

SECOND REGULAR SESSION

SENATE BILL NO. 862

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Read 1st time January 12, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4373S.011

AN ACT

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

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

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

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

36 (9) "Record", information that is inscribed on a tangible medium
37 or that is stored in an electronic or other medium and is retrievable in
38 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 consentor 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 (insert name of jurisdiction
29 in which the real property is located) under Section
30 260.1033, RSMo, of the Uniform Environmental Covenants
31 Act, Sections 260.1000 to 260.1039.

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

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

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

44 **5. The environmental covenant, amendment or termination**
45 **was signed by the department.**

46 **6. The environmental covenant, amendment, or**
47 **termination was filed in the database on (insert date**
48 **of filing).**

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

260.1036. 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.**

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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