

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1761
93RD GENERAL ASSEMBLY

Reported from the Committee on Conservation and Natural Resources March 28, 2006 with recommendation that House Committee Substitute for House Bill No. 1761 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

4540L.04C

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Section A. Sections 444.765, 444.766, and 444.770, RSMo, are repealed and three new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

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

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

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

36 [(8)] (9) "Fill dirt", material removed from its natural location through mining or
37 construction activity, which is a mixture of unconsolidated earthy material, which may include
38 some minerals, and which is used to fill, raise, or level the surface of the ground at the site of
39 disposition, which may be at the site it was removed or on other property, and which is not
40 processed to extract mineral components of the mixture. Backfill material for use in completing
41 reclamation is not included in this definition;

42 [(9)] (10) "Land improvement", work performed by or for a public or private owner or
43 lessor of real property for purposes of improving the suitability of the property for construction
44 at an undetermined future date, where specific plans for construction do not currently exist;

45 [(10)] (11) "Mineral", a constituent of the earth in a solid state which, when extracted
46 from the earth, is usable in its natural form or is capable of conversion into a usable form as a
47 chemical, an energy source, or raw material for manufacturing or construction material. For the

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

51 [(11)] **(12)** "Mining", the removal of overburden and extraction of underlying minerals
52 or the extraction of minerals from exposed natural deposits for a commercial purpose, as defined
53 by this section;

54 [(12)] **(13)** "Operator", any person, firm or corporation engaged in and controlling a
55 surface mining operation;

56 [(13)] **(14)** "Overburden", all of the earth and other materials which lie above natural
57 deposits of minerals; and also means such earth and other materials disturbed from their natural
58 state in the process of surface mining other than what is defined in subdivision (10) of this
59 section;

60 [(14)] **(15)** "Peak", a projecting point of overburden created in the surface mining
61 process;

62 [(15)] **(16)** "Pit", the place where minerals are being or have been mined by surface
63 mining;

64 [(16)] **(17)** "Public entity", the state or any officer, official, authority, board, or
65 commission of the state and any county, city, or other political subdivision of the state, or any
66 institution supported in whole or in part by public funds;

67 [(17)] **(18)** "Refuse", all waste material directly connected with the cleaning and
68 preparation of substance mined by surface mining;

69 [(18)] **(19)** "Ridge", a lengthened elevation of overburden created in the surface mining
70 process;

71 [(19)] **(20)** "Site" or "mining site", any location or group of associated locations where
72 minerals are being surface mined by the same operator;

73 [(20)] **(21)** "Surface mining", the mining of minerals for commercial purposes by
74 removing the overburden lying above natural deposits thereof, and mining directly from the
75 natural deposits thereby exposed, and shall include mining of exposed natural deposits of such
76 minerals over which no overburden lies and, after August 28, 1990, the surface effects of
77 underground mining operations for such minerals. For purposes of the provisions of sections
78 444.760 to 444.790, surface mining shall not include excavations to move minerals or fill dirt
79 within the confines of the real property where excavation occurs or to remove minerals or fill dirt
80 from the real property in preparation for construction at the site of excavation. No excavation
81 of fill dirt shall be deemed surface mining regardless of the site of disposition or whether
82 construction occurs at the site of excavation.

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

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

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

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

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

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

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

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

3. (1) If the director or his or her designee determines that a surface mining permit is required for real property which is purported to be for purposes of construction or land improvement not requiring a surface mining permit under this section, such determination shall be sent in writing to the owner of the property by certified mail stating the reasons for such determination. Upon request of the person receiving the letter, an informal conference shall be scheduled with the director within fifteen calendar days to discuss the determination. Following the informal conference, the director shall issue a written determination regarding his or her findings of fact no later than thirty calendar days after the date of the conference. If the director agrees that a surface mining permit is required and the person disagrees with that decision, the 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
44 may 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 to engage in surface mining without
2 first obtaining from the commission a permit to do so, in such form as is hereinafter provided,
3 including any operator involved in any gravel mining operation where the annual tonnage of
4 gravel mined by such operator is less than five thousand tons, **except as provided in subsection**
5 **2 of this section.**

