2. Except as otherwise provided in section 260.1024, an  
6 environmental covenant is subject to the laws of this state governing  
7 recording and priority of interests in real property.

260.1024. 1. An environmental covenant is perpetual unless it is:

2 (1) By its terms limited to a specific duration or terminated by  
3 the occurrence of a specific event;

4 (2) Terminated by consent under section 260.1027;

5 (3) Terminated by subsection 2 of this section;

6 (4) Terminated by foreclosure of an interest that has priority  
7 over the environmental covenant; or

8 (5) Terminated or modified in an eminent domain proceeding,  
9 but only if:

10 (a) The agency that signed the covenant is a party to the  
11 proceeding;

12 (b) All persons identified in section 260.1027 are given notice of  
13 the pendency of the proceeding; and

14 (c) The court determines, after hearing, that the termination or  
15 modification will not adversely affect human health or the  
16 environment.

17 2. If the agency that signed an environmental covenant has  
18 determined that the intended benefits of the covenant can no longer be  
19 realized, a court, under the doctrine of changed circumstances, in an  
20 action in which all persons identified in section 260.1027 have been  
21 given notice, may terminate the covenant or reduce its burden on the  
22 real property subject to the covenant. The agency's determination or  
23 its failure to make a determination upon request is subject to review  
24 under chapter 536, RSMo.

25 3. Except as otherwise provided in subsections 1 and 2 of this  
26 section, an environmental covenant may not be extinguished, limited,  
27 or impaired through issuance of a tax deed, foreclosure of a tax lien, or  
28 application of the doctrine of adverse possession, prescription,  
29 abandonment, waiver, or lack of enforcement, or any similar doctrine.

30 4. An environmental covenant may not be extinguished, limited,  
31 or impaired by the application of chapter 442, RSMo, or chapter 444,

32 RSMo.

260.1027. 1. An environmental covenant may be amended or  
2 terminated by consent only if the amendment or termination is signed  
3 by:

4 (1) The department;

5 (2) Unless waived by the agency, the current owner of the fee  
6 simple of the real property subject to the covenant;

7 (3) Each person that originally signed the covenant, unless the  
8 person waived in a signed record the right to consent or a court finds  
9 that the person no longer exists or cannot be located or identified with  
10 the exercise of reasonable diligence; and

11 (4) Except as otherwise provided in subsection 4 of this section,  
12 the holder.

13 2. If an interest in real property is subject to an environmental  
14 covenant, the interest is not affected by an amendment of the covenant  
15 unless the current owner of the interest consents to the amendment or  
16 has waived in a signed record the right to consent to amendments.

17 3. Except for an assignment undertaken pursuant to a  
18 governmental reorganization, assignment of an environmental covenant  
19 to a new holder is an amendment.

20 4. Except as otherwise provided in an environmental covenant:

21 (1) A holder may not assign its interest without consent of the  
22 other parties;

23 (2) A holder may be removed and replaced by agreement of the  
24 other parties specified in subsection 1 of this section; and

25 (3) A court of competent jurisdiction may fill a vacancy in the  
26 position of holder.

260.1030. 1. A civil action for injunctive or other equitable relief  
2 for violation of an environmental covenant may be maintained by:

3 (1) A party to the covenant;

4 (2) The agency;

5 (3) Any person to whom the covenant expressly grants power to  
6 enforce; or

7 (4) A person whose interest in the real property or whose  
8 collateral or liability may be affected by the alleged violation of the  
9 covenant.

10 2. Sections 260.1000 to 260.1039 do not limit the regulatory

11 authority of the agency under law other than sections 260.1000 to  
12 260.1039 with respect to an environmental response project.

13 3. A person is not responsible for or subject to liability for  
14 environmental remediation solely because it has the right to enforce an  
15 environmental covenant.

260.1033. 1. The department of natural resources shall establish  
2 and maintain a database that contains all environmental covenants and  
3 any amendment or termination of those covenants. The database may  
4 also contain any other information concerning environmental  
5 covenants and the real property subject to them which the department  
6 considers appropriate. The database is a public record for purposes of  
7 chapter 610, RSMo.

8 2. After an environmental covenant or an amendment or  
9 termination of a covenant is added to the database established under  
10 subsection 1 of this section, a notice of the covenant, amendment, or  
11 termination that complies with this section may be recorded in the land  
12 records in lieu of recording the entire covenant. Any such notice must  
13 contain:

14 (1) A legally sufficient description and any available street  
15 address of the real property subject to the covenant;

16 (2) The name and address of the owner of the fee simple interest  
17 in the real property, the department, and the holder if other than the  
18 department;

19 (3) A statement that the covenant, amendment, or termination is  
20 available in a database at the department of natural resources, which  
21 discloses the method of any electronic access; and

22 (4) A statement that the notice is notification of an  
23 environmental covenant executed under sections 260.1000 to 260.1039.

24 3. A statement in substantially the following form, executed with  
25 the same formalities as a deed in this state, satisfies the requirements  
26 of subsection 2 of this section:

27 "1. This notice is filed in the land records of the  
28 ..... (political subdivision) of  
29 ..... (insert name of jurisdiction in which  
30 the real property is located) under Section 260.1033, RSMo,  
31 of the Uniform Environmental Covenants Act, Sections  
32 260.1000 to 260.1039, RSMo.



33 2. This notice and the covenant, amendment or  
34 termination to which it refers may impose significant  
35 obligations with respect to the property described below.

36 3. A legal description of the property is attached as  
37 Exhibit A to this notice. The address of the property that  
38 is subject to the environmental covenant is  
39 ..... (insert address of property) (not  
40 available).

41 4. The name and address of the owner of the fee simple  
42 interest in the real property on the date of this notice is  
43 ..... (insert name of current owner of  
44 the property and the owner's current address as shown on  
45 the tax records of the jurisdiction in which the property is  
46 located).

47 5. The environmental covenant, amendment or termination  
48 was signed by the department.

49 6. The environmental covenant, amendment, or  
50 termination was filed in the database on .....  
51 (insert date of filing).

52 7. The full text of the covenant, amendment, or  
53 termination and any other information required by the  
54 department is on file and available for inspection and  
55 copying in the records maintained for that purpose by the  
56 department at 1738 East Elm Street, Jefferson City,  
57 Missouri."

260.1036. 1. In applying and construing sections 260.1000 to  
2 260.1039, consideration must be given to the need to promote  
3 uniformity of the law with respect to its subject matter among states  
4 that enact it.

5 2. Sections 260.1000 to 260.1039 shall not apply to aboveground  
6 or underground storage tanks as defined in section 319.100, RSMo.

260.1039. Sections 260.1000 to 260.1039 modifies, limits, or  
2 supersedes the federal Electronic Signatures in Global and National  
3 Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify,  
4 limit, or supersede Section 101 of that Act, 15 U.S.C. Section 7001(a), or  
5 authorize electronic delivery of any of the notices described in Section  
6 103 of that Act, 15 U.S.C. Section 7003(b).

Section B. If any provision of sections 260.1000 to 260.1039 or its  
2 application to any person or circumstance is held invalid, the invalidity does not  
3 affect other provisions or applications of sections 260.1000 to 260.1039 which can  
4 be given effect without the invalid provision or application, and to this end the  
5 provisions of sections 260.1000 to 260.1039 are severable.

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