

SECOND REGULAR SESSION

HOUSE BILL NO. 1761

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES LOEHNER (Sponsor), DETHROW, HOBBS, SCHLOTTACH, MUNZLINGER, WALLACE, WILSON (119), DAY, QUINN, SCHAD, JOHNSON (47), SMITH (150), JONES, PARSON, MYERS, McGHEE, KUESSNER, WHORTON, MAY, FRANZ, GUEST AND SMITH (118) (Co-sponsors).

Read 1st time February 14, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4540L.011

AN ACT

To repeal sections 444.765, 444.766, and 444.770, RSMo, and to enact in lieu thereof three new sections relating to surface mining and gravel excavation.

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

Section A. Sections 444.765, 444.766, and 444.770, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 444.765, 444.766, and 444.770, to read as follows:

444.765. Wherever used or referred to in sections 444.760 to 444.790, unless a different meaning clearly appears from the context, the following terms mean:

(1) "Affected land", the pit area or area from which overburden shall have been removed, or upon which overburden has been deposited after September 28, 1971. When mining is conducted underground, affected land means any excavation or removal of overburden required to create access to mine openings, except that areas of disturbance encompassed by the actual underground openings for air shafts, portals, adits and haul roads in addition to disturbances within fifty feet of any openings for haul roads, portals or adits shall not be considered affected land. Sites which exceed the excluded areas by more than one acre for underground mining operations shall obtain a permit for the total extent of affected lands with no exclusions as required under sections 444.760 to 444.790;

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.

12 (2) "Beneficiation", the dressing or processing of minerals for the purpose of regulating
13 the size of the desired product, removing unwanted constituents, and improving the quality or
14 purity of a desired product;

15 (3) "Commercial purpose", the purpose of extracting minerals for their value in sales to
16 other persons or for incorporation into a product;

17 (4) "Commission", the land reclamation commission in the department of natural
18 resources;

19 (5) "Construction", construction, erection, alteration, maintenance, or repair of any
20 facility including but not limited to any building, structure, highway, road, bridge, viaduct, water
21 or sewer line, pipeline or utility line, and demolition, excavation, land clearance, and moving of
22 minerals or fill dirt in connection therewith;

23 (6) "Director", the staff director of the land reclamation commission;

24 (7) "Excavation", any operation in which earth, minerals, or other material in or on the
25 ground is moved, removed, or otherwise displaced for purposes of construction at the site of
26 excavation, by means of any tools, equipment, or explosives and includes, but is not limited to,
27 backfilling, grading, trenching, digging, ditching, drilling, well-drilling, auguring, boring,
28 tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving, demolition
29 of structures, and the use of high-velocity air to disintegrate and suction to remove earth and
30 other materials. For purposes of this section, excavation or removal of overburden for purposes
31 of mining for a commercial purpose or for purposes of reclamation of land subjected to surface
32 mining is not included in this definition. Neither shall excavations of sand and gravel by political
33 subdivisions using their own personnel and equipment or private individuals for personal use be
34 included in this definition;

35 (8) "Fill dirt", material removed from its natural location through mining or construction
36 activity, which is a mixture of unconsolidated earthy material, which may include some minerals,
37 and which is used to fill, raise, or level the surface of the ground at the site of disposition, which
38 may be at the site it was removed or on other property, and which is not processed to extract
39 mineral components of the mixture. Backfill material for use in completing reclamation is not
40 included in this definition;

41 (9) "Land improvement", work performed by or for a public or private owner or lessor
42 of real property for purposes of improving the suitability of the property for construction at an
43 undetermined future date, where specific plans for construction do not currently exist;

44 (10) "Mineral", a constituent of the earth in a solid state which, when extracted from the
45 earth, is usable in its natural form or is capable of conversion into a usable form as a chemical,
46 an energy source, or raw material for manufacturing or construction material. For the purposes

47 of this section, this definition includes barite, tar sands, and oil shales, but does not include iron,
48 lead, zinc, gold, silver, coal, surface or subsurface water, fill dirt, natural oil or gas together with
49 other chemicals recovered therewith;

50 (11) "Mining", the removal of overburden and extraction of underlying minerals or the
51 extraction of minerals from exposed natural deposits for a commercial purpose, as defined by this
52 section;

