

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1058
98TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, May 4, 2015, with recommendation that the Senate Committee Substitute do pass.

1815S.03C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 29.380, 260.200, 260.225, 260.250, 260.320, 260.325, 260.330, 260.335, 260.345, and 644.145, RSMo, and to enact in lieu thereof eleven new sections relating to the department of natural resources.

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

Section A. Sections 29.380, 260.200, 260.225, 260.250, 260.320, 260.325, 260.330, 260.335, 260.345, and 644.145, RSMo, are repealed and eleven new section enacted in lieu thereof, to be known as sections 29.380, 260.200, 260.225, 260.250, 260.320, 260.324, 260.325, 260.330, 260.335, 260.345, and 644.145, to read as follows:

29.380. 1. The state auditor shall have the authority to audit solid waste management districts created under section 260.305 in the same manner as the auditor may audit any agency of the state.

2. Beginning August 28, [2012] **2015**, the state auditor [shall conduct an audit of each solid waste management district created under section 260.305 and thereafter shall] **may** conduct audits of [each] solid waste management [district] **districts** as he or she deems necessary. The state auditor may request reimbursement from the district for the costs of conducting the audit. **If the auditor requests such reimbursement, the solid waste management district shall reimburse the auditor for the costs of conducting the audit and the moneys shall be deposited in the petition audit revolving trust fund created under section 29.230. Such reimbursement shall be limited to two percent of the solid waste management district's annual**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

14 monetary allocation.

260.200. 1. The following words and phrases when used in sections
2 260.200 to 260.345 shall mean:

3 (1) "Alkaline-manganese battery" or "alkaline battery", a battery having
4 a manganese dioxide positive electrode, a zinc negative electrode, an alkaline
5 electrolyte, including alkaline-manganese button cell batteries intended for use
6 in watches, calculators, and other electronic products, and larger-sized
7 alkaline-manganese batteries in general household use;

8 (2) "Applicant", a person or persons seeking or holding a facility permit;

9 (3) "Bioreactor", a municipal solid waste disposal area or portion of a
10 municipal solid waste disposal area where the controlled addition of liquid waste
11 or water accelerates both the decomposition of waste and landfill gas generation;

12 (4) "Button cell battery" or "button cell", any small alkaline-manganese
13 or mercuric-oxide battery having the size and shape of a button;

14 (5) "City", any incorporated city, town, or village;

15 (6) "Clean fill", uncontaminated soil, rock, sand, gravel, concrete, asphaltic
16 concrete, cinderblocks, brick, minimal amounts of wood and metal, and inert
17 solids as approved by rule or policy of the department for fill, reclamation or
18 other beneficial use;

19 (7) "Closure", the permanent cessation of active disposal operations,
20 abandonment of the disposal area, revocation of the permit or filling with waste
21 of all areas and volumes specified in the permit and preparing the area for
22 long-term care;

23 (8) "Closure plan", plans, designs and relevant data which specify the
24 methods and schedule by which the operator will complete or cease disposal
25 operations, prepare the area for long-term care, and make the area suitable for
26 other uses, to achieve the purposes of sections 260.200 to 260.345 and the
27 regulations promulgated thereunder;

28 (9) "Conference, conciliation and persuasion", a process of verbal or
29 written communications consisting of meetings, reports, correspondence or
30 telephone conferences between authorized representatives of the department and
31 the alleged violator. The process shall, at a minimum, consist of one offer to meet
32 with the alleged violator tendered by the department. During any such meeting,
33 the department and the alleged violator shall negotiate in good faith to eliminate
34 the alleged violation and shall attempt to agree upon a plan to achieve
35 compliance;

36 (10) "Construction and demolition waste", waste materials from the
37 construction and demolition of residential, industrial, or commercial structures,
38 but shall not include materials defined as clean fill under this section;

39 (11) "Demolition landfill", a solid waste disposal area used for the
40 controlled disposal of demolition wastes, construction materials, brush, wood
41 wastes, soil, rock, concrete and inert solids insoluble in water;

42 (12) "Department", the department of natural resources;

43 (13) "Director", the director of the department of natural resources;

44 (14) "Disclosure statement", a sworn statement or affirmation, in such
45 form as may be required by the director of the department of natural resources,
46 which includes:

47 (a) The full names and business address of key personnel;

48 (b) The full name and business address of any entity, other than a natural
49 person, that collects, transfers, processes, treats, stores, or disposes of solid waste
50 in which all key personnel holds an equity interest of seven percent or more;

51 (c) A description of the business experience of all key personnel listed in
52 the disclosure statement;

53 (d) For the five-year period ending on the date the sworn disclosure
54 statement or affirmation is signed by key personnel:

55 a. A listing organized by issuing federal, state, or county or
56 county-equivalent regulatory body of all environmental permits or licenses for the
57 collection, transfer, treatment, processing, storage, or disposal of solid waste
58 issued to or held by any key personnel;

59 b. A listing and explanation of notices of violation which shall by rule be
60 defined, prosecutions, or other administrative enforcement actions resulting in an
61 adjudication or conviction;

62 c. A listing of license or permit suspensions, revocations, or denials issued
63 by any state, the federal government or a county or county equivalent, which are
64 pending or have concluded with a finding of violation or entry of a consent
65 agreement regarding an allegation of civil or criminal violation of law, regulation
66 or requirement relating to the collection, transfer, treatment, processing, storage,
67 or disposal of solid waste or violation of the environmental statutes of other
68 states or federal statutes;

69 d. An itemized list of all felony convictions under the laws of the state of
70 Missouri or the equivalent thereof under the laws of any other jurisdiction; and
71 a listing of any findings of guilt for any crimes or criminal acts an element of

72 which involves restraint of trade, price-fixing, intimidation of the customers of
73 another person or for engaging in any other acts which may have the effect of
74 restraining or limiting competition concerning activities regulated pursuant to
75 this chapter or similar laws of other states or the federal government including,
76 but not limited to, racketeering or violation of antitrust laws of any key
77 personnel;

78 (15) "District", a solid waste management district established under
79 section 260.305;

80 (16) "Financial assurance instrument", an instrument or instruments,
81 including, but not limited to, cash or surety bond, letters of credit, corporate
82 guarantee or secured trust fund, submitted by the applicant to ensure proper
83 closure and postclosure care and corrective action of a solid waste disposal area
84 in the event that the operator fails to correctly perform closure and postclosure
85 care and corrective action requirements, except that the financial test for the
86 corporate guarantee shall not exceed one and one-half times the estimated cost
87 of closure and postclosure. The form and content of the financial assurance
88 instrument shall meet or exceed the requirements of the department. The
89 instrument shall be reviewed and approved or disapproved by the attorney
90 general;

91 (17) "Flood area", any area inundated by the one hundred year flood
92 event, or the flood event with a one percent chance of occurring in any given year;

