

SECOND REGULAR SESSION

SENATE BILL NO. 715

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROHRBACH.

Pre-filed December 1, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3080S.02I

AN ACT

To repeal section 640.010, RSMo, relating to the environmental regulation consistency act, and to enact in lieu thereof two new sections relating to the same subject.

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

Section A. Section 640.010, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 640.010 and 640.020, to read as follows:

640.010. 1. There is hereby created a department of natural resources in charge of a director appointed by the governor, by and with the advice and consent of the senate. The director shall administer the programs assigned to the department relating to environmental control and the conservation and management of natural resources. The director shall coordinate and supervise all staff and other personnel assigned to the department. He shall faithfully cause to be executed all policies established by the boards and commissions assigned to the department, be subject to their decisions as to all substantive and procedural rules and his decisions shall be subject to appeal to the board or commission on request of the board or commission [or by affected parties]. The director shall recommend policies to the various boards and commissions assigned to the department to achieve effective and coordinated environmental control and natural resource conservation policies.

2. The director shall appoint directors of staff to service each of the policy

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

making boards or commissions assigned to the department. Each director of staff shall be qualified by education, training and experience in the technical matters of the board to which he is assigned and his appointment shall be approved by the board to which he is assigned and he shall be removed or reassigned on their request in writing to the director of the department. All other employees of the department and of each board and commission assigned to the department shall be appointed by the director of the department in accord with chapter 36, RSMo, and shall be assigned and may be reassigned as required by the director of the department in such a manner as to provide optimum service, efficiency and economy.

3. The air conservation commission, chapter 203, RSMo, and others, the clean water commission, chapter 204, RSMo, and others, are transferred by type II transfer to the department of natural resources. The governor shall appoint the members of these bodies in accord with the laws establishing them, with the advice and consent of the senate. The bodies hereby transferred shall retain all rulemaking and hearing powers allotted by law, as well as those of any bodies transferred to their jurisdiction. All the powers, duties and functions of the state environmental improvement authority, chapter 260, RSMo, and others, are transferred by type III transfer to the air conservation commission. All the powers, duties and functions of the water resources board, chapter 256, RSMo, and others, are transferred by type I transfer to the clean water commission and the board is abolished. No member of the clean water commission shall receive or shall have received, during the previous two years from the date of his appointment, a significant portion of his income directly or indirectly from permit holders or applicants for a permit under the jurisdiction of the clean water commission. The state park board, chapter 253, RSMo, is transferred to the department of natural resources by type I transfer.

4. All the powers, duties and functions of the state soil and water districts commission, chapter 278, RSMo, and others, are transferred by a type II transfer to the department.

5. All the powers, duties and functions of the state geologist, chapter 256, RSMo, and others, are transferred by type I transfer to the department of natural resources. All the powers, duties and functions of the state land survey authority, chapter 60, RSMo, are transferred to the department of natural resources by type I transfer and the authority is abolished. All the powers, duties and functions of the state oil and gas council, chapter 259, RSMo, and others are

transferred to the department of natural resources by type II transfer. The director of the department shall appoint a state geologist who shall have the duties to supervise and coordinate the work formerly done by the departments or authorities abolished by this subsection, and shall provide staff services for the state oil and gas council.

6. All the powers, duties and functions of the land reclamation commission, chapter 444, RSMo, and others, are transferred to the department of natural resources by type II transfer. All necessary personnel required by the commission shall be selected, employed and discharged by the commission. The director of the department shall not have the authority to abolish positions.

7. The functions performed by the division of health in relation to the maintenance of a safe quality of water dispensed to the public, sections 640.100 to 640.115, and others, and for licensing and regulating solid waste management systems and plans are transferred by type I transfer to the department of natural resources.

8. (1) The state interagency council for outdoor recreation, chapter 258, RSMo, is transferred to the department of natural resources by type II transfer. The council shall consist of representatives of the following state agencies: department of agriculture; department of conservation; office of administration; department of natural resources; department of economic development; department of social services; department of transportation; and the University of Missouri.

(2) The council shall function as provided in chapter 258, RSMo, except that the department of natural resources shall provide all staff services as required by the council notwithstanding the provisions of sections 258.030 and 258.040, RSMo, and all personnel and property of the council are hereby transferred by type I transfer to the department of natural resources and the office of executive secretary to the council is abolished.

