

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 881

91ST GENERAL ASSEMBLY

Reported from the Committee on Commerce and Environment, January 31, 2002, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

3339S.02C

AN ACT

To amend chapter 640, RSMo, by adding thereto six new sections relating to the environmental hearing 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 six new sections, to be known as sections 640.800, 640.805, 640.807, 640.812, 640.815, and 640.825, to read as follows:

640.800. 1. There is hereby created the "Environmental Hearing Commission" within the office of administration. The commission shall consist of three commissioners appointed by the governor with the advice and consent of the senate. The commissioners shall be appointed within six months after the effective date of this section. The term of each commissioner shall be six years and until his or her successor is appointed, qualified and sworn, except that, of the first three commissioners appointed, one shall have a term of four years and one shall have a term of two years as designated by the governor at the time of appointment. There is no limitation on the number of terms any appointed commissioner may serve. If a vacancy occurs, the governor may appoint a commissioner for the remaining portion of the unexpired term created by the vacancy. The governor may remove any appointed commissioner for cause.

2. The commissioners shall have an interest in and knowledge of environmental issues and shall be attorneys at law admitted to practice before the supreme court of Missouri, but shall not practice law during their term of office. Any commissioner shall recuse himself or herself from any matter involving any person from which such commissioner had received significant, direct or indirect income

during the two years immediately prior to such commissioner's appointment to the environmental hearing commission, including any holder of or applicant for any license or permit issued by the department of natural resources or any commission listed in subsection 1 of section 640.805. Each commissioner shall receive annual compensation of ninety-one thousand six hundred thirty-six dollars, plus any salary adjustment provided pursuant to section 105.005, RSMo. Each commissioner shall also be entitled to actual and necessary expenses in the performance of his or her duties. The office of the environmental hearing commission shall be located in the City of Jefferson and it may employ necessary clerical assistance, with compensation and expenses of the commissioners to be paid from appropriations from general revenue made for that purpose.

3. If a commissioner during his or her term of office becomes temporarily incapacitated by illness or otherwise to perform the duties of his or her office, the governor shall appoint a person to perform the duties of the office during the incapacity of the commissioner. The person appointed shall have all the powers and duties of the office and shall possess all of the qualifications of the office except that he or she may continue in the private practice of law but shall not practice during this period in connection with matters with which the department of natural resources or any commission listed in subsection 1 of section 640.805 is involved. He or she shall receive the remuneration provided for the office of commissioner during the time which he or she serves.

4. Each commissioner shall have authority to exercise all powers granted to the environmental hearing commission without the concurrence of any other commissioner, except with respect to the rulemaking powers, in which all commissioners must concur.

5. The environmental hearing commission shall promulgate such rules as are necessary to implement the provisions of this chapter within one year after the effective date of this section. No rule or portion of a rule promulgated pursuant to this chapter shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.

640.805. 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 in chapters 260, 278, 319, 444, 640, 643, and 644, RSMo, 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, shall be transferred to the environmental hearing commission created in section 640.800 upon the initial promulgation of rules by the environmental hearing commission pursuant to subsection 5 of section 640.800.

2. Except as otherwise provided by law, any person or entity shall have the right to appeal to the environmental hearing commission from any finding, order, decision or assessment for which the authority to hear appeals was transferred to the environmental hearing commission in subsection 1 of this section. Any person or entity who is a party to such a dispute shall be entitled to a hearing before the environmental hearing commission by the filing of a petition with the environmental hearing commission within thirty days after any such finding, order, decision or assessment is placed in the United States mail or within thirty days any such finding, order, decision or assessment is delivered, whichever is earlier.

3. Any finding, order, decision or assessment by the director of the department of natural resources or any commission for which the authority to hear appeals was transferred to the environmental hearing commission in subsection 1 of this section 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 environmental hearing commission. To appeal, you must file a petition with the environmental hearing commission within thirty days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent 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 environmental hearing commission."

4. For the purpose of determining whether documents are filed within the time allowed by law, documents transmitted to the environmental hearing commission by registered mail or certified mail shall be deemed filed with the environmental hearing 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 environmental hearing commission shall deem it to be filed on the date the environmental hearing 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.

5. The environmental hearing commission may promulgate rules and

regulations that provide for the filing of documents with the commission by electronic facsimile transmission.

6. All matters heard by the environmental hearing commission pursuant to this chapter shall be governed by the provisions of chapter 536, RSMo. The environmental hearing 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 supply. Decisions of the environmental hearing commission pursuant to this section shall be rendered within sixty days of the completion of the hearing and binding subject to appeal by either party.

7. In the event the person filing the appeal prevails in any dispute pursuant to this section, interest shall be allowed upon any amount found to have been wrongfully collected or erroneously paid at the rate established by the director of the department of revenue pursuant to section 32.065, RSMo.

640.807. 1. Hearings shall be conducted before a panel of all three commissioners.

2. No hearing provided for in section 640.805 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 environmental hearing commission may be held in any county in the state or any city not within a county at the discretion of the hearing commissioners after the consideration of the convenience of the parties involved.

640.812. 1. The method of assignment of petitions, appeals or other cases may be determined by rule or other agreement between the commissioners. Formal procedural requirements shall not be required of any appeal filed pursuant to any provision of law relating to the environmental hearing commission, and substantial compliance with the requirements of the law relating to the environmental hearing commission shall be deemed sufficient; however, all testimony in any hearing shall be under oath and a commissioner may administer oaths or affirmations to any witness. It shall not be necessary for a person to be represented by counsel to institute any such proceeding, and the environmental hearing commission shall adopt rules and procedures which shall facilitate the filing and processing of such complaints without formal representation.

2. The environmental hearing commission may stay or suspend any action of the department of natural resources or any commission listed in subsection 1 of section 640.805 pending the environmental hearing commission's findings and determination in the cause. The environmental hearing 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 environmental hearing commission deems necessary to adequately protect the public interest.

640.815. Except as otherwise provided by law, all final decisions of the environmental hearing commission shall be subject to judicial review as provided in and subject to the provisions of sections 536.100 to 536.140, RSMo. The right to judicial review as provided herein shall also be available to the department of natural resources and any commission listed in subsection 1 of section 640.805 aggrieved by a final decision of the environmental hearing commission.

640.825. In all matters heard by the environmental hearing commission pursuant to this chapter, the burden of proof shall be upon the department of natural resources or the commission listed in subsection 1 of section 640.805 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 shall be on the applicant for such permit, license or registration.

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