

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 642
97TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, April 3, 2014, with recommendation that the Senate Committee Substitute do pass.

4971S.05C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 444.772 and 444.773, RSMo, and to enact in lieu thereof two new sections relating to surface mining.

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

Section A. Sections 444.772 and 444.773, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 444.772 and 444.773, to read as follows:

444.772. 1. Any operator desiring to engage in surface mining shall make written application to the director for a permit.

2. Application for permit shall be made on a form prescribed by the commission and shall include:

(1) The name of all persons with any interest in the land to be mined;

(2) The source of the applicant's legal right to mine the land affected by the permit;

(3) The permanent and temporary post office address of the applicant;

(4) Whether the applicant or any person associated with the applicant holds or has held any other permits pursuant to sections 444.500 to 444.790, and an identification of such permits;

(5) The written consent of the applicant and any other persons necessary to grant access to the commission or the director to the area of land affected under application from the date of application until the expiration of any permit granted under the application and thereafter for such time as is necessary to assure compliance with all provisions of sections 444.500 to 444.790 or any rule or regulation promulgated pursuant to them. Permit applications submitted by

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

18 operators who mine an annual tonnage of less than ten thousand tons shall be
19 required to include written consent from the operator to grant access to the
20 commission or the director to the area of land affected;

21 (6) A description of the tract or tracts of land and the estimated number
22 of acres thereof to be affected by the surface mining of the applicant for the next
23 succeeding twelve months; and

24 (7) Such other information that the commission may require as such
25 information applies to land reclamation.

26 3. The application for a permit shall be accompanied by a map in a scale
27 and form specified by the commission by regulation.

28 4. The application shall be accompanied by a bond, security or certificate
29 meeting the requirements of section 444.778, a geologic resources fee authorized
30 under section 256.700, and a permit fee approved by the commission not to exceed
31 one thousand dollars. The commission may also require a fee for each site listed
32 on a permit not to exceed four hundred dollars for each site. If mining operations
33 are not conducted at a site for six months or more during any year, the fee for
34 such site for that year shall be reduced by fifty percent. The commission may
35 also require a fee for each acre bonded by the operator pursuant to section
36 444.778 not to exceed twenty dollars per acre. If such fee is assessed, the
37 per-acre fee on all acres bonded by a single operator that exceed a total of two
38 hundred acres shall be reduced by fifty percent. In no case shall the total fee for
39 any permit be more than three thousand dollars. Permit and renewal fees shall
40 be established by rule, except for the initial fees as set forth in this subsection,
41 and shall be set at levels that recover the cost of administering and enforcing
42 sections 444.760 to 444.790, making allowances for grants and other sources of
43 funds. The director shall submit a report to the commission and the public each
44 year that describes the number of employees and the activities performed the
45 previous calendar year to administer sections 444.760 to 444.790. For any
46 operator of a gravel mining operation where the annual tonnage of gravel mined
47 by such operator is less than five thousand tons, the total cost of submitting an
48 application shall be three hundred dollars. The issued permit shall be valid from
49 the date of its issuance until the date specified in the mine plan unless sooner
50 revoked or suspended as provided in sections 444.760 to 444.790. Beginning
51 August 28, 2007, the fees shall be set at a permit fee of eight hundred dollars, a
52 site fee of four hundred dollars, and an acre fee of ten dollars, with a maximum
53 fee of three thousand dollars. Fees may be raised as allowed in this subsection

54 after a regulation change that demonstrates the need for increased fees.

55 5. An operator desiring to have his or her permit amended to cover
56 additional land may file an amended application with the commission. Upon
57 receipt of the amended application, and such additional fee and bond as may be
58 required pursuant to the provisions of sections 444.760 to 444.790, the director
59 shall, if the applicant complies with all applicable regulatory requirements, issue
60 an amendment to the original permit covering the additional land described in
61 the amended application.

62 6. An operation may withdraw any land covered by a permit, excepting
63 affected land, by notifying the commission thereof, in which case the penalty of
64 the bond or security filed by the operator pursuant to the provisions of sections
65 444.760 to 444.790 shall be reduced proportionately.

66 7. Where mining or reclamation operations on acreage for which a permit
67 has been issued have not been completed, the permit shall be renewed. The
68 operator shall submit a permit renewal form furnished by the director for an
69 additional permit year and pay a fee equal to an application fee calculated
70 pursuant to subsection 4 of this section, but in no case shall the renewal fee for
71 any operator be more than three thousand dollars. For any operator involved in
72 any gravel mining operation where the annual tonnage of gravel mined by such
73 operator is less than five thousand tons, the permit as to such acreage shall be
74 renewed by applying on a permit renewal form furnished by the director for an
75 additional permit year and payment of a fee of three hundred dollars. Upon
76 receipt of the completed permit renewal form and fee from the operator, the
77 director shall approve the renewal. With approval of the director and operator,
78 the permit renewal may be extended for a portion of an additional year with a
79 corresponding prorating of the renewal fee.

