

FIRST REGULAR SESSION

HOUSE BILL NO. 781

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BIVINS (Sponsor), SATER,
McGHEE AND MOORE (Co-sponsors).

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D. ADAM CRUMBLISS, Chief Clerk

1812L.01I

AN ACT

To repeal section 260.470, RSMo, and to enact in lieu thereof fifteen new sections relating to environmental covenants.

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

Section A. Section 260.470, RSMo, is repealed and fifteen new sections enacted in lieu thereof, to be known as sections 260.470, 260.1000, 260.1003, 260.1006, 260.1009, 260.1012, 260.1015, 260.1018, 260.1021, 260.1024, 260.1027, 260.1030, 260.1033, 260.1036, and 260.1039, to read as follows:

260.470. **1.** When the director places a site on the registry as provided in section 260.440, and after the resolution of any appeal under section 260.455, he shall file with the county recorder of deeds the period during which the site was used as a hazardous waste disposal area. When the director finds that a site on the registry has been properly closed under subdivision (5) of subsection 3 of section 260.445 with no evidence of potential adverse impact, he shall file this finding with the county recorder of deeds. The county recorder of deeds shall file this information so that any purchaser will be given notice that the site has been placed on, or removed from, the registry.

2. Any owner of a registry site may petition the department to remove the site from the registry provided that:

(1) Corrective actions have addressed the contamination at the site in accordance with a department-approved risk-based corrective action plan;

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.

13 (2) The department has issued a letter indicating that no further actions are
14 required to address current risk from contaminants for the site; and

15 (3) An environmental covenant for the property that meets the requirements of
16 sections 260.1000 to 260.1039 has been filed with the county recorder of deeds.

17 3. The department shall approve such a request unless the department determines
18 that removal from the registry would result in significant current or future risk of harm
19 to human health, public welfare, or the environment. In making such a determination, the
20 department shall provide a written justification that considers the amount, toxicity, and
21 persistence of any contaminants left in place and the stability of current site conditions.
22 Any denial under this subsection may be appealed to the commission in the manner
23 provided in section 260.460.

 260.1000. Sections 260.1000 to 260.1039 shall be cited as the "Missouri
2 Environmental Covenants Act".

 260.1003. As used in sections 260.1000 to 260.1039, the following terms shall mean:

2 (1) "Activity and use limitations", restrictions or obligations with respect to real
3 property created under sections 260.1000 to 260.1039;

4 (2) "Department", the Missouri department of natural resources or any other state
5 or federal department that determines or approves the environmental response project
6 under which the environmental covenant is created;

7 (3) "Common interest community", a condominium, cooperative, or other real
8 property with respect to which a person, by virtue of the person's ownership of a parcel
9 of real property, is obligated to pay property taxes, insurance premiums, maintenance, or
10 improvement of other real property described in a recorded covenant that creates the
11 common interest community;

12 (4) "Environmental covenant", a servitude arising under an environmental
13 response project that imposes activity and use limitations;

14 (5) "Environmental response project", a plan or work performed for
15 environmental remediation of real property and conducted:

16 (a) Under a federal or state program governing environmental remediation of real
17 property, including but not limited to the Missouri hazardous waste management law as
18 specified in this chapter;

19 (b) Incident to closure of a solid or hazardous waste management unit, if the
20 closure is conducted with approval of the department; or

21 (c) Under a state voluntary cleanup program authorized in the Missouri hazardous
22 waste management law as specified in this chapter;

23 (6) "Holder", the grantee of an environmental covenant as specified in section
24 **260.1006;**

25 (7) "Person", an individual, corporation, business trust, estate, trust, partnership,
26 **limited liability company, association, joint venture, public corporation, government,**
27 **governmental subdivision, department, or instrumentality, or any other legal or**
28 **commercial entity;**

29 (8) "Record", information that is inscribed on a tangible medium or that is stored
30 **in an electronic or other medium and is retrievable in perceivable form;**

31 (9) "State", a state of the United States, the District of Columbia, Puerto Rico, the
32 **United States Virgin Islands, or any territory or insular possession subject to the**
33 **jurisdiction of the United States.**

260.1006. 1. Any person, including a person that owns an interest in the real
2 **property, the department, or a municipality or other unit of local government, may be a**
3 **holder. An environmental covenant may identify more than one holder. The interest of**
4 **a holder is an interest in real property.**

