

FIRST REGULAR SESSION

HOUSE BILL NO. 299

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES LICHTENEGGER (Sponsor), LASATER, ENTLICHER
KELLY (24), ALLEN, WRIGHT, POLLOCK, ZERR, GUERNSEY, HAMPTON, WALLINGFORD,
HODGES, WYATT, FAITH, DAVIS, WHITE, STILL, COOKSON, GATSCHENBERGER, GRISAMORE,
FRANZ AND REDMON (Co-sponsors).

0478L.03I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 444.773, RSMo, and to enact in lieu thereof one new section relating to the land reclamation act, with an emergency clause.

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

Section A. Section 444.773, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 444.773, to read as follows:

444.773. 1. All applications for a permit shall be filed with the director, who shall promptly investigate the application and make a recommendation to the commission within four weeks after the public notice period provided in section 444.772 expires as to whether the permit should be issued or denied. If the director determines that the application has not fully complied with the provisions of section 444.772 or any rule or regulation promulgated pursuant to that section, the director shall recommend denial of the permit. The director shall consider any written comments when making his or her recommendation to the commission on the issuance or denial of the permit.

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

3. If the recommendation of the director is for issuance of the permit, the director shall issue the permit without a public meeting or a hearing except that upon petition, received prior to the date of the notice of recommendation, from any person whose health, safety or livelihood will be unduly impaired by the issuance of this permit, a public meeting or a hearing may be

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.

16 held. If a public meeting is requested pursuant to this chapter and the applicant agrees, the
17 director shall, within thirty days after the time for such request has passed, order that a public
18 meeting be held. The meeting shall be held in a reasonably convenient location for all interested
19 parties. The applicant shall cooperate with the director in making all necessary arrangements for
20 the public meeting. Within thirty days after the close of the public meeting, the director shall
21 recommend to the commission approval or denial of the permit. If the public meeting does not
22 resolve the concerns expressed by the public, any person whose health, safety or livelihood will
23 be unduly impaired by the issuance of such permit may make a written request to the land
24 reclamation commission for a formal public hearing. The land reclamation commission may
25 grant a public hearing to formally resolve concerns of the public. Any public hearing before the
26 commission shall address one or more of the factors set forth in this section.

27 4. In any hearing held pursuant to this section the burden of proof shall be on the
28 applicant for a permit. If the commission finds, based on competent and substantial scientific
29 evidence on the record, that an interested party's health, safety or livelihood will be unduly
30 impaired by the issuance of the permit, **or if the affected land is within one mile of any school,**
31 **child care facility, church, nursing home, public building, or cemetery,** the commission may
32 deny such permit. If the commission finds, based on competent and substantial scientific
33 evidence on the record, that the operator has demonstrated, during the five-year period
34 immediately preceding the date of the permit application, a pattern of noncompliance at other
35 locations in Missouri that suggests a reasonable likelihood of future acts of noncompliance, the
36 commission may deny such permit. In determining whether a reasonable likelihood of
37 noncompliance will exist in the future, the commission may look to past acts of noncompliance
38 in Missouri, but only to the extent they suggest a reasonable likelihood of future acts of
39 noncompliance. Such past acts of noncompliance in Missouri, in and of themselves, are an
40 insufficient basis to suggest a reasonable likelihood of future acts of noncompliance. In addition,
41 such past acts shall not be used as a basis to suggest a reasonable likelihood of future acts of
42 noncompliance unless the noncompliance has caused or has the potential to cause, a risk to
43 human health or to the environment, or has caused or has potential to cause pollution, or was
44 knowingly committed, or is defined by the United States Environmental Protection Agency as
45 other than minor. If a hearing petitioner or the commission demonstrates either present acts of
46 noncompliance or a reasonable likelihood that the permit seeker or the operations of associated
47 persons or corporations in Missouri will be in noncompliance in the future, such a showing will
48 satisfy the noncompliance requirement in this subsection. In addition, such basis must be
49 developed by multiple noncompliances of any environmental law administered by the Missouri
50 department of natural resources at any single facility in Missouri that resulted in harm to the
51 environment or impaired the health, safety or livelihood of persons outside the facility. For any

52 permit seeker that has not been in business in Missouri for the past five years, the commission
53 may review the record of noncompliance in any state where the applicant has conducted business
54 during the past five years. Any decision of the commission made pursuant to a hearing held
55 pursuant to this section is subject to judicial review as provided in chapter 536. No judicial
56 review shall be available, however, until and unless all administrative remedies are exhausted.

Section B. Because immediate action is necessary to reduce significant health and traffic
2 risks, section A of this act is deemed necessary for the immediate preservation of the public
3 health, welfare, peace, and safety, and is hereby declared to be an emergency act within the
4 meaning of the constitution, and section A of this act shall be in full force and effect upon its
5 passage and approval.

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