93 (18) "Household consumer", an individual who generates used motor oil
94 through the maintenance of the individual's personal motor vehicle, vessel,
95 airplane, or other machinery powered by an internal combustion engine;

96 (19) "Household consumer used motor oil collection center", any site or
97 facility that accepts or aggregates and stores used motor oil collected only from
98 household consumers or farmers who generate an average of twenty-five gallons
99 per month or less of used motor oil in a calendar year. This section shall not
100 preclude a commercial generator from operating a household consumer used
101 motor oil collection center;

102 (20) "Household consumer used motor oil collection system", any used
103 motor oil collection center at publicly owned facilities or private locations, any
104 curbside collection of household consumer used motor oil, or any other household
105 consumer used motor oil collection program determined by the department to
106 further the purposes of sections 260.200 to 260.345;

107 (21) "Infectious waste", waste in quantities and characteristics as

108 determined by the department by rule, including isolation wastes, cultures and
109 stocks of etiologic agents, blood and blood products, pathological wastes, other
110 wastes from surgery and autopsy, contaminated laboratory wastes, sharps,
111 dialysis unit wastes, discarded biologicals known or suspected to be infectious;
112 provided, however, that infectious waste does not mean waste treated to
113 department specifications;

114 (22) "Key personnel", the applicant itself and any person employed by the
115 applicant in a managerial capacity, or empowered to make discretionary decisions
116 with respect to the solid waste operations of the applicant in Missouri, but shall
117 not include employees exclusively engaged in the physical or mechanical
118 collection, transfer, transportation, treatment, processing, storage, or disposal of
119 solid waste and such other employees as the director of the department of natural
120 resources may designate by regulation. If the applicant has not previously
121 conducted solid waste operations in Missouri, the term also includes any officer,
122 director, partner of the applicant, or any holder of seven percent or more of the
123 equity or debt of the applicant. If any holder of seven percent or more of the
124 equity or debt of the applicant or of any key personnel is not a natural person,
125 the term includes all key personnel of that entity, provided that where such
126 entity is a chartered lending institution or a reporting company under the federal
127 Securities Exchange Act of 1934, the term does not include key personnel of such
128 entity. Provided further that the term means the chief executive officer of any
129 agency of the United States or of any agency or political subdivision of the state
130 of Missouri, and all key personnel of any person, other than a natural person,
131 that operates a landfill or other facility for the collection, transfer, treatment,
132 processing, storage, or disposal of nonhazardous solid waste under contract with
133 or for one of those governmental entities;

134 (23) "Lead-acid battery", a battery designed to contain lead and sulfuric
135 acid with a nominal voltage of at least six volts and of the type intended for use
136 in motor vehicles and watercraft;

137 (24) "Major appliance", clothes washers and dryers, water heaters, trash
138 compactors, dishwashers, conventional ovens, ranges, stoves, woodstoves, air
139 conditioners, refrigerators and freezers;

140 (25) "Mercuric-oxide battery" or "mercury battery", a battery having a
141 mercuric-oxide positive electrode, a zinc negative electrode, and an alkaline
142 electrolyte, including mercuric-oxide button cell batteries generally intended for
143 use in hearing aids and larger size mercuric-oxide batteries used primarily in

144 medical equipment;

145 (26) "Minor violation", a violation which possesses a small potential to
146 harm the environment or human health or cause pollution, was not knowingly
147 committed, and is not defined by the United States Environmental Protection
148 Agency as other than minor;

149 (27) "Motor oil", any oil intended for use in a motor vehicle, as defined in
150 section 301.010, train, vessel, airplane, heavy equipment, or other machinery
151 powered by an internal combustion engine;

152 (28) "Motor vehicle", as defined in section 301.010;

153 (29) "Operator" and "permittee", anyone so designated, and shall include
154 cities, counties, other political subdivisions, authority, state agency or institution,
155 or federal agency or institution;

156 (30) "Permit modification", any permit issued by the department which
157 alters or modifies the provisions of an existing permit previously issued by the
158 department;

159 (31) "Person", any individual, partnership, limited liability company,
160 corporation, association, trust, institution, city, county, other political subdivision,
161 authority, state agency or institution, or federal agency or institution, or any
162 other legal entity;

163 (32) "Plasma arc technology", a process that converts electrical energy into
164 thermal energy. This electric arc is created when an ionized gas transfers electric
165 power between two or more electrodes;

166 (33) "Postclosure plan", plans, designs and relevant data which specify the
167 methods and schedule by which the operator shall perform necessary monitoring
168 and care for the area after closure to achieve the purposes of sections 260.200 to
169 260.345 and the regulations promulgated thereunder;

170 (34) "Recovered materials", those materials which have been diverted or
171 removed from the solid waste stream for sale, use, reuse or recycling, whether or
172 not they require subsequent separation and processing;

173 (35) "Recycled content", the proportion of fiber in a newspaper which is
174 derived from postconsumer waste;

175 (36) "Recycling", the separation and reuse of materials which might
176 otherwise be disposed of as solid waste;

177 (37) "Resource recovery", a process by which recyclable and recoverable
178 material is removed from the waste stream to the greatest extent possible, as
179 determined by the department and pursuant to department standards, for reuse

180 or remanufacture;

181 (38) "Resource recovery facility", a facility in which recyclable and
182 recoverable material is removed from the waste stream to the greatest extent
183 possible, as determined by the department and pursuant to department
184 standards, for reuse or remanufacture;

185 (39) "Sanitary landfill", a solid waste disposal area which accepts
186 commercial and residential solid waste;

187 (40) "Scrap tire", a tire that is no longer suitable for its original intended
188 purpose because of wear, damage, or defect;

189 (41) "Scrap tire collection center", a site where scrap tires are collected
190 prior to being offered for recycling or processing and where fewer than five
191 hundred tires are kept on site on any given day;

192 (42) "Scrap tire end-user facility", a site where scrap tires are used as a
193 fuel or fuel supplement or converted into a usable product. Baled or compressed
194 tires used in structures, or used at recreational facilities, or used for flood or
195 erosion control shall be considered an end use;

196 (43) "Scrap tire generator", a person who sells tires at retail or any other
197 person, firm, corporation, or government entity that generates scrap tires;

198 (44) "Scrap tire processing facility", a site where tires are reduced in
199 volume by shredding, cutting, or chipping or otherwise altered to facilitate
200 recycling, resource recovery, or disposal;

201 (45) "Scrap tire site", a site at which five hundred or more scrap tires are
202 accumulated, but not including a site owned or operated by a scrap tire end-user
203 that burns scrap tires for the generation of energy or converts scrap tires to a
204 useful product;