5 **2. The rights of a department under sections 260.1000 to 260.1039 or under an**
6 **environmental covenant, other than a right as a holder, is not an interest in real property.**

7 **3. A department is bound by any obligation it assumes in an environmental**
8 **covenant, but a department does not assume obligations merely by signing an**
9 **environmental covenant. Any other person that signs an environmental covenant is bound**
10 **by the obligations the person assumes in the covenant, but signing the covenant does not**
11 **change obligations, rights, or protections granted or imposed under law other than sections**
12 **260.1000 to 260.1039 except as provided in the covenant.**

13 **4. The following rules apply to interests in real property in existence at the time an**
14 **environmental covenant is created or amended:**

15 **(1) An interest that has priority under other law is not affected by an**
16 **environmental covenant unless the person that owns the interest subordinates that interest**
17 **to the covenant;**

18 **(2) Sections 260.1000 to 260.1039 do not require a person that owns a prior interest**
19 **to subordinate that interest to an environmental covenant or to agree to be bound by the**
20 **covenant;**

21 **(3) A subordination agreement may be contained in an environmental covenant**
22 **covering real property or in a separate record. If the environmental covenant covers**
23 **commonly owned property in a common interest community, the record may be signed by**
24 **any person authorized by the governing board of the owners association;**

25 (4) An agreement by a person to subordinate a prior interest to an environmental
26 covenant affects the priority of that person's interest but shall not by itself impose any
27 affirmative obligation on the person with respect to the environmental covenant.

260.1009. 1. An environmental covenant shall:

2 (1) State that the instrument is an environmental covenant executed under sections
3 260.1000 to 260.1039;

4 (2) Contain a legally sufficient description of the real property subject to the
5 covenant;

6 (3) Describe the activity and use limitations on the real property;

7 (4) Identify every holder;

8 (5) Be signed by the department, every holder, and unless waived by the
9 department, every owner of the fee simple of the real property subject to the covenant; and

10 (6) Identify the name and location of any administrative record for the
11 environmental response project reflected in the environmental covenant.

12 2. In addition to the information required by subsection 1 of this section, an
13 environmental covenant may contain other information, restrictions, and requirements
14 agreed to by the persons who signed it, including any:

15 (1) Requirements for notice following transfer of a specified interest in, or
16 concerning proposed changes in use of, applications for building permits for, or proposals
17 for any site work affecting the contamination on, the property subject to the covenant;

18 (2) Requirements for periodic reporting describing compliance with the covenant;

19 (3) Rights of access to the property granted in connection with implementation or
20 enforcement of the covenant;

21 (4) A brief narrative description of the contamination and remedy, including the
22 contaminants of concern, the pathways of exposure, limits on exposure, and the location
23 and extent of the contamination;

24 (5) Limitation on amendment or termination of the covenant in addition to those
25 contained in sections 260.1024 and 260.1027; and

26 (6) Rights of the holder in addition to its right to enforce the covenant under section
27 260.1030.

28 3. In addition to other conditions for its approval of an environmental covenant,
29 the department may require those persons specified by the department who have interests
30 in the real property to sign the covenant.

 260.1012. 1. An environmental covenant that complies with sections 260.1000 to
2 260.1039 runs with the land.

3 **2. An environmental covenant that is otherwise effective is valid and enforceable**
4 **even if:**

5 **(1) It is not appurtenant to an interest in real property;**

6 **(2) It can be or has been assigned to a person other than the original holder;**

7 **(3) It is not of a character that has been recognized traditionally at common law;**

8 **(4) It imposes a negative burden;**

9 **(5) It imposes an affirmative obligation on a person having an interest in the real**
10 **property or on the holder;**

11 **(6) The benefit or burden does not touch or concern real property;**

12 **(7) There is no privity of estate or contract;**

13 **(8) The holder dies, ceases to exist, resigns, or is replaced; or**

14 **(9) The owner of an interest subject to the environmental covenant and the holder**
15 **are the same person.**

16 **3. An instrument that creates restrictions or obligations with respect to real**
17 **property that would qualify as activity and use limitations except for the fact that the**
18 **instrument was recorded before the effective date of sections 260.1000 to 260.1039 is not**
19 **invalid or unenforceable because of any of the limitations on enforcement of interests**
20 **described in subsection 2 of this section or because it was identified as an easement,**
21 **servitude, deed restriction, or other interest. Sections 260.1000 to 260.1039 shall not apply**
22 **in any other respect to such an instrument.**