80 8. Where one operator succeeds another at any uncompleted operation,
81 either by sale, assignment, lease or otherwise, the commission may release the
82 first operator from all liability pursuant to sections 444.760 to 444.790 as to that
83 particular operation if both operators have been issued a permit and have
84 otherwise complied with the requirements of sections 444.760 to 444.790 and the
85 successor operator assumes as part of his or her obligation pursuant to sections
86 444.760 to 444.790 all liability for the reclamation of the area of land affected by
87 the former operator.

88 9. The application for a permit shall be accompanied by a plan of
89 reclamation that meets the requirements of sections 444.760 to 444.790 and the

90 rules and regulations promulgated pursuant thereto, and shall contain a verified
91 statement by the operator setting forth the proposed method of operation,
92 reclamation, and a conservation plan for the affected area including approximate
93 dates and time of completion, and stating that the operation will meet the
94 requirements of sections 444.760 to 444.790, and any rule or regulation
95 promulgated pursuant to them.

96 10. At the time that a permit application is deemed complete by the
97 director, the operator shall publish a notice of intent to operate a surface mine
98 in any newspaper qualified pursuant to section 493.050 to publish legal notices
99 in any county where the land is located. If the director does not respond to a
100 permit application within forty-five calendar days, the application shall be
101 deemed to be complete. Notice in the newspaper shall be posted once a week for
102 four consecutive weeks beginning no more than ten days after the application is
103 deemed complete. The operator shall also send notice of intent to operate a
104 surface mine by certified mail to the governing body of the counties or cities in
105 which the proposed area is located, and to the last known addresses of all record
106 landowners [of contiguous real property or real property located adjacent to the
107 proposed mine plan area] **within two thousand six hundred and forty feet**
108 **from the border of the proposed mine plan area.** The notices shall include
109 the name and address of the operator, a legal description consisting of county,
110 section, township and range, the number of acres involved, a statement that the
111 operator plans to mine a specified mineral during a specified time, and the
112 address of the commission. The notices shall also contain a statement that any
113 person with a direct, personal interest in one or more of the factors the
114 [commission] **director** may consider in issuing a permit may request a public
115 meeting[, a public hearing] or file written comments to the director no later than
116 fifteen days following the final public notice publication date. **If any person**
117 **requests a public meeting, the applicant shall cooperate with the**
118 **director in making all necessary arrangements for the public meeting**
119 **to be held in a reasonably convenient location and at a reasonable time**
120 **for interested participants, and the applicant shall bear the expenses.**

121 11. The [commission] **director** may approve a permit application or
122 permit amendment whose operation or reclamation plan deviates from the
123 requirements of sections 444.760 to 444.790 if it can be demonstrated by the
124 operator that the conditions present at the surface mining location warrant an
125 exception. The criteria accepted for consideration when evaluating the merits of

126 an exception or variance to the requirements of sections 444.760 to 444.790 shall
127 be established by regulations.

128 12. Fees imposed pursuant to this section shall become effective August
129 28, 2007, and shall expire on December 31, 2018. No other provisions of this
130 section shall expire.

444.773. 1. All applications for a permit shall be filed with the director,
2 who shall promptly investigate the application and make a [recommendation to
3 the commission] **decision** within [four] **six** weeks after **completion of** the
4 [public notice period] **process** provided in **subsection 10 of** section 444.772
5 [expires as to whether] **to issue or deny** the permit [should be issued or
6 denied]. If the director determines that the application has not fully complied
7 with the provisions of section 444.772 or any rule or regulation promulgated
8 pursuant to that section, the director [shall recommend denial of] **may seek**
9 **additional information from the applicant before making a decision to**
10 **issue or deny** the permit. The director shall consider any [written] **public**
11 comments when making [his or her recommendation to the commission on the
12 issuance or denial of] **the decision to issue or deny** the permit. **In issuing**
13 **a permit, the director may impose reasonable conditions consistent**
14 **with the provisions of sections 444.760 to 444.790.**

15 2. [If the recommendation of the director is to deny the permit, a hearing
16 as provided in sections 444.760 to 444.790, if requested by the applicant within
17 fifteen days of the date of notice of recommendation of the director, shall be held
18 by the commission.