640.020. 1. Other provisions of law notwithstanding, the department of natural resources, including any board or commission assigned to the department of natural resources in accordance with section 640.010 that is authorized by statute to adopt rules, shall have the authority to promulgate such rules, pursuant to chapter 536, RSMo, to ensure that the state of Missouri is in compliance with the provisions of any applicable federal statutes and federal regulations.

(1) The clean air commission shall have the authority to

promulgate such rules to establish standards, guidelines and requirements to ensure that the state of Missouri is in compliance with the substantive provisions of the federal Clean Air Act, as amended, relating to air pollution control;

(2) The clean water commission shall have the authority to promulgate such rules to establish standards, guidelines and requirements to ensure that the state of Missouri is in compliance with the substantive provisions of the federal Clean Water Act, as amended, relating to water pollution control, and subtitle I of the federal Resource Conservation and Recovery Act, as amended, relating to underground storage tanks;

(3) The hazardous waste management commission shall have the authority to promulgate such rules to establish standards, guidelines and requirements to ensure that the state of Missouri is in compliance with the substantive provisions of the federal Resource Conservation and Recovery Act, as amended, relating to hazardous waste management;

(4) The land reclamation commission shall have the authority to promulgate such rules to establish standards, guidelines and requirements to ensure that the state of Missouri is in compliance with the substantive provisions of the federal Surface Mining Control and Reclamation Act, as amended, relating to surface mining and land reclamation;

(5) The safe drinking water commission shall have the authority to promulgate such rules to establish standards, guidelines and requirements to ensure that the state of Missouri is in compliance with the substantive provisions of the federal Safe Drinking Water Act, as amended, relating to drinking water systems; and

(6) The department shall have the authority to promulgate such rules to establish standards, guidelines and requirements to ensure that the state of Missouri is in compliance with the substantive provisions of subtitle D of the federal Resource Conservation and Recovery Act, as amended, relating to solid waste management.

2. The rules promulgated by the department or any commission or board assigned to the department shall not be any stricter than the scope or subject matter of federal regulations under the provisions of

the applicable federal statutes and federal regulations, except as provided in subsection 3. The scope and subject matter of federal regulation for purposes of this subsection is that set forth in any and all applicable federal statutes, regulations, guidance documents and policy documents. If there are no federal statutes or regulations with respect to a particular subject matter, then the scope of federal regulation is zero and the department or any commission or board assigned to the department shall not adopt regulations with respect to that subject matter, except as provided in subsection 3 of this section.

3. The department or any commission or board assigned to the department and listed in subsection 1 of this section may adopt rules that are stricter than the scope or subject matter of federal regulation if the rulemaking body makes specific findings, based on competent and substantial evidence in the administrative record, that:

(1) Specific circumstances or conditions in the state of Missouri are causing, or have the potential to cause, specific harm to human health and the environment; and

(2) Either:

(a) The specific circumstances or conditions are not subject to regulation by any applicable federal statute or federal regulation; or

(b) The existing federal statutes or regulations are not sufficient to adequately protect human health and the environment in the state of Missouri; and

(3) A more restrictive rule is necessary to address the specific circumstance or condition in order to prevent or alleviate the specific harm caused to human health and the environment.

4. For any rule promulgated pursuant to subsection 3 of this section, the department, commission or board shall specifically enumerate in the administrative record and shall publish in the Missouri Register, along with the notice of proposed rulemaking, findings of fact relative to the specific circumstances or conditions causing harm, the nature and scope of the specific harm to human health and the environment, and the health-based or science-based reasons justifying why the adoption of a more restrictive rule will prevent or alleviate the specific harm to human health and the environment.

5. For any rule promulgated pursuant to subsection 3 of this section, the fiscal notes required by sections 536.200 and 536.205, RSMo, shall contain, in addition to the requirements imposed by those sections, a discussion and explanation of the consideration by the department, commission or board of the effects of human health and the environment, economics, pollution prevention and the effectiveness and cost of reasonably available control methods for the proposed more restrictive rule.

6. Any rule that is more restrictive than federal statutes or federal regulations that is adopted by the department or a commission or board assigned to the department without complying with the procedures set forth in this section is void.

7. 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, 2002, shall be invalid and void.

8. This section may be referred to as the "Environmental Regulation Consistency Act".

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