23 **4. Sections 260.1000 to 260.1039 shall not invalidate or render unenforceable any**
24 **interest, whether designated as an environmental covenant or other interest, that is**
25 **otherwise enforceable under the laws of this state.**

260.1015. Sections 260.1000 to 260.1039 shall not authorize a use of real property
2 **that is otherwise prohibited by zoning, by law other than sections 260.1000 to 260.1039**
3 **regulating use of real property, or by a recorded instrument that has priority over the**
4 **environmental covenant. An environmental covenant may prohibit or restrict uses of real**
5 **property which are authorized by zoning or by laws other than sections 260.1000 to**
6 **260.1039.**

260.1018. 1. A copy of an environmental covenant shall be provided by the persons
2 **and in the manner required by the department to:**

3 **(1) Each person that signed the covenant;**

4 **(2) Each person holding a recorded interest in the real property subject to the**
5 **covenant;**

6 **(3) Each person in possession of the real property subject to the covenant;**

7 (4) Each municipality or other unit of local government in which real property
8 subject to the covenant is located; and

9 (5) Any other person the department requires.

10 2. The validity of a covenant is not affected by failure to provide a copy of the
11 covenant as required under this section.

260.1021. 1. An environmental covenant and any amendment or termination of the
2 covenant shall be recorded in every county or city not within a county in which any portion
3 of the real property subject to the covenant is located. For purposes of indexing, a holder
4 shall be treated as a grantee.

5 2. Except as otherwise provided in section 260.1024, an environmental covenant is
6 subject to the laws of this state governing recording and priority of interests in real
7 property.

260.1024. 1. An environmental covenant is perpetual unless it is:

2 (1) By its terms, limited to a specific duration or terminated by the occurrence of
3 a specific event;

4 (2) Terminated by consent under section 260.1027;

5 (3) Terminated by subsection 2 of this section;

6 (4) Terminated by foreclosure of an interest that has priority over the
7 environmental covenant; or

8 (5) Terminated or modified in an eminent domain proceeding, but only if:

9 (a) The department that signed the covenant is a party to the proceeding;

10 (b) All persons identified in section 260.1027 are given notice of the pendency of the
11 proceeding; and

12 (c) The court determines, after hearing, that the termination or modification will
13 not adversely affect human health, public welfare, or the environment.

14 2. If the department that signed an environmental covenant has determined that
15 the intended benefits of the covenant can no longer be realized, a court, under the doctrine
16 of changed circumstances, in an action in which all persons identified in section 260.1027
17 have been given notice, may terminate the covenant or reduce its burden on the real
18 property subject to the covenant. The department's determination or its failure to make
19 a determination upon request is subject to review under chapter 536, RSMo.

20 3. Except as otherwise provided in subsections 1 and 2 of this section, an
21 environmental covenant may not be extinguished, limited, or impaired through issuance
22 of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession,
23 prescription, abandonment, waiver, lack of enforcement, or acquiescence, or any similar
24 doctrine.

25 **4. An environmental covenant may not be extinguished, limited, or impaired by the**
26 **application of chapter 442, RSMo, or chapter 444, RSMo.**

260.1027. 1. An environmental covenant may be amended or terminated by consent
2 **only if the amendment or termination is signed by:**

3 **(1) The department;**

4 **(2) Unless this requirement is waived by the department, the current owner of the**
5 **fee simple of the real property subject to the covenant;**

6 **(3) Each person that originally signed the covenant, unless the person waived in a**
7 **signed record the right to consent or a court finds that the person no longer exists or**
8 **cannot be located or identified with the exercise of reasonable diligence; and**

9 **(4) The holder, except as otherwise provided in subsection 4 of this section.**

10 **2. If an interest in real property is subject to an environmental covenant, the**
11 **interest is not affected by an amendment of the covenant unless the current owner of the**
12 **interest consents to the amendment or has waived in a signed record the right to consent**
13 **to amendments.**

14 **3. Except for an assignment undertaken under a governmental reorganization,**
15 **assignment of an environmental covenant to a new holder is an amendment.**

16 **4. Except as otherwise provided in an environmental covenant:**

17 **(1) A holder may not assign its interest without consent of the other parties;**