205 (46) "Solid waste", garbage, refuse and other discarded materials
206 including, but not limited to, solid and semisolid waste materials resulting from
207 industrial, commercial, agricultural, governmental and domestic activities, but
208 does not include hazardous waste as defined in sections 260.360 to 260.432,
209 recovered materials, overburden, rock, tailings, matte, slag or other waste
210 material resulting from mining, milling or smelting;

211 (47) "Solid waste disposal area", any area used for the disposal of solid
212 waste from more than one residential premises, or one or more commercial,
213 industrial, manufacturing, recreational, or governmental operations;

214 (48) "Solid waste fee", a fee imposed pursuant to sections 260.200 to
215 260.345 and may be:

- 216 (a) A solid waste collection fee imposed at the point of waste collection; or
217 (b) A solid waste disposal fee imposed at the disposal site;
- 218 (49) "Solid waste management area", a solid waste disposal area which
219 also includes one or more of the functions contained in the definitions of
220 recycling, resource recovery facility, waste tire collection center, waste tire
221 processing facility, waste tire site or solid waste processing facility, excluding
222 incineration;
- 223 (50) **"Solid waste management project", a targeted project that**
224 **meets statewide waste reduction and recycling priorities, and for which**
225 **no solid waste management district grant applicant has applied to**
226 **perform, and for which no qualified applicants have applied to perform**
227 **such project by a competitive bid issued by the solid waste management**
228 **district for the completion of such project;**
- 229 (51) "Solid waste management system", the entire process of managing
230 solid waste in a manner which minimizes the generation and subsequent disposal
231 of solid waste, including waste reduction, source separation, collection, storage,
232 transportation, recycling, resource recovery, volume minimization, processing,
233 market development, and disposal of solid wastes;
- 234 [(51)] (52) "Solid waste processing facility", any facility where solid
235 wastes are salvaged and processed, including:
- 236 (a) A transfer station; or
237 (b) An incinerator which operates with or without energy recovery but
238 excluding waste tire end-user facilities; or
239 (c) A material recovery facility which operates with or without composting;
240 (d) A plasma arc technology facility;
- 241 [(52)] (53) "Solid waste technician", an individual who has successfully
242 completed training in the practical aspects of the design, operation and
243 maintenance of a permitted solid waste processing facility or solid waste disposal
244 area in accordance with sections 260.200 to 260.345;
- 245 [(53)] (54) "Tire", a continuous solid or pneumatic rubber covering
246 encircling the wheel of any self-propelled vehicle not operated exclusively upon
247 tracks, or a trailer as defined in chapter 301, except farm tractors and farm
248 implements owned and operated by a family farm or family farm corporation as
249 defined in section 350.010;
- 250 [(54)] (55) "Used motor oil", any motor oil which, as a result of use,
251 becomes unsuitable for its original purpose due to loss of original properties or

252 the presence of impurities, but used motor oil shall not include ethylene glycol,
253 oils used for solvent purposes, oil filters that have been drained of free flowing
254 used oil, oily waste, oil recovered from oil tank cleaning operations, oil spilled to
255 land or water, or industrial nonlube oils such as hydraulic oils, transmission oils,
256 quenching oils, and transformer oils;

257 [(55)] (56) "Utility waste landfill", a solid waste disposal area used for
258 fly ash waste, bottom ash waste, slag waste and flue gas emission control waste
259 generated primarily from the combustion of coal or other fossil fuels;

260 [(56)] (57) "Yard waste", leaves, grass clippings, yard and garden
261 vegetation and Christmas trees. The term does not include stumps, roots or
262 shrubs with intact root balls.

263 2. For the purposes of this section and sections 260.270 to 260.279 and
264 any rules in place as of August 28, 2005, or promulgated under said sections, the
265 term "scrap" shall be used synonymously with and in place of waste, as it applies
266 only to scrap tires.

260.225. 1. The department shall administer sections 260.200 to 260.345
2 to maximize the amount of recovered materials and to minimize disposal of solid
3 waste in sanitary landfills. The department shall, through its rules and
4 regulations, policies and programs, encourage to the maximum extent practical,
5 the use of alternatives to disposal. To accomplish these objectives, the
6 department shall:

7 (1) Administer the state solid waste management program pursuant to the
8 provisions of sections 260.200 to 260.345;

9 (2) Cooperate with appropriate federal, state, and local units of
10 government of this or any other state, and with appropriate private organizations
11 in carrying out its authority under sections 260.200 to 260.345;

12 (3) Promulgate and adopt, after public hearing, such rules and regulations
13 relating to solid waste management systems as shall be necessary to carry out the
14 purposes and provisions of sections 260.200 to 260.345;

15 (4) Develop a statewide solid waste management plan in cooperation with
16 local governments, regional planning commissions, districts, and appropriate
17 state agencies;

18 (5) Provide technical assistance to cities, counties, districts, and
19 authorities;

20 (6) Develop and conduct a mandatory solid waste technician training
21 course of study;

22 (7) Conduct and contract for research and investigations in the overall
23 area of solid waste storage, collection, recycling, recovery, processing,
24 transportation and disposal, including, but not limited to, new and novel
25 procedures;

26 (8) Subject to appropriation by the general assembly, establish criteria for
27 awarding state-funded solid waste management [planning] grants to cities,
28 counties, and districts, allocate funds, and monitor the proper expenditure of
29 funds;

30 (9) Issue such permits and orders and conduct such inspections as may
31 be necessary to implement the provisions of sections 260.200 to 260.345 and the
32 rules and regulations adopted pursuant to sections 260.200 to 260.345;

33 (10) Initiate, conduct and support research, demonstration projects, and
34 investigations with applicable federal programs pertaining to solid waste
35 management systems;

36 (11) Contract with cities, counties, districts and other persons to act as
37 its agent in carrying out the provisions of sections 260.200 to 260.345 under
38 procedures and conditions as the department shall prescribe.

39 2. The department shall prepare model solid waste management plans
40 suitable for rural and urban areas which may be used by districts, counties and
41 cities. In preparing the model plans, the department shall consider the findings
42 and recommendations of the study of resource recovery conducted pursuant to
43 section 260.038, and other relevant information. The plans shall conform with
44 the requirements of section 260.220 and section 260.325 and shall:

45 (1) Emphasize waste reduction and recycling;

46 (2) Provide for economical waste management through regional **and**
47 **district** cooperation;

48 (3) Be designed to achieve a reduction of forty percent in solid waste
49 disposed, by weight, by January 1, 1998;

50 (4) Establish a means to measure the amount of reduction in solid waste
51 disposal;

52 (5) Provide for the elimination of small quantities of hazardous waste,
53 including household hazardous waste, from the solid waste stream; and

54 (6) Be designed to guide planning in districts, cities and counties
55 including cities and counties not within a district.

