

HOUSE _____ **AMENDMENT NO.** _____

Offered By

AMEND House Committee Substitute for Senate Bill No. 59, Page 4, Section 404.710, Line 123
by inserting after all of said section and line the following:

“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 parties. The applicant shall cooperate with the director in making all necessary arrangements for the public meeting. Within thirty days after the close of the public meeting, the director shall recommend to the commission approval or denial of the permit. If the public meeting does not resolve the concerns expressed by the public, any person whose health, safety or livelihood will be unduly impaired by the issuance of such permit may make a written request to the land reclamation commission for a formal public hearing. The land reclamation commission may grant a public hearing to formally resolve concerns of the public. Any public hearing before the commission shall address one or more of the factors set forth in this section.

1 4. In any public hearing [held pursuant to this section the burden of proof shall be on the
2 applicant for a permit.],² if the commission finds, based on competent and substantial scientific
3 evidence on the record, that an interested party's health, safety or livelihood will be unduly
4 impaired by the issuance of the permit, the commission may deny such permit. If the commission
5 finds, based on competent and substantial scientific evidence on the record, that the operator has
6 demonstrated, during the five-year period immediately preceding the date of the permit
7 application, a pattern of noncompliance at other locations in Missouri that suggests a reasonable
8 likelihood of future acts of noncompliance, the commission may deny such permit. In
9 determining whether a reasonable likelihood of noncompliance will exist in the future, the
10 commission may look to past acts of noncompliance in Missouri, but only to the extent they
11 suggest a reasonable likelihood of future acts of noncompliance. Such past acts of noncompliance
12 in Missouri, in and of themselves, are an insufficient basis to suggest a reasonable likelihood of
13 future acts of noncompliance. In addition, such past acts shall not be used as a basis to suggest a
14 reasonable likelihood of future acts of noncompliance unless the noncompliance has caused or has
15 the potential to cause, a risk to human health or to the environment, or has caused or has potential
16 to cause pollution, or was knowingly committed, or is defined by the United States Environmental
17 Protection Agency as other than minor. If a hearing petitioner or the commission demonstrates
18 either present acts of noncompliance or a reasonable likelihood that the permit seeker or the
19 operations of associated persons or corporations in Missouri will be in noncompliance in the
20 future, such a showing will satisfy the noncompliance requirement in this subsection. In addition,
21 such basis must be developed by multiple noncompliances of any environmental law administered
22 by the Missouri department of natural resources at any single facility in Missouri that resulted in
23 harm to the environment or impaired the health, safety or livelihood of persons outside the
24 facility. For any permit seeker that has not been in business in Missouri for the past five years, the
25 commission may review the record of noncompliance in any state where the applicant has
26 conducted business during the past five years. Any decision of the commission made pursuant to
27 a hearing held pursuant to this section is subject to judicial review as provided in chapter 536. No
28 judicial review shall be available, however, until and unless all administrative remedies are
29 exhausted.”; and

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31 Further amend said bill by amending the title, enacting clause, and intersectional references
32 accordingly.
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