18 **(2) A holder may be removed and replaced by agreement of the other parties**
19 **specified in subsection 1 of this section.**

20 **5. A court of competent jurisdiction may fill a vacancy in the position of holder.**

260.1030. 1. A civil action for injunctive or other equitable relief for violation of
2 **an environmental covenant may be maintained by:**

3 **(1) A party to the covenant;**

4 **(2) The department;**

5 **(3) Any person to whom the covenant expressly grants power to enforce;**

6 **(4) A person whose interest in the real property or whose collateral or liability may**
7 **be affected by the alleged violation of the covenant; or**

8 **(5) A municipality or other unit of local government in which the real property**
9 **subject to the covenant is located.**

10 **2. Sections 260.1000 to 260.1039 do not limit the regulatory authority of the**
11 **department under law other than sections 260.1000 to 260.1039 with respect to an**
12 **environmental response project.**

13 **3. A person is not responsible for or subject to liability for environmental**
14 **remediation solely because it has the right to enforce an environmental covenant.**

260.1033. 1. The department shall establish an activity and use limitation information system and ensure that it is maintained, that provides readily accessible information on sites with known contamination, and records the creation, amendment, and termination of covenants. The activity and use limitation information system shall distinguish clearly between three categories of sites contaminated with hazardous substance contamination:

(1) Sites where no investigation or remedial action has been performed, or where remedial actions are in progress but are not complete;

(2) Sites where remedial action has been taken to address known risks to human health, public welfare, and the environment and the site is suitable for certain land uses and the department has issued a letter indicating that the site is suitable for certain land uses and that further investigation and remedial action is not required;

(3) Sites where previous concerns about contamination should no longer be an issue because of removal of waste and contamination or investigation results that demonstrate that contamination is now below levels considered suitable for unrestricted use.

2. After an environmental covenant or an amendment or termination of a covenant is filed in the information system established under subsection 1 of this section, a notice of the covenant, amendment, or termination that complies with this section may be recorded in the land records in lieu of recording the entire covenant. Any such notice shall contain:

(1) A legally sufficient description and any available street address of the real property subject to the covenant;

(2) The name and address of the owner of the fee simple interest in the real property, the department, and the holder if other than the department;

(3) A statement that the covenant, amendment, or termination is available in an information system at the department, which discloses the method of any electronic access; and

(4) A statement that the notice is notification of an environmental covenant executed under sections 260.1000 to 260.1039.

3. A statement in substantially the following form, executed with the same formalities as a deed in this state, satisfies the requirements of subsection 2 of this section:

"1. This notice is filed in the land records of the (political subdivision) of (insert name of jurisdiction in which the real property is located) under Sections 260.1000 to 260.1039, RSMo.

2. This notice and the covenant, amendment or termination to which it refers may impose significant obligations with respect to the property described below.

37 3. A legal description of the property is attached as Exhibit A to this
38 notice. The address of the property that is subject to the environmental
39 covenant is (insert address of property) (not available).

40 4. The name and address of the owner of the fee simple interest in
41 the real property on the date of this notice is (insert name of
42 current owner of the property and the owner's current address as shown on
43 the tax records of the jurisdiction in which the property is located).

44 5. The environmental covenant, amendment or termination was
45 signed by (insert name and address of the department).

46 6. The environmental covenant, amendment, or termination was
47 filed in the information system on (insert date of filing).

48 7. The full text of the covenant, amendment or termination and any
49 other information required by the department is on file and available for
50 inspection and copying in the information system maintained for that
51 purpose by the department at (insert address and room of building
52 in which the information system is maintained). The covenant, amendment
53 or termination may be found electronically at (insert Internet address
54 for covenant)."

260.1036. Sections 260.1000 to 260.1039 shall not apply to aboveground or
2 underground storage tanks as defined in section 319.100, RSMo.

260.1039. As authorized in 15 U.S.C. 7002, as amended, sections 260.1000 to
2 260.1039 modifies, limits, or supersedes the federal Electronic Signatures in Global and
3 National Commerce Act, 15 U.S.C. Section 7001, et seq., but do not modify, limit, or
4 supersede 15 U.S.C. Section 7001(a), or authorize electronic delivery of any of the notices
5 described in 15 U.S.C. Section 7003(b).

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