56 3. The model plan shall be distributed to the executive board of each solid
57 waste district and to counties and cities not within a district by December 1,

58 1991.

59 4. No rule or portion of a rule promulgated under the authority of sections
60 260.200 to 260.345 shall become effective unless it has been promulgated
61 pursuant to the provisions of section 536.024.

62 5. In coordination with other appropriate state agencies, including, but
63 not limited to, the division of commerce and industrial development, the office of
64 administration, the environmental improvement and energy resource authority,
65 and the public service commission, the department shall perform the following
66 duties in order to promote resource recovery in the state in ways which are
67 economically feasible:

68 (1) Identify markets for recovered materials and for energy which could
69 be produced from solid waste and household hazardous waste;

70 (2) Provide technical assistance pertaining to all aspects of resource
71 recovery to cities, counties, districts, industries and other persons;

72 (3) Identify opportunities for resource recovery programs in state
73 government and initiate actions to implement such programs;

74 (4) Expand state contracts for procurement of items made from recovered
75 materials;

76 (5) Initiate recycling programs within state government;

77 (6) Provide a clearinghouse of consumer information regarding the need
78 to support resource recovery, utilize and develop new resource recovery programs
79 around existing enterprises, request and purchase recycled products, participate
80 in resource conservation activities and other relevant issues;

81 (7) Identify barriers to resource recovery and resource conservation, and
82 propose remedies to these barriers; and

83 (8) Initiate activities with appropriate state and local entities to develop
84 markets for recovered materials.

260.250. 1. After January 1, 1991, major appliances, waste oil and
2 lead-acid batteries shall not be disposed of in a solid waste disposal area. After
3 January 1, 1992, yard waste shall not be disposed of in a solid waste disposal
4 area, except as otherwise provided in this subsection. After August 28, 2007,
5 yard waste may be disposed of in a municipal solid waste disposal area or portion
6 of a municipal solid waste disposal area provided that:

7 (1) The department has approved the municipal solid waste disposal area
8 or portion of a solid waste disposal area to operate as a bioreactor under 40 CFR
9 Part 258.4; and

10 (2) The landfill gas produced by the bioreactor shall be used for the
11 generation of electricity.

12 2. After January 1, 1991, waste oil shall not be incinerated without energy
13 recovery.

14 3. Each **solid waste management** district[, county and city] shall
15 address the recycling, reuse and handling of aluminum containers, glass
16 containers, newspapers, **textiles**, whole tires, plastic beverage containers and
17 steel containers in its solid waste management plan consistent with sections
18 260.250 to 260.345.

260.320. 1. The executive board shall meet within thirty days after the
2 selection of the initial members. The time and place of the first meeting of the
3 board shall be designated by the council. A majority of the members of the board
4 shall constitute a quorum. At its first meeting the board shall elect a chairman
5 from its members and select a secretary, treasurer and such officers or employees
6 as it deems expedient or necessary for the accomplishment of its purposes. The
7 secretary and treasurer need not be members of the board.

8 2. The executive board may adopt, alter or repeal its own bylaws, rules
9 and regulations governing the manner in which its business may be transacted,
10 including procedures for the replacement of persons who habitually fail to attend
11 board meetings, and may establish its fiscal year, adopt an official seal, apply for
12 and accept grants, gifts or appropriations from any public or private sector, make
13 all expenditures which are incidental and necessary to carry out its purposes and
14 powers, and take such action, enter into such agreements and exercise all other
15 powers and functions necessary or appropriate to carry out the duties and
16 purposes of sections 260.200 to 260.345.

17 3. The executive board shall:

18 (1) Review and comment upon applications for permits submitted
19 pursuant to section 260.205, for solid waste processing facilities and solid waste
20 disposal areas which are to be located within the region or, if located in an
21 adjacent region, which will impact solid waste management practices within the
22 region;

23 (2) Prepare and recommend to the council a solid waste management plan
24 for the district;

25 (3) Identify illegal dump sites and provide all available information about
26 such sites to the appropriate county prosecutor and to the department;

27 (4) Establish an education program to inform the public about responsible

28 **solid** waste management practices;

29 (5) Establish procedures to minimize the introduction of small quantities
30 of hazardous waste, including household hazardous waste, into the solid waste
31 stream;

32 (6) Assure adequate capacity to manage waste which is not otherwise
33 removed from the solid waste stream; and

34 (7) Appoint one or more geographically balanced advisory committees
35 composed of the representatives of commercial generators, representatives of the
36 solid waste management industry, and two citizens unaffiliated with a solid waste
37 facility or operation to assess and make recommendations on solid waste
38 management.

39 4. The executive board may enter into contracts with any person **or**
40 **entity** for services related to any component of the solid waste management
41 system. Bid specifications for solid waste management services shall be designed
42 to meet the objectives of sections 260.200 to 260.345, encourage small businesses
43 to engage and compete in the delivery of **solid** waste management services and
44 to minimize the long-run cost of managing solid waste. Bid specifications shall
45 enumerate the minimum components and minimum quantities of waste products
46 which shall be recycled by the successful bidder. The board shall divide the
47 district into units to maximize access for small businesses when it requests bids
48 for solid waste management services, **but in no case shall a district**
49 **executive board perform solid waste management projects that compete**
50 **with a qualified private enterprise.**

51 5. No person shall serve as a member of the council or of the executive
52 board who is a stockholder, officer, agent, attorney or employee or who is in any
53 way pecuniarily interested in any business which engages in any aspect of solid
54 waste management regulated under sections 260.200 to 260.345; provided,
55 however, that such member may own stock in a publicly traded corporation which
56 may be involved in **solid** waste management as long as such holdings are not
57 substantial.

260.324. 1. Any person or entity that applies for a grant under
2 **section 260.335 shall not be disqualified from receiving such grant on**
3 **the basis that there exists a familial relationship between the applicant**
4 **and any member of the solid waste management district executive**
5 **board within the fourth degree by consanguinity or affinity. For**
6 **applicants with a familial relationship with any member of the solid**

7 waste management district executive board within the fourth degree by
8 consanguinity or affinity, the solid waste management district
9 executive board shall only approve such grant application if approved
10 by a vote of two-thirds of the solid waste management district executive
11 board.

12 **2. If a person, who by virtue of his or her membership on a solid**
13 **waste management district executive board, does not abstain from a**
14 **vote to award a solid waste management district grant to any person**
15 **or entity providing solid waste management services who is a relative**
16 **within the fourth degree by consanguinity or affinity, the person shall**
17 **forfeit membership on the solid waste management district executive**
18 **board and the solid waste management district council.**

260.325. 1. The executive board of each district shall submit to the
2 department a plan which has been approved by the council for a solid waste
3 management system serving areas within its jurisdiction and shall, from time to
4 time, submit officially adopted revisions of its plan as it deems necessary or the
5 department may require. In developing the district's solid waste management
6 plan, the board shall consider the model plan distributed to the board pursuant
7 to section 260.225. Districts may contract with a licensed professional engineer
8 or as provided in chapter 70 for the development and submission of a joint plan.

