

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 739

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR KLINDT.

Pre-filed December 1, 2003, and ordered printed.

Read 2nd time January 8, 2004, and referred to the Committee on Agriculture, Conservation, Parks and Natural Resources.

Reported from the Committee January 22, 2004, with recommendation that the bill do pass.

Taken up for Perfection January 27, 2004. Bill declared Perfected and Ordered Printed, as amended.

2973S.02P

TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 640, RSMo, by adding thereto four new sections relating to environmental regulation.

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

Section A. Chapter 640, RSMo, is amended by adding thereto four new sections, to be known as sections 640.015, 640.016, 640.018, and 1, to read as follows:

640.015. 1. All provisions of the law to the contrary notwithstanding, all rules that prescribe environmental conditions or standards promulgated by the department of natural resources, a board or a commission, pursuant to authorities granted in this chapter and chapters 260, 278, 319, 444, 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 cite the specific section of law or legal authority. The rule shall also be based on the regulatory impact report provided in this section.

2. The regulatory impact report required by this section shall include:

(1) A report on the peer-reviewed scientific 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 costs and benefits;

(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, which includes both economic and environmental costs and benefits;

(6) A determination of whether there are less costly 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;

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

(9) An explanation of the risks to human health, public welfare, or the environment, addressed by the proposed rule, including an estimate of the impact of risk;

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

(11) A description and impact statement of any uncertainties and assumptions made in conducting the analysis on the resulting risk estimate;

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

(13) The identification of alternative regulatory approaches that will produce comparable human health, public welfare, or the environmental outcomes and an estimate of their relative benefits and costs.

3. The department, board, or commission shall develop the regulatory impact report required by this section using peer reviewed and published data or when the peer-reviewed data is not reasonably available, a written explanation shall be filed at the time of the rule promulgation notice explaining why the peer-reviewed data was not available to support the regulation. If the peer-reviewed data is not available, the department must provide all scientific references and the types, amount, and sources of scientific information that was used to develop the rule at the time of the rule promulgation notice.

4. The department, board, or commission shall publish in at least one newspaper of general circulation, qualified pursuant to chapter 493, RSMo, with

an average circulation of twenty thousand or more and on the department, board, or commission website a notice of availability of any regulatory impact report conducted pursuant to this section and shall make such assessments and analyses available to the public by posting them on the department, board, or commission website. The department, board, or commission 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.

5. The department, board, or commission shall file a copy of the regulatory impact report with the joint committee on administrative rules concurrently with the filing of the proposed rule pursuant to section 536.024, RSMo.

6. If the department, board, or commission fails to conduct the regulatory impact report as required for each proposed rule pursuant to this section, such rule shall be void.

7. Any other provision of this section to the contrary notwithstanding, the department, board, or commission referenced in subsection 1 of this section may adopt a rule, without conducting a regulatory impact report if the director of the department determines that immediate action is necessary to protect human health, public welfare, or the environment; provided, however, in doing so, the department, board, or commission shall be required to provide written justification as to why it deviated from conducting a regulatory impact report and shall complete the regulatory impact report within one hundred eighty days of the adoption of the rule.

8. The provisions of this section shall not apply if the department adopts environmental protection agency rules and rules from other applicable federal agencies without variance.

640.016. In all matters where a rule that prescribes environmental conditions or standards has been promulgated after August 28, 2004, by the department of natural resources, a board or a commission pursuant to authorities granted in this chapter and chapters 260, 278, 444, and 644, RSMo, the hazardous waste management commission in chapter 260, RSMo, the state soil and water districts commission in chapter 178, 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, board, or commission promulgating the rule to prove that the rule is necessary to prevent the specific circumstances or conditions that would cause harm to human health, public welfare, or the environment.

640.018. 1. The department of natural resources shall not place in any

permit any requirement, provision, stipulation, or any other restriction which is not prescribed by regulation.

2. Prior to submitting a permit to public comment the department of natural resources shall deliver such permit to the permit applicant at the contact address on the permit application for final review. In the interest of expediting permit issuance, permit applicants may waive the opportunity to review draft permits prior to public notice. The permit applicant shall have ten days to review the permit for errors. Upon receipt of the applicant's review of the permit, the department of natural resources shall correct the permit where nonsubstantive drafting errors exist. The department of natural resources shall make such 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 correct drafting errors in 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 this chapter and chapters 260, 278, 319, 444, 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, without written permission from the permittee, the decision for a period of one year or unless the department determines that immediate action is necessary to protect human health, public welfare, or the environment.

Section 1. 1. If a refund mandated under article X, section 18, of the Missouri Constitution from the following funds:

(1) The water and wastewater loan fund established pursuant to section 644.122, RSMo;

(2) The water pollution permit fee subaccount of the natural resources protection fund established in section 640.220;

(3) The water and wastewater loan revolving funds; or

(4) Any fund established by the office of administration for the sole purpose of receiving and distributing state match bond proceeds for the department of

natural resources' state revolving fund programs established pursuant to the federal Clean Water Act, the federal Safe Drinking Water Act, or any federal regulation authorized under either federal act;

would violate the federal Clean Water Act, the federal Safe Drinking Water Act, or any federal regulation authorized under either federal act, the department of natural resources shall identify an equal amount from other funds appropriated to the department.

2. The commissioner of administration shall transfer the funds identified by the department, that would otherwise be transferred from the funds identified in subsection 1 of this section, to the state general revenue fund for any refund that occurs after August 28, 2003.

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