

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2306
99TH GENERAL ASSEMBLY

6214H.03C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

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

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
2 known as section 260.1150, to read as follows:

**260.1150. 1. This section shall be known and may be cited as the “Environmental
2 Restoration Corporation Act”.**

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

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

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

16 (2) To adopt an official seal;

17 (3) To sue and be sued;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 (4) To accept gifts, contributions, disbursements, distributions, donations,
19 endowments, loans, grants, settlement proceeds, and payments from the federal and state
20 government, and from other sources, public or private, for carrying out any of its
21 functions, which funds shall not be expended other than for the purposes provided;

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

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

27 (7) To convey real property when the board of directors finds, at its sole discretion,
28 that it has acquired all rights, title, and interest in the property within the area designated
29 for cleanup or remediation and such conveyance is in the public interest. In any such
30 conveyance, the board of directors may impose such conditions and covenants, including
31 conservation easements, as it determines are reasonable and appropriate;

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

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

42 4. Any such nonprofit corporation organized under this section shall be managed
43 and regulated by a board consisting of no less than five directors, who shall initially be
44 appointed by the incorporators. Any director shall not have any personal liability related
45 to any official acts or obligations of the corporation. However, any such immunity shall
46 not apply with regard to any intentional or negligent act or omission that results in a
47 violation of any law set forth in subsection 2 of this section. No more than two directors
48 shall be employed by a state, county, or local government, and no more than two directors
49 shall be public nongovernmental members. The board shall meet at least four times per
50 calendar year. A quorum of the board shall consist of three members. An action taken by
51 a majority vote of the board at a meeting where a quorum is present shall be an act of the
52 board. All powers and duties conferred upon the directors shall be exercised personally
53 by the directors and not by alternates or representatives. All actions of any such nonprofit

54 corporation shall be taken at meetings open to the public, except for confidential matters
55 relating to personnel, contracts, or litigation.

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

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

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

63 6. Any such nonprofit corporation may include in any conveyance of any real
64 property to any third party an environmental covenant in the form as set forth in sections
65 260.1000 to 260.1039 or a conservation easement under section 442.014.

66 7. Prior to acquiring any interest in any real property that is the subject of any
67 environmental restoration activities, any such nonprofit corporation shall undertake all
68 reasonable and appropriate due diligence activities in accordance with all applicable
69 regulations adopted by the United States Environmental Protection Agency in order to
70 qualify the nonprofit corporation as a bona fide prospective purchaser as defined in 42
71 U.S.C. Section 9601(40), as amended. Provided such nonprofit corporation qualifies as a
72 bona fide prospective purchaser, such nonprofit corporation shall be immune from any
73 liability of any kind or nature under the Missouri hazardous waste management law under
74 sections 260.350 to 260.433; the Missouri solid waste management law under sections
75 260.200 to 260.345; or the Missouri clean water law under chapter 644 for any conditions
76 that may exist at, on, or under any such real property; however, such corporation shall
77 comply with all applicable regulatory requirements.

78 8. Any such nonprofit corporation owes no duty of care and shall have no liability
79 of any kind or nature whatsoever to any trespasser or any other person who enters on any
80 real property held, managed, or owned by the nonprofit corporation in relation to keeping
81 the land safe for recreational or any other use or to giving any general or specific notice
82 or warning with respect to any natural or artificial condition, structure, or personal
83 property thereon.

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