9 2. The board shall hold at least one public hearing in each county in the
10 district when it prepares a proposed plan or substantial revisions to a plan in
11 order to solicit public comments on the plan.

12 3. The solid waste management plan shall be submitted to the department
13 within eighteen months of the formation of the district. The plan shall be
14 prepared and submitted according to the procedures specified in section 260.220
15 and this section.

16 4. Each plan shall:

17 (1) Delineate areas within the district where solid waste management
18 systems are in existence;

19 (2) Reasonably conform to the rules and regulations adopted by the
20 department for implementation of sections 260.200 to 260.345;

21 (3) Delineate provisions for the collection of recyclable materials or
22 collection points for recyclable materials;

23 (4) Delineate provisions for the collection of compostable materials or
24 collection points for compostable materials;

25 (5) Delineate provisions for the separation of household waste and other
26 small quantities of hazardous waste at the source or prior to disposal;

27 (6) Delineate provisions for the orderly extension of solid waste
28 management services in a manner consistent with the needs of the district,
29 including economic impact, and in a manner which will minimize degradation of
30 the waters or air of the state, prevent public nuisances or health hazards,
31 promote recycling and waste minimization and otherwise provide for the safe and
32 sanitary management of solid waste;

33 (7) Take into consideration existing comprehensive plans, population
34 trend projections, engineering and economics so as to delineate those portions of
35 the district which may reasonably be expected to be served by a solid waste
36 management system;

37 (8) Specify how the district will achieve a reduction in solid waste placed
38 in sanitary landfills through waste minimization, reduction and recycling;

39 (9) Establish a timetable, with milestones, for the reduction of solid waste
40 placed in a landfill through waste minimization, reduction and recycling;

41 (10) Establish an education program to inform the public about
42 responsible waste management practices;

43 (11) Establish procedures to minimize the introduction of small quantities
44 of hazardous waste, including household hazardous waste, into the solid waste
45 stream;

46 (12) Establish a time schedule and proposed method of financing for the
47 development, construction and operation of the planned solid waste management
48 system together with the estimated cost thereof;

49 (13) Identify methods by which rural households that are not served by
50 a regular solid waste collection service may participate in waste reduction,
51 recycling and resource recovery efforts within the district; and

52 (14) Include such other reasonable information as the department shall
53 require.

54 5. The board shall review the district's solid waste management plan at
55 least every twenty-four months for the purpose of evaluating the district's
56 progress in meeting the requirements and goals of the plan, and shall submit
57 plan revisions to the department and council.

58 6. In the event any plan or part thereof is disapproved, the department
59 shall furnish any and all reasons for such disapproval and shall offer assistance
60 for correcting deficiencies. The executive board shall within sixty days revise and

61 resubmit the plan for approval or request a hearing in accordance with section
62 260.235. Any plan submitted by a district shall stand approved one hundred
63 twenty days after submission unless the department disapproves the plan or some
64 provision thereof.

65 7. The director may institute appropriate action under section 260.240 to
66 compel submission of plans in accordance with sections 260.200 to 260.345 and
67 the rules and regulations adopted pursuant to sections 260.200 to 260.345.

68 8. [The provisions of section 260.215 to the contrary notwithstanding, any
69 county within a region which on or after January 1, 1995, is not a member of a
70 district shall by June 30, 1995, submit a solid waste management plan to the
71 department of natural resources. Any county which withdraws from a district
72 and all cities within the county with a population over five hundred shall submit
73 a solid waste plan or a revision to an existing plan to the department of natural
74 resources within one hundred eighty days of its decision not to participate. The
75 plan shall meet the requirements of section 260.220 and this section.

76 9.] Funds may, upon appropriation, be made available to [cities, counties
77 and] districts[,] under section 260.335, for the purpose of implementing the
78 requirements of this section.

79 [10.] **9. Based upon the financial assistance amounts set forth in**
80 **this section**, the district **executive** board shall arrange for **an** independent
81 financial [audits] **statement audit** of the records and accounts of its operations
82 by a certified public accountant or a firm of certified public accountants. Districts
83 receiving [two] **more than eight** hundred thousand dollars [or more] of financial
84 assistance **annually** shall have annual independent financial **statement** audits
85 [and]; districts receiving [less than] **between** two hundred **fifty** thousand
86 dollars **and eight hundred thousand dollars** of financial assistance **annually**
87 shall have **a biennial** independent financial [audits at least once every two
88 years. The state auditor may examine the findings of such audits and may
89 conduct audits of the districts] **statement audit for the two-year period. All**
90 **other districts shall be monitored biennially by the department and,**
91 **based upon the findings within the monitoring report, may be required**
92 **to arrange for an independent financial statement audit for the**
93 **biennial monitoring period under review.** Subject to limitations caused by
94 the availability **of** resources, the department shall conduct a performance audit
95 of grants to each district at least once every [three] **five years, or as deemed**
96 **necessary by the department based upon district grantee performance.**

260.330. 1. Except as otherwise provided in subsection 6 of this section, effective October 1, 1990, each operator of a solid waste sanitary landfill shall collect a charge equal to one dollar and fifty cents per ton or its volumetric equivalent of solid waste accepted and each operator of the solid waste demolition landfill shall collect a charge equal to one dollar per ton or its volumetric equivalent of solid waste accepted. Each operator shall submit the charge, less collection costs, to the department of natural resources for deposit in the "Solid Waste Management Fund" which is hereby created. On October 1, 1992, and thereafter, the charge imposed herein shall be adjusted annually by the same percentage as the increase in the general price level as measured by the Consumer Price Index for All Urban Consumers for the United States, or its successor index, as defined and officially recorded by the United States Department of Labor or its successor agency. No annual adjustment shall be made to the charge imposed under this subsection during October 1, 2005, to October 1, [2017] **2027**, except an adjustment amount consistent with the need to fund the operating costs of the department and taking into account any annual percentage increase in the total of the volumetric equivalent of solid waste accepted in the prior year at solid waste sanitary landfills and demolition landfills and solid waste to be transported out of this state for disposal that is accepted at transfer stations. No annual increase during October 1, 2005, to October 1, [2017] **2027**, shall exceed the percentage increase measured by the Consumer Price Index for All Urban Consumers for the United States, or its successor index, as defined and officially recorded by the United States Department of Labor or its successor agency and calculated on the percentage of revenues dedicated under subdivision (1) of subsection 2 of section 260.335. Any such annual adjustment shall only be made at the discretion of the director, subject to appropriations. Collection costs shall be established by the department and shall not exceed two percent of the amount collected pursuant to this section.

