

FIRST REGULAR SESSION

HOUSE BILL NO. 686

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE RICHARDSON.

1647L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 444.773, RSMo, and to enact in lieu thereof one new section relating to mining permits.

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Section A. Section 444.773, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 444.773, to read as follows: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 held. If a public meeting is requested pursuant to this chapter and the applicant agrees, the director shall, within thirty days after the time for such request has passed, order that a public meeting be held. The meeting shall be held in a reasonably convenient location for all interested

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.

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 **public** 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, the commission may deny such permit. If the
31 commission finds, based on competent and substantial scientific evidence on the record, that the
32 operator has demonstrated, during the five-year period immediately preceding the date of the
33 permit application, a pattern of noncompliance at other locations in Missouri that suggests a
34 reasonable likelihood of future acts of noncompliance, the commission may deny such permit.
35 In determining whether a reasonable likelihood of noncompliance will exist in the future, the
36 commission may look to past acts of noncompliance in Missouri, but only to the extent they
37 suggest a reasonable likelihood of future acts of noncompliance. Such past acts of
38 noncompliance in Missouri, in and of themselves, are an insufficient basis to suggest a
39 reasonable likelihood of future acts of noncompliance. In addition, such past acts shall not be
40 used as a basis to suggest a reasonable likelihood of future acts of noncompliance unless the
41 noncompliance has caused or has the potential to cause, a risk to human health or to the
42 environment, or has caused or has potential to cause pollution, or was knowingly committed, or
43 is defined by the United States Environmental Protection Agency as other than minor. If a
44 hearing petitioner or the commission demonstrates either present acts of noncompliance or a
45 reasonable likelihood that the permit seeker or the operations of associated persons or
46 corporations in Missouri will be in noncompliance in the future, such a showing will satisfy the
47 noncompliance requirement in this subsection. In addition, such basis must be developed by
48 multiple noncompliances of any environmental law administered by the Missouri department of
49 natural resources at any single facility in Missouri that resulted in harm to the environment or
50 impaired the health, safety or livelihood of persons outside the facility. For any permit seeker
51 that has not been in business in Missouri for the past five years, the commission may review the
52 record of noncompliance in any state where the applicant has conducted business during the past
53 five years. Any decision of the commission made pursuant to a hearing held pursuant to this
54 section is subject to judicial review as provided in chapter 536. No judicial review shall be
55 available, however, until and unless all administrative remedies are exhausted.