53 (12) **"Noncommercial operator", any person whose excavation activities are limited**
54 **to sites on privately owned farmland used for agricultural purposes, as defined in section**
55 **142.800, RSMo, or other property owned by private individuals used primarily for**
56 **purposes other than surface mining, and where seasonal gravel removal to manage gravel**
57 **accretion is conducted in accordance with the department guidelines;**

58 (13) "Operator", any person, firm or corporation engaged in and controlling a surface
59 mining operation;

60 [(13)] (14) "Overburden", all of the earth and other materials which lie above natural
61 deposits of minerals; and also means such earth and other materials disturbed from their natural
62 state in the process of surface mining other than what is defined in subdivision (10) of this
63 section;

64 [(14)] (15) "Peak", a projecting point of overburden created in the surface mining
65 process;

66 [(15)] (16) "Pit", the place where minerals are being or have been mined by surface
67 mining;

68 [(16)] (17) "Public entity", the state or any officer, official, authority, board, or
69 commission of the state and any county, city, or other political subdivision of the state, or any
70 institution supported in whole or in part by public funds;

71 [(17)] (18) "Refuse", all waste material directly connected with the cleaning and
72 preparation of substance mined by surface mining;

73 [(18)] (19) "Ridge", a lengthened elevation of overburden created in the surface mining
74 process;

75 [(19)] (20) "Site" or "mining site", any location or group of associated locations where
76 minerals are being surface mined by the same operator;

77 [(20)] (21) "Surface mining", the mining of minerals for commercial purposes by
78 removing the overburden lying above natural deposits thereof, and mining directly from the
79 natural deposits thereby exposed, and shall include mining of exposed natural deposits of such
80 minerals over which no overburden lies and, after August 28, 1990, the surface effects of
81 underground mining operations for such minerals. For purposes of the provisions of sections

82 444.760 to 444.790, surface mining shall not include excavations to move minerals or fill dirt
83 within the confines of the real property where excavation occurs or to remove minerals or fill dirt
84 from the real property in preparation for construction at the site of excavation. No excavation
85 of fill dirt shall be deemed surface mining regardless of the site of disposition or whether
86 construction occurs at the site of excavation.

444.766. 1. No provision of sections 444.760 to 444.790 shall apply to the excavation
2 of minerals or fill dirt for the purposes of construction or land improvement as unrelated to the
3 mining of minerals for a commercial purpose or reclamation of land subsequent to the surface
4 mining of minerals.

5 2. No permit is required under sections 444.760 to 444.790 for the purpose of moving
6 minerals or fill dirt within the confines of real property where excavation occurs, or for purposes
7 of removing minerals or fill dirt from the real property as provided in this section.

8 (1) Excavations for construction pursuant to engineering plans and specifications
9 prepared by an architect, professional engineer, or landscape architect licensed pursuant to
10 chapter 327, RSMo, or any excavation for construction performed under a written contract that
11 requires excavation of minerals or fill dirt and establishes dates for completion of work and
12 specifies the terms of payment for work, shall be presumed to be for the purposes of construction
13 and shall not require a permit for surface mining.

14 (2) Excavations for purposes of land improvement where minerals removed from the site
15 are excess minerals that cannot be used on-site for any practical purpose and at no time are
16 subjected to crushing, screening, or other means of beneficiation with the exception of removal
17 of **trees, dead and decaying vegetation**, tree limbs, and stumps shall be presumed to be for the
18 purposes of land improvement and shall not require a permit for surface mining, provided that:

19 (a) The site has not been designated as a surface mine by the federal Mine Safety and
20 Health Administration;

21 (b) Minerals from the property are not used for commercial purposes on a frequent or
22 ongoing basis; and

23 (c) A pit, peak, or ridge does not persist at the site as inconsistent with the purposes of
24 land improvement.

25 (3) Permits shall not be required for the excavation of fill dirt, regardless of the site of
26 disposition or whether construction occurs at the site of excavation.

27 3. (1) If the director or his or her designee determines that a surface mining permit is
28 required for real property which is purported to be for purposes of construction or land
29 improvement not requiring a surface mining permit under this section, such determination shall
30 be sent in writing to the owner of the property by certified mail stating the reasons for such

31 determination. Upon request of the person receiving the letter, an informal conference shall be
32 scheduled with the director within fifteen calendar days to discuss the determination. Following
33 the informal conference, the director shall issue a written determination regarding his or her
34 findings of fact no later than thirty calendar days after the date of the conference. If the director
35 agrees that a surface mining permit is required and the person disagrees with that decision, the
36 person may make a written request for a hearing before the commission at its next regular
37 meeting. Such written request shall be filed within thirty calendar days after receipt of the
38 director's written determination, except when the thirtieth day would be later than the date of the
39 next regularly scheduled commission meeting, the written request shall be filed at least seven
40 days prior to the commission meeting unless the director and the person filing the request
41 mutually agree to place the matter on the commission's agenda for a later meeting. The
42 commission shall issue a written determination as to whether a surface mining permit is required
43 under this state's law within thirty calendar days after the hearing. The written determination may
44 be appealed as provided under this chapter.

