

SECOND REGULAR SESSION

# SENATE BILL NO. 645

96TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR SCHAEFER.

Read 1st time January 11, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

5134S.011

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## AN ACT

To repeal sections 621.250, 640.018, 643.130, and 644.071, RSMo, and to enact in lieu thereof four new sections relating to environmental permits.

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

Section A. Sections 621.250, 640.018, 643.130, and 644.071, RSMo, are  
2 repealed and four new sections enacted in lieu thereof, to be known as sections  
3 621.250, 640.018, 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 administrative hearing commission may render a recommended final decision  
10 after hearing or through stipulation, consent order, agreed settlement or by  
11 disposition in the nature of default judgment, judgment on the pleadings, or  
12 summary determination, consistent with the requirements of this subsection and  
13 the rules and procedures of the administrative hearing commission.

14 2. Except as otherwise provided by law, any person or entity who is a  
15 party to, or who is aggrieved or adversely affected by, any finding, order, decision,  
16 or assessment for which the authority to hear appeals was transferred to the  
17 administrative hearing commission in subsection 1 of this section may file a

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

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

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

51           4. In the event the person filing the appeal prevails in any dispute under  
52 this section, interest shall be allowed upon any amount found to have been

53 wrongfully collected or erroneously paid at the rate established by the director of  
54 the department of revenue under section 32.065.

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

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

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

640.018. 1. In any case where the department has not issued a permit or  
2 rendered a permit decision by the expiration of a statutorily required time frame  
3 for any application for a permit under this chapter or chapters 260, 278, 319, 444,  
4 643, or 644, **upon request of the permit applicant the department shall**  
5 **issue the permit** [shall be issued as of] the first day following the expiration of  
6 the required time frame, provided all necessary information has been submitted  
7 for the application and the department has been in possession of all such  
8 information for the duration of the required time frame. This subsection shall be  
9 considered in addition to, and not in lieu thereof, any other provision of law  
10 regarding consequences of failure by the department to issue a permit or permit  
11 decision by the expiration of a required time frame.

12         2. If engineering plans, specifications, and designs prepared by a  
13 registered professional engineer are submitted to the department of natural  
14 resources as a part of a permit application or permit modification, the permit  
15 application or permit modification shall include a statement that the plans,  
16 specifications, and designs were prepared in accordance with the applicable  
17 requirements and shall be sealed by the registered professional engineer in  
18 accordance with section 327.411, as applicable. The department shall use the  
19 complete, sealed engineering plans, specifications, and designs as submitted in  
20 addition to permit applications and other relevant information, documents, and  
21 materials in developing comments on the engineering submittals and in

22 determining whether to issue or deny permits. The review of documents, plans,  
23 specifications, and designs sealed by a registered professional engineer for an  
24 applicant shall be conducted by a registered professional engineer or an  
25 engineering intern on behalf of the department.

26 3. The department shall designate supervisory registered professional  
27 engineers for permitting purposes under this chapter and chapters 260, 278, 319,  
28 444, 643, and 644. Any permit applicant receiving written comments on an  
29 engineering submittal may request a determination from the department's  
30 supervisory registered professional engineer as to a final disposition of the  
31 department's comments regarding engineering submittals in determining a  
32 decision on the permit. The department's supervisory engineer shall inform the  
33 permit applicant of a preliminary decision within fifteen days after the permit  
34 applicant's request for a determination and shall make a final determination  
35 within thirty days of such request.

36 4. Nothing in this section shall be construed to require plans or other  
37 submittals to the department pursuant to an application to come under a general  
38 permit or an application for a site-specific permit to be prepared by a registered  
39 professional engineer, unless otherwise required under state or federal law.

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 determination of  
5 the commission or the director shall be filed in the court of appeals instead of in  
6 the circuit court]. No judicial review shall be available hereunder, however,  
7 unless and until all administrative remedies are 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 judicial  
5 review of any final order or determination of the commission or the director shall  
6 be filed in the court of appeals instead of in the circuit court]. No judicial review  
7 shall be available, however, unless and until all administrative remedies are  
8 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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