

SECOND REGULAR SESSION

SENATE BILL NO. 978

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROMINE.

Read 1st time February 1, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6276S.01I

AN ACT

To amend chapter 260, RSMo, by adding thereto one new section relating to environmental restoration corporations.

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

Section A. Chapter 260, RSMo, is amended by adding thereto one new section, to be known as section 260.1150, to read as follows:

260.1150. 1. This section shall be known and may be cited as the "Environmental Restoration Corporation Act".

2. A public benefit nonprofit corporation may be formed under the provisions of chapter 355 to hold, manage, or own environmentally impaired property that is otherwise subject to an ongoing cleanup or remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq.; the Missouri hazardous waste management law, sections 260.350 to 260.433; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq.; or the Missouri clean water law, sections 644.006 to 644.150, for the purpose of promoting social welfare in Missouri by facilitating efforts to restore and redevelop such environmentally impaired property.

3. Any such nonprofit corporation organized under this section shall, in addition to all powers conferred by chapter 355, have the following powers, which shall be exercised at the sole and exclusive discretion of the directors:

(1) To adopt bylaws and rules for the regulation of its affairs and the conduct of its business;

(2) To adopt an official seal;

(3) To sue and be sued;

(4) To accept gifts, contributions, disbursements, distributions,

22 donations, endowments, loans, grants, settlement proceeds, and
23 payments from the federal and state government, and from other
24 sources, public or private, for carrying out any of its functions, which
25 funds shall not be expended other than for the purposes provided;

26 (5) To acquire, accept, convey, dispose, encumber, manage, and
27 own any real property that is subject to any cleanup or remedial action
28 as described in subsection 2 of this section;

29 (6) To make and execute leases, contracts, releases, compromises,
30 and other instruments necessary or convenient to carry out its
31 purposes;

32 (7) To convey real property whenever the board of directors
33 finds, at its sole discretion, that it has acquired all rights, title, and
34 interest in the property within the area designated for cleanup or
35 remediation and such conveyance is in the public interest. In any such
36 conveyance, the board of directors may impose such conditions and
37 covenants, including conservation easements, as it determines are
38 reasonable and appropriate;

39 (8) To employ and pay compensation to such employees and
40 agents, including accountants, attorneys, and others as the board of
41 directors shall deem necessary to further the purposes of such
42 nonprofit corporation; and

43 (9) To enter into contracts with private or public entities to
44 conduct, implement, manage, oversee, and regulate any and all
45 activities that may be necessary or required in connection with the
46 management of the real property and the implementation of any
47 cleanup or remedial action as described in subsection 2 of this
48 section. Any such contract may include provisions for the delivery of
49 administrative support services to the corporation and for a reasonable
50 fee to be paid for management services related to the execution and
51 implementation of any and all activities required by such contract.

52 4. Any such nonprofit corporation organized under this section
53 shall be managed and regulated by a board consisting of no less than
54 five directors, who shall initially be appointed by the
55 incorporators. Any director shall not have any personal liability
56 related to any official acts or obligations of the corporation. No more
57 than two directors shall be employed by a state, county, or local
58 government, and no more than two directors shall be public

59 nongovernmental members. The board shall meet at least four times
60 per calendar year. A quorum of the board shall consist of three
61 members. An action taken by a majority vote of the board at a meeting
62 where a quorum is present shall be an act of the board. All powers and
63 duties conferred upon the directors shall be exercised personally by the
64 directors and not by alternates or representatives. All actions of any
65 such nonprofit corporation shall be taken at meetings open to the
66 public.

67 5. If any such nonprofit corporation receives public funds in
68 connection with any specific environmental restoration activity at a
69 specific property:

70 (1) The corporation shall allow for reasonable periodic audits by
71 the state auditor with respect to the corporation's use of such public
72 funds in relation to the property for which such public funds were
73 received; and

74 (2) The corporation shall, upon reasonable request, provide an
75 annual report to the general assembly concerning the receipt and use
76 of such public funds.

77 6. Any such nonprofit corporation shall include in any
78 conveyance of any real property to any third party an environmental
79 covenant in the form as set forth in sections 260.1000 to 260.1039.

80 7. Prior to acquiring any interest in any real property that is the
81 subject of any environmental restoration activities, any such nonprofit
82 corporation shall undertake all reasonable and appropriate due
83 diligence activities in accordance with all applicable regulations
84 adopted by the United States Environmental Protection Agency in
85 order to qualify the nonprofit corporation as a bona fide prospective
86 purchaser as defined in 42 U.S.C. Section 9601(40), as
87 amended. Provided such nonprofit corporation qualifies as a bona fide
88 prospective purchaser, such nonprofit corporation shall be immune
89 from any liability of any kind or nature whatsoever under the Missouri
90 hazardous waste management law under sections 260.350 to 260.433;
91 provisions relating to solid waste under sections 260.200 to 260.345; or
92 the Missouri clean water law under chapter 644 for any conditions that
93 may exist at, on, or under any such real property.

94 8. Any such nonprofit corporation owes no duty of care and shall
95 have no liability of any kind or nature whatsoever to any trespasser or

96 any other person who enters on any real property held, managed, or
97 owned by the nonprofit corporation in relation to keeping the land safe
98 for recreational or any other use or to giving any general or specific
99 notice or warning with respect to any natural or artificial condition,
100 structure, or personal property thereon.

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