45 (2) Until a final written determination has been issued under the process established
46 under subdivision (1) of this subsection, the person receiving a letter stating the reasons a mining
47 permit is required may continue activity at the site in dispute. The commission may stay the
48 director's determination. If the final written determination is that a permit is required, all fees
49 otherwise provided by statute or rules of the commission shall apply. If the determination is that
50 no permit is required, no permit fees shall be required by the director or the commission.

51 (3) The process set out in this subsection for determining whether a mining permit is
52 required shall not be subject to the hearing requirements of section 444.789.

444.770. 1. It shall be unlawful for any operator, **other than a noncommercial**
2 **operator**, to engage in surface mining without first obtaining from the commission a permit to
3 do so, in such form as is hereinafter provided, including any operator, **other than a**
4 **noncommercial operator**, involved in any gravel mining operation where the annual tonnage
5 of gravel mined by such operator is less than five thousand tons, **except when an operator**
6 **conducts gravel removal at the request of a property owner for the primary purpose of**
7 **managing seasonal gravel accretion on property not used primarily for gravel mining.**
8 **Such mining shall be conducted in accordance with department guidelines.**

9 2. Sections 444.760 to 444.790 shall apply only to those areas which are opened on or
10 after January 1, 1972, or to the extended portion of affected areas extended after that date. The
11 effective date of this section for minerals not previously covered under the provisions of sections
12 444.760 to 444.790 shall be August 28, 1990.

13 3. All surface mining operations where land is affected after September 28, 1971, which
14 are under the control of any government agency whose regulations are equal to or greater than
15 those imposed by section 444.774, are not subject to the further provisions of sections 444.760
16 to 444.790, except that such operations shall be registered with the land reclamation commission.

17 4. Any portion of a surface mining operation which is subject to the provisions of
18 sections 260.200 to 260.245, RSMo, and the regulations promulgated thereunder, shall not be
19 subject to the provisions of sections 444.760 to 444.790, and any bonds or portions thereof
20 applicable to such operations shall be promptly released by the commission, and the associated
21 permits canceled by the commission upon presentation to it of satisfactory evidence that the
22 operator has received a permit pursuant to section 260.205, RSMo, and the regulations
23 promulgated thereunder. Any land reclamation bond associated with such released permits shall
24 be retained by the commission until presentation to the commission of satisfactory evidence that:

25 (1) The operator has complied with sections 260.226 and 260.227, RSMo, and the
26 regulations promulgated thereunder, pertaining to closure and postclosure plans and financial
27 assurance instruments; and

28 (2) The operator has commenced operation of the solid waste disposal area or sanitary
29 landfill as those terms are defined in chapter 260, RSMo.

30 5. Notwithstanding the provisions of subsection 1 of this section, any political
31 subdivision which uses its own personnel and equipment, **or contracts with an operator for**
32 **excavation to obtain sand and gravel material solely for the use of such political**
33 **subdivision**, or any private individual for personal use may conduct in-stream gravel operations
34 without obtaining from the commission a permit to conduct such an activity.

35 **6. Notwithstanding the provisions of subsection 5 of this section, an operator or**
36 **landowner shall be allowed to sell or barter material extracted from the landowner's**
37 **property without a permit only when such excavation is conducted in accordance with**
38 **department guidelines for the management of seasonal gravel accretion.**

39 **7. Notwithstanding the provisions of subsection 1 of this section, a noncommercial**
40 **operator shall not conduct gravel removal from March until June.**

41 **8. Notwithstanding the provisions of subsection 1 of this section, a noncommercial**
42 **operator shall not be limited to driving vehicles and other equipment to removal sites and**
43 **existing crossings. Vehicles and other equipment may cross streams.**

44 **9. Notwithstanding the provisions of subsection 1 of this section, a noncommercial**
45 **operator shall maintain an undisturbed buffer of five feet between the removal area and**
46 **the water line at the time of excavation.**

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