2. The department shall, by rule and regulation, provide for the method and manner of collection.

3. The charges established in this section shall be enumerated separately from the disposal fee charged by the landfill and may be passed through to persons who generated the solid waste. Moneys [shall be] transmitted to the department shall be no less than the amount collected less collection costs and in a form, manner and frequency as the department shall prescribe. The provisions of section 33.080 to the contrary notwithstanding, moneys in the

37 account shall not lapse to general revenue at the end of each biennium. Failure
38 to collect the charge does not relieve the operator from responsibility for
39 transmitting an amount equal to the charge to the department.

40 4. The department may examine or audit financial records and landfill
41 activity records and measure landfill usage to verify the collection and
42 transmittal of the charges established in this section. The department may
43 promulgate by rule and regulation procedures to ensure and to verify that the
44 charges imposed herein are properly collected and transmitted to the department.

45 5. Effective October 1, 1990, any person who operates a transfer station
46 in Missouri shall transmit a fee to the department for deposit in the solid waste
47 management fund which is equal to one dollar and fifty cents per ton or its
48 volumetric equivalent of solid waste accepted. Such fee shall be applicable to all
49 solid waste to be transported out of the state for disposal. On October 1, 1992,
50 and thereafter, the charge imposed herein shall be adjusted annually by the same
51 percentage as the increase in the general price level as measured by the
52 Consumer Price Index for All Urban Consumers for the United States, or its
53 successor index, as defined and officially recorded by the United States
54 Department of Labor or its successor agency. No annual adjustment shall be
55 made to the charge imposed under this subsection during October 1, 2005, to
56 October 1, [2017] **2027**, except an adjustment amount consistent with the need
57 to fund the operating costs of the department and taking into account any annual
58 percentage increase in the total of the volumetric equivalent of solid waste
59 accepted in the prior year at solid waste sanitary landfills and demolition
60 landfills and solid waste to be transported out of this state for disposal that is
61 accepted at transfer stations. No annual increase during October 1, 2005, to
62 October 1, [2017] **2027**, shall exceed the percentage increase measured by the
63 Consumer Price Index for All Urban Consumers for the United States, or its
64 successor index, as defined and officially recorded by the United States
65 Department of Labor or its successor agency and calculated on the percentage of
66 revenues dedicated under subdivision (1) of subsection 2 of section 260.335. Any
67 such annual adjustment shall only be made at the discretion of the director,
68 subject to appropriations. The department shall prescribe rules and regulations
69 governing the transmittal of fees and verification of waste volumes transported
70 out of state from transfer stations. Collection costs shall also be established by
71 the department and shall not exceed two percent of the amount collected
72 pursuant to this subsection. A transfer station with the sole function of

73 separating materials for recycling or resource recovery activities shall not be
74 subject to the fee imposed in this subsection.

75 6. Each political subdivision which owns an operational solid waste
76 disposal area may designate, pursuant to this section, up to two free disposal
77 days during each calendar year. On any such free disposal day, the political
78 subdivision shall allow residents of the political subdivision to dispose of any
79 solid waste which may be lawfully disposed of at such solid waste disposal area
80 free of any charge, and such waste shall not be subject to any state fee pursuant
81 to this section. Notice of any free disposal day shall be posted at the solid waste
82 disposal area site and in at least one newspaper of general circulation in the
83 political subdivision no later than fourteen days prior to the free disposal day.

260.335. 1. Each fiscal year eight hundred thousand dollars from the
2 solid waste management fund shall be made available, upon appropriation, to the
3 department and the environmental improvement and energy resources authority
4 to fund activities that promote the development and maintenance of markets for
5 recovered materials. Each fiscal year up to two hundred thousand dollars from
6 the solid waste management fund **may** be used by the department upon
7 appropriation for grants to solid waste management districts for district grants
8 and district operations. Only those solid waste management districts that are
9 allocated fewer funds under subsection 2 of this section than if revenues had been
10 allocated based on the criteria in effect in this section on August 27, 2004, are
11 eligible for these grants. An eligible district shall receive a proportionate share
12 of these grants based on that district's share of the total reduction in funds for
13 eligible districts calculated by comparing the amount of funds allocated under
14 subsection 2 of this section with the amount of funds that would have been
15 allocated using the criteria in effect in this section on August 27, 2004. The
16 department and the authority shall establish a joint interagency agreement with
17 the department of economic development to identify state priorities for market
18 development and to develop the criteria to be used to judge proposed
19 projects. Additional moneys may be appropriated in subsequent fiscal years if
20 requested. The authority shall establish a procedure to measure the effectiveness
21 of the grant program under this subsection and shall provide a report to the
22 governor and general assembly by January fifteenth of each year regarding the
23 effectiveness of the program.

24 2. All remaining revenues deposited into the fund each fiscal year after
25 moneys have been made available under subsection 1 of this section shall be

26 allocated as follows:

27 (1) Thirty-nine percent of the revenues shall be dedicated, upon
28 appropriation, to the elimination of illegal solid waste disposal, to identify and
29 prosecute persons disposing of solid waste illegally, to conduct solid waste
30 permitting activities, to administer grants and perform other duties imposed in
31 sections 260.200 to 260.345 and section 260.432. In addition to the thirty-nine
32 percent of the revenues, the department may receive any annual increase in the
33 charge during October 1, 2005, to October 1, [2014] **2027**, under section 260.330
34 and such increases shall be used solely to fund the operating costs of the
35 department;

36 (2) Sixty-one percent of the revenues, except any annual increases in the
37 charge under section 260.330 during October 1, 2005, to October 1, [2014] **2027**,
38 which shall be used solely to fund the operating costs of the department, shall be
39 allocated [through grants, upon appropriation, to participating cities, counties,
40 and] **to solid waste management** districts. Revenues to be allocated under
41 this subdivision shall be divided as follows: forty percent shall be allocated based
42 on the population of each district in the latest decennial census, and sixty percent
43 shall be allocated based on the amount of revenue generated within each
44 district. For the purposes of this subdivision, revenue generated within each
45 district shall be determined from the previous year's data. No more than fifty
46 percent of the revenue allocable under this subdivision may be allocated to the
47 districts upon approval of the department for implementation of a solid waste
48 management plan and district operations, and at least fifty percent of the revenue
49 allocable to the districts under this subdivision shall be allocated to the cities and
50 counties of the district or to persons or entities providing solid waste
51 management, waste reduction, recycling and related services in these cities and
52 counties. Each district shall receive a minimum of seventy-five thousand dollars
53 under this subdivision. After August 28, [2005] **2015**, each district shall receive
54 a minimum of ninety-five thousand dollars under this subdivision for district
55 grants and district operations. Each district receiving moneys under this
56 subdivision shall expend such moneys pursuant to a solid waste management
57 plan required under section 260.325, and only in the case that the district is in
58 compliance with planning requirements established by the department. Moneys
59 shall be awarded based upon grant applications. **The following criteria may**
60 **be considered to establish the order of district grant priority:**

