

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 36
92ND GENERAL ASSEMBLY

Reported from the Committee on Agriculture, Conservation, Parks and Natural Resources, February 6, 2003, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

0424S.08C

AN ACT

To repeal section 640.010, RSMo, and to enact in lieu thereof four new sections relating to environmental regulation.

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

Section A. Section 640.010, RSMo, is repealed and four new sections enacted in lieu thereof, to be known as sections 640.010, 640.014, 640.016, and 640.018, to read as follows: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 **directly** 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 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.

640.014. 1. All provisions of the law to the contrary notwithstanding, all substantive rules promulgated by the department of natural resources pursuant to authorities granted 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 clearly set out the specific section of law or legal authority. The rule shall also be based on the cost-benefit analysis and the risk assessment provided in this section.

2. The cost benefit analysis required by this section shall include:

(1) A report on the peer-reviewed scientific report or data used to commence the rulemaking process;

(2) A description of persons who will most likely be affected by the proposed rule, including persons that will bear the costs of the proposed rule and persons that will benefit from the proposed rule;

(3) A description of the probable qualitative and quantitative impact of the proposed rule, including environmental and economic;

(4) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue;

(5) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction;

(6) A determination of whether there are less costly methods or less intrusive methods for achieving the proposed rule;

(7) A description of any alternative method for achieving the purpose of the

proposed rule that were seriously considered by the department and the reasons why they were rejected in favor of the proposed rule; and

(8) An analysis of both short-term and long-term consequences of the proposed rule.

3. The risk assessment required by this section shall include the following components:

(1) A report on the peer-reviewed scientific report or data used to commence the rulemaking process;

(2) An explanation of the risks to public health or the environment, or both, addressed by the proposed rule, including an estimate of the risk;

(3) The identification of the sources of scientific information used in evaluating the risk and a summary of such information;

(4) A description of any uncertainties and assumptions made in conducting the analysis, including the impact of such uncertainties and assumptions on the resulting risk estimate;

(5) A description of any significant countervailing risks that may be caused by the proposed rule;

(6) The identification of alternative regulatory approaches that will produce comparable environmental or health outcomes and an estimate of their relative benefits and costs; and

(7) The risk assessment or cost benefit analysis provided for in this section.

4. Upon completion of either a risk assessment or cost benefit analysis, the department may determine the rule is not feasible for any reason and would not be required to complete the remaining study.

5. The department shall develop the risk assessments and cost-benefit analyses required by this section using scientifically objective and unbiased standards relying on the best reasonably available scientific information.

6. The department shall publish in at least one major newspaper of general circulation in this state and on the department website a notice of availability of any risk assessment or cost-benefit analysis conducted pursuant to this section and shall make such assessments and analyses available to the public by posting them on the department website. The department shall allow at least sixty days for the public to submit comments and shall post all comments and respond to all significant comments prior to promulgating the rule.

7. The department shall file a copy of the risk assessment and cost benefit analysis with the joint committee on administrative rules concurrently with the filing of the proposed rule pursuant to section 536.024, RSMo.

8. If the department fails to conduct the risk assessment and cost-benefit analysis as required for each proposed rule pursuant to this section, such rule shall be void.

9. Any other provision of this article to the contrary notwithstanding, the commissions referenced in subsection 1 of this section or the department may adopt a rule, without conducting a risk assessment and a cost-benefit analysis if the director of the department determines that immediate action is necessary to protect the public health and welfare; provided, however, in doing so, the department shall be required to provide written justification as to why it deviated from conducting a risk assessment and cost-benefit analysis and shall complete the risk assessment and cost-benefit analysis within forty-five days of the adoption of the rule.

640.016. In all matters where a rule that has been promulgated by the department of natural resources pursuant to authorities granted in chapters 260, 278, 319, 444, 640, 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, and the clean water commission in chapter 644, RSMo, is challenged pursuant to section 536.050, RSMo, the burden of proof shall be on the department or commission promulgating the rule to prove that the rule is necessary to prevent specific circumstances or conditions causing harm to human health or the environment.

640.018. 1. The department of natural resources shall not place in any permit any requirement, provision, stipulation, or the like which is not prescribed by regulation.

2. Prior to submitting a permit to public comment the department of natural resources shall deliver said permit to the permit applicant at the contact address on the permit application for final review. The permit applicant shall have ten days to review the permit for errors. Upon review of the permit, the applicant may require the department of natural resources to correct the permit where drafting errors exist. The department of natural resources shall make said changes within ten days and submit the permit for public comment. If the permit applicant is not provided the opportunity to review permits prior to submission for public comment, the permit applicant shall have the authority to modify their permits after they are issued without paying any fee for such changes or modifications.

3. In any matter where a permit is denied by the department of natural resources pursuant to authorities granted 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, such denial shall clearly state the basis for such denial.

4. Once a permit or action has been approved by the department, the department shall not revoke or change the decision for a period of one year or unless the department determines that immediate action is necessary to protect the public health and welfare.

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