6 2. (1) **A property owner or operator conducting gravel removal at the request of**
7 **a property owner for the primary purpose of managing seasonal gravel accretion on**
8 **property not used primarily for gravel mining shall be exempt from obtaining a permit as**
9 **required in subsection 1 of this section. Such gravel mining shall be conducted solely on**
10 **the property owner's property and shall be in accordance with department guidelines,**
11 **rules, and regulations. The annual tonnage of gravel mined by such property owner, to be**
12 **sold commercially, shall be limited to fifteen hundred tons annually per site. The property**
13 **owner shall notify the department before any person or operator conducts gravel removal**
14 **from the property owner's property if the gravel is sold or intended to be sold**
15 **commercially. Notification shall include the nature of the activity, name of the county and**
16 **stream in which the site is located and the property owner's name. For one year, the**
17 **property owner shall not be required to contact the department if any future gravel mining**
18 **activities occur at this site description. The notification shall expire after one year. Any**
19 **such future gravel mining activities shall require the property owner to renotify the**
20 **department on an annual basis. At the time of notification to the department, the property**

21 owner shall receive a copy, either via Internet or hard copy, of the department's guidelines,
22 rules, and regulations relevant to the activity reported.

23 (2) No property owner or operator conducting gravel removal at the request of a
24 property owner for the primary purpose of managing seasonal gravel accretion on
25 property not used primarily for gravel mining shall conduct gravel removal from any site
26 located within a distance, to be determined by the department and included in the
27 guidelines, rules, and regulations given to the property owner at the time of notification,
28 of any building, structure, highway, road, bridge, viaduct, water or sewer line, and pipeline
29 or utility line.

30 (3) No property owner or operator conducting gravel removal at the request of a
31 property owner for the primary purpose of managing seasonal gravel accretion on
32 property not used primarily for gravel mining shall conduct gravel removal annually from
33 March fifteenth to June first.

34 4. Sections 444.760 to 444.790 shall apply only to those areas which are opened on or
35 after January 1, 1972, or to the extended portion of affected areas extended after that date. The
36 effective date of this section for minerals not previously covered under the provisions of sections
37 444.760 to 444.790 shall be August 28, 1990.

38 [3.] 5. All surface mining operations where land is affected after September 28, 1971,
39 which are under the control of any government agency whose regulations are equal to or greater
40 than those imposed by section 444.774, are not subject to the further provisions of sections
41 444.760 to 444.790, except that such operations shall be registered with the land reclamation
42 commission.

43 [4.] 6. Any portion of a surface mining operation which is subject to the provisions of
44 sections 260.200 to 260.245, RSMo, and the regulations promulgated thereunder, shall not be
45 subject to the provisions of sections 444.760 to 444.790, and any bonds or portions thereof
46 applicable to such operations shall be promptly released by the commission, and the associated
47 permits canceled by the commission upon presentation to it of satisfactory evidence that the
48 operator has received a permit pursuant to section 260.205, RSMo, and the regulations
49 promulgated thereunder. Any land reclamation bond associated with such released permits shall
50 be retained by the commission until presentation to the commission of satisfactory evidence that:

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

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

56 [5.] 7. Notwithstanding the provisions of subsection 1 of this section, any political
57 subdivision which uses its own personnel and equipment, **or contracts with an operator for**
58 **excavation to obtain sand and gravel material solely for the use of such political**
59 **subdivision**, or any private individual for personal use may conduct in-stream gravel operations
60 without obtaining from the commission a permit to conduct such an activity.

61 **8. Any person filing a complaint with the department for violations of this section**
62 **shall identify themselves by name and telephone number, provide the date of the violation,**
63 **and provide photographs, water samples, or other adequate proof, as determined by the**
64 **department, that there has been a violation.**

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