

FIRST REGULAR SESSION

SENATE BILL NO. 403

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NIEVES.

Read 1st time March 1, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1882S.011

AN ACT

To repeal sections 621.250, 643.130, and 644.071, RSMo, and to enact in lieu thereof three new sections relating to appeals of decisions by environmental commissions.

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

Section A. Sections 621.250, 643.130, and 644.071, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 621.250,
3 643.130, and 644.071, to read as follows:

621.250. 1. All authority to hear appeals granted in chapters 260, 444,
2 640, 643, and 644, and to the hazardous waste management commission in
3 chapter 260, the land reclamation commission in chapter 444, the safe drinking
4 water commission in chapter 640, the air conservation commission in chapter 643,
5 and the clean water commission in chapter 644 shall be transferred to the
6 administrative hearing commission under this chapter. The authority to render
7 final decisions after hearing on appeals heard by the administrative hearing
8 commission shall remain with the commissions listed in this subsection. The
9 [commissions listed in this subsection] **administrative hearing commission**
10 may render **a recommended** final [decisions] **decision** after hearing or through
11 stipulation, consent order, agreed settlement or by disposition in the nature of
12 default judgment, judgment on the pleadings, or summary determination,
13 consistent with **the requirements of this subsection and** the rules and
14 procedures of the administrative hearing commission.

15 2. Except as otherwise provided by law, any person or entity who is a
16 party to, or who is **aggrieved or adversely** affected by, any finding, order,

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

17 decision, or assessment for which the authority to hear appeals was transferred
18 to the administrative hearing commission in subsection 1 of this section may file
19 a notice of appeal with the administrative hearing commission within thirty days
20 after any such finding, order, decision, or assessment is placed in the United
21 States mail or within thirty days of any such finding, order, decision, or
22 assessment being delivered, whichever is earlier. **Within sixty days after the**
23 **date on which the notice of appeal is filed** the administrative hearing
24 commission [may] **shall hold hearings and make a recommended decision**
25 **based on those hearings** or [may] **shall make a recommended [decisions]**
26 **decision** based on stipulation of the parties, consent order, agreed settlement or
27 by disposition in the nature of default judgment, judgment on the pleadings, or
28 summary determination, in accordance with **the requirements of this**
29 **subsection and** the rules and procedures of the administrative hearing
30 commission.

31 3. Any decision by the director of the department of natural resources that
32 may be appealed [to the commissions listed] **as provided** in subsection 1 of this
33 section [and] shall contain a notice of the right of appeal in substantially the
34 following language: "If you were adversely affected by this decision, you may
35 appeal to have the matter heard by the administrative hearing commission. To
36 appeal, you must file a petition with the administrative hearing commission
37 within thirty days after the date this decision was mailed or the date it was
38 delivered, whichever date was earlier. If any such petition is sent by registered
39 mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent
40 by any method other than registered mail or certified mail, it will be deemed filed
41 on the date it is received by the administrative hearing commission.". Within
42 fifteen days after the administrative hearing commission renders its
43 recommended decision, it shall transmit the record and a transcript of the
44 proceedings, together with the administrative hearing commission's recommended
45 decision to the commission having authority to issue a final decision. The **final**
46 decision of the commission **shall be issued within ninety days of the date**
47 **the notice of appeal is filed and** shall be based only on the facts and evidence
48 in the hearing record. The commission may adopt the recommended decision as
49 its final decision. The commission may change a finding of fact or conclusion of
50 law made by the administrative hearing commission, or may vacate or modify the
51 recommended decision issued by the administrative hearing commission, only if
52 the commission states in writing the specific reason for a change made under this

53 subsection.

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

58 5. Appropriations shall be made from the respective funds of the various
59 commissions to cover the administrative hearing commission's costs associated
60 with these appeals.

61 6. In all matters heard by the administrative hearing commission under
62 this section, the burden of proof shall comply with section 640.012. The hearings
63 shall be conducted by the administrative hearing commission in accordance with
64 the provisions of chapter 536 and its regulations promulgated thereunder.

65 **7. No cause of action or appeal arising out of any finding, order,**
66 **decision, or assessment of any of the commissions listed in subsection**
67 **1 of this section shall accrue in any court unless the party seeking to**
68 **file such cause of action or appeal shall have filed a notice of appeal**
69 **and received a final decision in accordance with the provisions of this**
70 **section.**

 643.130. All final orders or determinations of the commission or the
2 director hereunder shall be subject to judicial review pursuant to the provisions
3 of sections 536.100 to 536.140, **except that, the provisions of section 536.110**
4 **notwithstanding, all actions seeking judicial review of any final**
5 **determination of the commission or the director shall be filed in the**
6 **court of appeals instead of in the circuit court.** No judicial review shall be
7 available hereunder, however, unless and until all administrative remedies are
8 exhausted.

 644.071. 1. All final orders or determinations of the commission or the
2 director made pursuant to the provisions of sections 644.006 to 644.141 are
3 subject to judicial review pursuant to the provisions of chapter 536, **except that,**
4 **the provisions of section 536.110 notwithstanding, all actions seeking**
5 **judicial review of any final order or determination of the commission**
6 **or the director shall be filed in the court of appeals instead of in the**
7 **circuit court.** No judicial review shall be available, however, unless and until
8 all administrative remedies are exhausted.

9 2. In any suit filed pursuant to section 536.050 concerning the validity of
10 the commission's standards, rules and regulations, the court shall review the

11 record made before the commission to determine the validity and reasonableness
12 of such standards, rules, limitations, and regulations and may hear such
13 additional evidence as it deems necessary.

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