61 (a) **Grants to facilities of organizations employing individuals**

62 **with disabilities under sections 178.900 to 178.960 or sections 205.968**
63 **to 205.972;**

64 **(b) Grants for proposals that will promote and maximize the**
65 **sharing of district resources;**

66 **(c) Grants for proposals which provide methods of recycling and**
67 **solid waste reduction; and**

68 **(d) All other grants.**

69 Any **allocated district moneys** remaining in any fiscal year due to insufficient
70 or inadequate **grant applications [may] shall** be reallocated [pursuant to this
71 subdivision] **for grant applications in subsequent years or for solid waste**
72 **management projects other than district operations, including a**
73 **district's next request for solid waste management project**
74 **proposals. Any allocated district moneys remaining after a period of**
75 **five years shall revert to the credit of the solid waste management fund**
76 **created under section 260.330;**

77 (3) Except for the amount up to one-fourth of the department's previous
78 fiscal year expense, any remaining unencumbered funds generated under
79 subdivision (1) of this subsection in prior fiscal years shall be reallocated under
80 this section;

81 (4) Funds may be made available under this subsection for the
82 administration and grants of the used motor oil program described in section
83 260.253;

84 (5) The department and the environmental improvement and energy
85 resources authority shall conduct sample audits of grants provided under this
86 subsection.

87 **3. In addition to the criteria listed in this section,** the advisory
88 board created in section 260.345 shall recommend criteria to be used to allocate
89 grant moneys to districts, cities and counties. These criteria shall establish a
90 priority for proposals which provide methods of solid waste reduction and
91 recycling. The department shall promulgate criteria for evaluating grants by rule
92 and regulation. Projects of cities and counties located within a district which are
93 funded by grants under this section shall conform to the district solid waste
94 management plan.

95 **4. The funds awarded to the districts[, counties and cities] pursuant to**
96 **this section shall be used for the purposes set forth in sections 260.300 to**
97 **260.345, and shall be used in addition to existing funds appropriated by counties**

98 and cities for solid waste management and shall not supplant county or city
99 appropriated funds.

100 **5. Once grants are approved by the solid waste management**
101 **district, the district shall submit to the department the appropriate**
102 **forms associated with the grant application and any supporting**
103 **information to verify that appropriate public notice procedures were**
104 **followed, that grant proposals were reviewed and ranked by the**
105 **district, and that only eligible costs as set forth in regulations are to be**
106 **funded. Within thirty days, the department shall review the grant**
107 **application. If the department finds any deficiencies, or needs more**
108 **information in order to evaluate the grant application, the department**
109 **shall notify the district in writing. The district shall have an additional**
110 **thirty days to respond to the department's request and to submit any**
111 **additional information to the department. Within thirty days of**
112 **receiving additional information, the department shall either approve**
113 **or deny the grant application. If the department takes no action, the**
114 **grant application shall be deemed approved.** The department, in
115 conjunction with the solid waste advisory board, shall review the performance of
116 all grant recipients to ensure that grant moneys were appropriately and
117 effectively expended to further the purposes of the grant, as expressed in the
118 recipient's grant application. The grant application shall contain specific goals
119 and implementation dates, and grant recipients shall be contractually obligated
120 to fulfill same. The department may require the recipient to submit periodic
121 reports and such other data as are necessary, both during the grant period and
122 up to five years thereafter, to ensure compliance with this section. The
123 department may audit the records of any recipient to ensure compliance with this
124 section. Recipients of grants under sections 260.300 to 260.345 shall maintain
125 such records as required by the department. If a grant recipient fails to maintain
126 records or submit reports as required herein, refuses the department access to the
127 records, or fails to meet the department's performance standards, the department
128 may withhold subsequent grant payments, if any, and may compel the repayment
129 of funds provided to the recipient pursuant to a grant.

130 6. The department shall provide for a security interest in any machinery
131 or equipment purchased through grant moneys distributed pursuant to this
132 section.

133 7. If the moneys are not transmitted to the department within the time

134 frame established by the rule promulgated, interest shall be imposed on the
135 moneys due the department at the rate of ten percent per annum from the
136 prescribed due date until payment is actually made. These interest amounts
137 shall be deposited to the credit of the solid waste management fund.

260.345. 1. A state "Solid Waste Advisory Board" is created within the
2 department of natural resources. The advisory board shall be composed of the
3 chairman of the executive board of each of the solid waste management districts
4 **or his or her designee**, and other members as provided in this section. Up to
5 five additional members shall be appointed by the **program director of the solid**
6 **waste management program** of which two members shall represent the solid
7 waste management industry and have an economic interest in or activity with any
8 solid waste facility or operation, one member may represent the solid waste
9 composting or recycling industry businesses, and the remaining members shall
10 be public members who have demonstrated interest in solid waste management
11 issues and shall have no economic interest in or activity with any solid waste
12 facility or operation but may own stock in a publicly traded corporation which
13 may be involved in waste management as long as such holdings are not
14 substantial. **Beginning January 1, 2016**, the advisory board shall [advise]
15 **prepare an annual report due on or before January first advising the**
16 department regarding:

- 17 (1) The efficacy of its technical assistance program;
- 18 (2) Solid waste management problems experienced by solid waste
19 management districts;
- 20 (3) The effects of proposed rules and regulations upon solid waste
21 management within the districts;
- 22 (4) Criteria to be used in awarding grants pursuant to section 260.335;
- 23 (5) Waste management issues pertinent to the districts;
- 24 (6) The development of improved methods of solid waste minimization,
25 recycling and resource recovery; [and]
- 26 (7) **Unfunded solid waste management projects; and**
- 27 (8) Such other matters as the advisory board may determine.

28 **2. The advisory board shall also prepare a report on the subjects**
29 **listed in subdivisions (1) to (8) of subsection 1 of this section for any**
30 **standing, statutory, interim, or select committee or task force of the**
31 **general assembly having jurisdiction over solid waste. If a report is so**
32 **prepared, it shall be delivered to the chair and vice-chair of each**

33 **committee or task force having such jurisdiction. Such a report shall**
34 **not be generated and distributed on more than an annual basis.**

35 **3. The advisory board shall hold regular meetings on a quarterly**
36 **basis. A special meeting of the advisory board may occur upon a**
37 **majority vote of all advisory board members at a regular quarterly**
38 **meeting. Reasonable written notice of all meetings shall be given by**
39 **the director of the solid waste management program to all members of**
40 **the advisory board. A majority of advisory board members shall**
41 **constitute a quorum for the transaction of business. All actions of the**
42 **advisory board shall be taken at regular quarterly meetings open to the**
43 **public.**

644.145. 1. When issuing permits under this chapter that incorporate a
2 new requirement for discharges from publicly owned combined or separate
3 sanitary or storm sewer systems or **water or sewer** treatment works, or when
4 enforcing provisions of this chapter or the Federal Water Pollution Control Act,
5 33 U.S.C. Section 1251, et seq., pertaining to any portion of a publicly owned
6 combined or separate sanitary or storm sewer system or **water or sewer**
7 treatment works, the department of natural resources shall make a finding of
8 affordability on the costs to be incurred and the impact of any rate changes on
9 ratepayers upon which to base such permits and decisions, to the extent allowable
10 under this chapter and the Federal Water Pollution Control Act.