19 3. If the recommendation of the director is for issuance of the permit, the
20 director shall issue the permit without a public meeting or a hearing except that
21 upon petition, received prior to the date of the notice of recommendation, from
22 any person whose health, safety or livelihood will be unduly impaired by the
23 issuance of this permit, a public meeting or a hearing may be held. If a public
24 meeting is requested pursuant to this chapter and the applicant agrees, the
25 director shall, within thirty days after the time for such request has passed, order
26 that a public meeting be held. The meeting shall be held in a reasonably
27 convenient location for all interested parties. The applicant shall cooperate with
28 the director in making all necessary arrangements for the public meeting. Within
29 thirty days after the close of the public meeting, the director shall recommend to
30 the commission approval or denial of the permit. If the public meeting does not
31 resolve the concerns expressed by the public, any person whose health, safety or

32 livelihood will be unduly impaired by the issuance of such permit may make a
33 written request to the land reclamation commission for a formal public
34 hearing. The land reclamation commission may grant a public hearing to
35 formally resolve concerns of the public. Any public hearing before the commission
36 shall address one or more of the factors set forth in this section.] **The director's**
37 **decision shall be deemed to be the decision of the director of the**
38 **department of natural resources and shall be subject to appeal to the**
39 **administrative hearing commission as provided by sections 640.013 and**
40 **621.250.**

41 [4. In any public hearing, if] **3. For purposes of an appeal,** the
42 **administrative hearing** commission [finds] **may consider**, based on
43 competent and substantial scientific evidence on the record, [that] **whether** an
44 interested party's health, safety or livelihood will be unduly impaired by the
45 issuance of the permit[, the commission may deny such permit]. [If] The
46 **administrative hearing** commission [finds] **may also consider**, based on
47 competent and substantial scientific evidence on the record, [that] **whether** the
48 operator has demonstrated, during the five-year period immediately preceding the
49 date of the permit application, a pattern of noncompliance at other locations in
50 Missouri that suggests a reasonable likelihood of future acts of noncompliance[,
51 the commission may deny such permit]. In determining whether a reasonable
52 likelihood of noncompliance will exist in the future, the **administrative hearing**
53 commission may look to past acts of noncompliance in Missouri, but only to the
54 extent they suggest a reasonable likelihood of future acts of noncompliance. Such
55 past acts of noncompliance in Missouri, in and of themselves, are an insufficient
56 basis to suggest a reasonable likelihood of future acts of noncompliance. In
57 addition, such past acts shall not be used as a basis to suggest a reasonable
58 likelihood of future acts of noncompliance unless the noncompliance has caused
59 or has the potential to cause, a risk to human health or to the environment, or
60 has caused or has potential to cause pollution, or was knowingly committed, or
61 is defined by the United States Environmental Protection Agency as other than
62 minor. If a hearing petitioner or the **administrative hearing** commission
63 demonstrates either present acts of noncompliance or a reasonable likelihood that
64 the permit seeker or the operations of associated persons or corporations in
65 Missouri will be in noncompliance in the future, such a showing will satisfy the
66 noncompliance requirement in this subsection. In addition, such basis must be
67 developed by multiple noncompliances of any environmental law administered by

68 the Missouri department of natural resources at any single facility in Missouri
69 that resulted in harm to the environment or impaired the health, safety or
70 livelihood of persons outside the facility. For any permit seeker that has not been
71 in business in Missouri for the past five years, the **administrative hearing**
72 commission may review the record of noncompliance in any state where the
73 applicant has conducted business during the past five years. [Any decision of the
74 commission made pursuant to a hearing held pursuant to this section is subject
75 to judicial review as provided in chapter 536. No judicial review shall be
76 available, however, until and unless all administrative remedies are exhausted.]
77 **Once the administrative hearing commission has reviewed the appeal,**
78 **the administrative hearing commission shall make a recommendation**
79 **to the commission on permit issuance or denial.**

80 **4. The commission shall issue its own decision, based on the**
81 **appeal, for permit issuance or denial. If the commission changes a**
82 **finding of fact or conclusion of law made by the administrative hearing**
83 **commission, or modifies or vacates the decision recommended by the**
84 **administrative hearing commission, it shall issue its own decision,**
85 **which shall include findings of fact and conclusions of law. The**
86 **commission shall mail copies of its final decision to the parties to the**
87 **appeal or their counsel of record. The commission's decision shall be**
88 **subject to judicial review pursuant to chapter 536, except that the court**
89 **of appeals district with territorial jurisdiction coextensive with the**
90 **county where the mine is to be located shall have original jurisdiction.**
91 **No judicial review shall be available until and unless all administrative**
92 **remedies are exhausted.**

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