



GOVERNOR OF MISSOURI

JEFFERSON CITY

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JEREMIAH W. (JAY) NIXON  
GOVERNOR

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July 12, 2013

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you Senate Substitute for Senate Committee Substitute for House Bill No. 650 entitled:

AN ACT

To repeal sections 43.543, 60.185, 60.195, 60.301, 60.321, 60.451, 60.510, 60.530, 60.540, 60.550, 60.560, 60.570, 60.580, 60.590, 60.595, 60.600, 60.610, 60.620, 60.653, 60.670, 236.410, 253.090, 253.180, 253.185, 256.117, 258.010, 258.020, 258.030, 258.060, 258.070, 258.080, 260.200, 260.205, 260.235, 260.249, 260.262, 260.365, 260.379, 260.380, 260.390, 260.395, 260.434, 260.475, 261.023, 444.772, 621.250, 640.010, 640.012, 640.017, 640.075, 640.715, 640.725, 643.079, 644.051, 644.052, and 644.054, RSMo, and to enact in lieu thereof sixty-three new sections relating to the department of natural resources, with penalty provisions and an emergency clause for certain sections.

I disapprove of Senate Substitute for Senate Committee Substitute for House Bill No. 650. My reasons for disapproval are as follows:

Senate Substitute for Senate Committee Substitute for House Bill No. 650 contains a host of provisions that have been approved as part of other legislation, with the exception of the proposed Section 640.236, RSMo, which would exempt a select class of entities from punitive damages in certain instances and limit such damages in all other instances.

Current law establishes limitations on punitive damages at the greater of five hundred thousand dollars or five times the net amount of the judgment awarded against any one defendant (Sec. 510.265, RSMo). Senate Substitute for Senate Committee Substitute for House Bill No. 650, however, would exempt any civil action related to "underground hard rock mining or hard rock milling sites that ceased operations prior to January 1, 1975" from the existing limits on punitive damages. In these cases, defendants would not be subject to *any* punitive damages if they can show *any* evidence that they "have made or are making good faith efforts to remediate such sites." If the defendant is unable to make such a showing, the amount of punitive damages that may be awarded would still be significantly reduced from what is currently available under existing Missouri law.

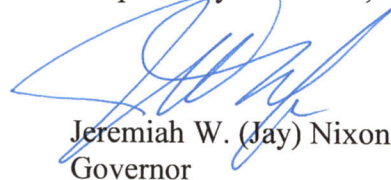
This effort to reduce the existing scope of damages is particularly egregious because Senate Substitute for Senate Committee Substitute for House Bill No. 650 seeks to apply the reduction retrospectively, not only against injuries that have already been sustained, but against actions that have already been filed. And it would do so after a judgment for damages has already been ordered against an entity that would be protected by this legislation, and on facts similar to those alleged in various other pending actions. If this provision became law, it could result in considerable inequities among individuals who may have been harmed by the same defendants under similar circumstances simply because certain parties were not as fast to the courthouse. Contrary to the damage limits imposed by this provision, citizens should have fair and unfettered access to the courts; they should be able to consult with counsel and be advised of the full scope of available remedies prior to commencing an action without having the proverbial goal posts moved after the fact.

Retrospectively attempting to decrease the liability exposure for a few select entities is not only inappropriate, it is legally impermissible. The State Constitution, Article I, Section 13, provides that “no . . . law . . . retrospective in its operation . . . can be enacted.” A law is retrospective in operation if it takes away or impairs vested or substantial rights acquired under existing laws or imposes new obligations, duties, or disabilities with respect to past transactions.” *Hess v. Chase Manhattan Bank*, 220 S.W.3d 758, 769 (Mo. banc 2007). In addition to this legal infirmity, enabling companies to legislate around liability would set a dangerous precedent.

In addition to these objections, the “fixed class” of beneficiaries created by Senate Substitute for Senate Committee Substitute for House Bill No. 650 would result in a special law prohibited by Article III, Section 40(30) of the Missouri Constitution, because a general law could be made applicable. Missouri courts have long recognized that a general law relates to “persons or things as a class,” whereas “a statute which relates to particular persons or things of a class is special.” *Reals v. Courson*, 349 Mo. 1193 (1942); *see also City of Springfield v. Sprint Spectrum, L.P.*, 203 S.W.3d 177 (2006). Senate Substitute for Senate Committee Substitute for House Bill No. 650 would not benefit all defendants, or all defendants engaged in mining, or even a particular type of mining, but rather only those defendants that dealt in underground hard rock mining or hard rock milling sites that ceased operations prior to January 1, 1975. Because so few entities exist within these parameters, it can only be said that the limitation on punitive damages contained in Senate Substitute for Senate Committee Substitute for House Bill No. 650 would violate the constitutional prohibition against the enactment of special laws.

In accordance with the above stated reasons for disapproval, I am returning Senate Substitute for Senate Committee Substitute for House Bill No. 650 without my approval.

Respectfully submitted,



Jeremiah W. (Jay) Nixon  
Governor