

SENATE BILL NO. 1722

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR GREGORY (21).

7425S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 621.250, RSMo, and to enact in lieu thereof one new section relating to environmental appeals.

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

Section A. Section 621.250, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 621.250,
3 to read as follows:

621.250. 1. All authority to hear contested case
2 administrative appeals granted in chapters 236, 256, 260,
3 444, 640, 643, and 644, and to the hazardous waste
4 management commission in chapter 260, the Missouri mining
5 commission in chapter 444, the safe drinking water
6 commission in chapter 640, the air conservation commission
7 in chapter 643, and the clean water commission in chapter
8 644 shall be transferred to the administrative hearing
9 commission under this chapter. The authority to render
10 final decisions after hearing on appeals heard by the
11 administrative hearing commission shall remain with the
12 commissions listed in this subsection. For appeals pursuant
13 to chapter 236, chapter 256, section 260.235, or section
14 260.249, the administrative hearing commission shall render
15 a final decision rather than a recommended decision. The
16 administrative hearing commission may render its recommended
17 or final decision after hearing or through stipulation,

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

18 consent order, agreed settlement or by disposition in the
19 nature of default judgment, judgment on the pleadings, or
20 summary determination, consistent with the requirements of
21 this subsection and the rules and procedures of the
22 administrative hearing commission.

23 2. Except as otherwise provided by law, any person or
24 entity who is a party to, or who is aggrieved or adversely
25 affected by, any finding, order, decision, or assessment for
26 which the authority to hear appeals was transferred to the
27 administrative hearing commission in subsection 1 of this
28 section may file a notice of appeal with the administrative
29 hearing commission within thirty days after any such
30 finding, order, decision, or assessment is placed in the
31 United States mail or within thirty days of any such
32 finding, order, decision, or assessment being delivered,
33 whichever is earlier. Within ninety days after the date on
34 which the notice of appeal is filed the administrative
35 hearing commission may hold hearings, and within one hundred
36 twenty days after the date on which the notice of appeal is
37 filed shall make a recommended decision, or a final decision
38 where applicable, in accordance with the requirements of
39 this section and the rules and procedures of the
40 administrative hearing commission; provided, however, that
41 the dates by which the administrative hearing commission is
42 required to hold hearings and make a recommended decision
43 may be extended at the sole discretion of the permittee as
44 either petitioner or intervenor in the appeal.

45 3. Any decision by the director of the department of
46 natural resources that may be appealed as provided in
47 subsection 1 of this section shall contain a notice of the
48 right of appeal in substantially the following language:
49 "If you were adversely affected by this decision, you may be

50 entitled to pursue an appeal before the administrative
51 hearing commission. To appeal, you must file a petition
52 with the administrative hearing commission within thirty
53 days after the date this decision was mailed or the date it
54 was delivered, whichever date was earlier. If any such
55 petition is sent by registered mail or certified mail, it
56 will be deemed filed on the date it is mailed; if it is sent
57 by any method other than registered mail or certified mail,
58 it will be deemed filed on the date it is received by the
59 administrative hearing commission.". Within fifteen days
60 after the administrative hearing commission renders a
61 recommended decision, it shall transmit the record and a
62 transcript of the proceedings, together with the
63 administrative hearing commission's recommended decision to
64 the commission having authority to issue a final decision.
65 The final decision of the commission shall be issued within
66 one hundred eighty days of the date the notice of appeal in
67 subsection 2 of this section is filed and shall be based
68 only on the facts and evidence in the hearing record;
69 provided, however, that the date by which the commission is
70 required to issue a final decision may be extended at the
71 sole discretion of the permittee as either petitioner or
72 intervenor in the appeal. The commission may adopt the
73 recommended decision as its final decision. The commission
74 may change a finding of fact or conclusion of law made by
75 the administrative hearing commission, or may vacate or
76 modify the recommended decision issued by the administrative
77 hearing commission, only if the commission states in writing
78 the specific reason for a change made under this
79 subsection. **When issuance or denial of a permit is**
80 **appealed, and the commission does not issue a final decision**
81 **within one hundred eighty days of the date the notice of**

82 **appeal under subsection 2 of this section is filed or by the**
83 **date extended at the sole discretion of the permittee, the**
84 **commission shall issue a decision affirming the issuance of**
85 **the permit.**

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

91 5. Appropriations shall be made from the respective
92 funds of the department of natural resources to cover the
93 administrative hearing commission's costs associated with
94 these appeals.

95 6. In all matters heard by the administrative hearing
96 commission under this section, the burden of proof shall
97 comply with section 640.012. The hearings shall be
98 conducted by the administrative hearing commission in
99 accordance with the provisions of chapter 536 and its
100 regulations promulgated thereunder.

101 7. **In any appeal filed by an aggrieved or adversely**
102 **affected party challenging the issuance of a permit issued**
103 **by the department of natural resources to a different**
104 **person, and the commission affirms the issuance of such**
105 **permit, when the person to whom the permit was issued is a**
106 **party or intervenor to the appeal, the commission shall**
107 **award to the permittee reasonable fees, damages, and**
108 **expenses incurred by the permittee in the civil action or**
109 **agency proceeding, unless the court or agency finds that the**
110 **position of the aggrieved or adversely affected party or**
111 **parties was substantially justified. The permittee may seek**
112 **award of such reasonable fees, damages, and expenses in the**
113 **manner provided for in section 536.087.**

114 [7.] 8. No cause of action or appeal arising out of
115 any finding, order, decision, or assessment of any of the
116 commissions listed in subsection 1 of this section shall
117 accrue in any court unless the party seeking to file such
118 cause of action or appeal shall have filed a notice of
119 appeal and received a final decision in accordance with the
120 provisions of this section.

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