11 2. (1) The department of natural resources shall not be required under
12 this section to make a finding of affordability when:

13 (a) Issuing collection system extension permits;

14 (b) Issuing National Pollution Discharge Elimination System operating
15 permit renewals which include no new environmental requirements; or

16 (c) The permit applicant certifies that the applicable requirements are
17 affordable to implement or otherwise waives the requirement for an affordability
18 finding; however, at no time shall the department require that any applicant
19 certify, as a condition to approving any permit, administrative or civil action, that
20 a requirement, condition, or penalty is affordable.

21 (2) The exceptions provided under paragraph (c) of subdivision (1) of this
22 subsection do not apply when the community being served has less than three
23 thousand three hundred residents.

24 3. When used in this chapter and in standards, rules and regulations
25 promulgated pursuant to this chapter, the following words and phrases mean:

26 (1) "Affordability", with respect to payment of a utility bill, a measure of
27 whether an individual customer or household with an income equal to [the] **or**
28 lower [of] **than** the median household income for their community [or the state
29 of Missouri] can pay the bill without undue hardship or unreasonable sacrifice
30 in the essential lifestyle or spending patterns of the individual or household,
31 taking into consideration the criteria described in subsection 4 of this section;

32 (2) "Financial capability", the financial capability of a community to make
33 investments necessary to make water quality-related improvements;

34 (3) "Finding of affordability", a department statement as to whether an
35 individual or a household receiving as income an amount equal to [the] **or** lower
36 [of] **than** the median household income for the applicant community [or the state
37 of Missouri] would be required to make unreasonable sacrifices in [their] **the**
38 **individual's or the household's** essential lifestyle or spending patterns or
39 undergo hardships in order to make the projected monthly payments for sewer
40 services. The department shall make a statement that the proposed changes
41 meet the definition of affordable, or fail to meet the definition of affordable, or are
42 implemented as a federal mandate regardless of affordability.

43 4. The department of natural resources shall adopt procedures by which
44 it will make affordability findings that evaluate the affordability of permit
45 requirements and enforcement actions described in subsection 1 of this section,
46 and may begin implementing such procedures prior to promulgating
47 implementing regulations. The commission shall have the authority to
48 promulgate rules to implement this section pursuant to chapters 536 and 644,
49 and shall promulgate such rules as soon as practicable. Affordability findings
50 shall be based upon reasonably verifiable data and shall include an assessment
51 of affordability with respect to persons or entities affected. The department shall
52 offer the permittee an opportunity to review a draft affordability finding, and the
53 permittee may suggest changes and provide additional supporting information,
54 subject to subsection 6 of this section. The finding shall be based upon the
55 following criteria:

56 (1) A community's financial capability and ability to raise or secure
57 necessary funding;

58 (2) Affordability of pollution control options for the individuals or
59 households at or below the median household income level of the community;

60 (3) An evaluation of the overall costs and environmental benefits of the
61 control technologies;

62 (4) Inclusion of ongoing costs of operating and maintaining the existing
63 wastewater collection and treatment system, including payments on outstanding
64 debts for wastewater collection and treatment systems when calculating projected
65 rates;

66 (5) An inclusion of ways to reduce economic impacts on distressed
67 populations in the community, including but not limited to low- and fixed-income
68 populations. This requirement includes but is not limited to:

69 (a) Allowing adequate time in implementation schedules to mitigate
70 potential adverse impacts on distressed populations resulting from the costs of
71 the improvements and taking into consideration local community economic
72 considerations; and

73 (b) Allowing for reasonable accommodations for regulated entities when
74 inflexible standards and fines would impose a disproportionate financial hardship
75 in light of the environmental benefits to be gained;

76 (6) An assessment of other community investments and operating costs
77 relating to environmental improvements and public health protection;

78 (7) An assessment of factors set forth in the United States Environmental
79 Protection Agency's guidance, including but not limited to the "Combined Sewer
80 Overflow Guidance for Financial Capability Assessment and Schedule
81 Development" that may ease the cost burdens of implementing wet weather
82 control plans, including but not limited to small system considerations, the
83 attainability of water quality standards, and the development of wet weather
84 standards; and

85 (8) An assessment of any other relevant local community economic
86 condition.

87 5. Prescriptive formulas and measures used in determining financial
88 capability, affordability, and thresholds for expenditure, such as median
89 household income, should not be considered to be the only indicator of a
90 community's ability to implement control technology and shall be viewed in the
91 context of other economic conditions rather than as a threshold to be achieved.

92 6. Reasonable time spent preparing draft affordability findings, allowing
93 permittees to review draft affordability findings or draft permits, or revising draft
94 affordability findings, shall be allowed in addition to the department's deadlines
95 for making permitting decisions pursuant to section 644.051.

96 7. If the department of natural resources fails to make a finding of
97 affordability where required by this section, then the resulting permit or decision

98 shall be null, void and unenforceable.

99 8. The department of natural resources' findings under this section may
100 be appealed to the commission pursuant to subsection 6 of section 644.051.

101 9. The department shall file an annual report by the beginning of the
102 fiscal year with the governor, the speaker of the house of representatives, the
103 president pro tempore of the senate, and the chairs of the committees in both
104 houses having primary jurisdiction over natural resource issues showing at least
105 the following information on the findings of affordability completed in the
106 previous calendar year:

107 (1) The total number of findings of affordability issued by the department,
108 those categorized as affordable, those categorized as not meeting the definition
109 of affordable, and those implemented as a federal mandate regardless of
110 affordability;

111 (2) The average increase in sewer rates both in dollars and percentage for
112 all findings found to be affordable;

113 (3) The average increase in sewer rates as a percentage of median house
114 income in the communities for those findings determined to be affordable and a
115 separate calculation of average increases in sewer rates for those found not to
116 meet the definition of affordable;

117 (4) A list of all the permit holders receiving findings, and for each
118 permittee the following data taken from the finding of affordability shall be listed:

119 (a) Current and projected monthly residential sewer rates in dollars;

120 (b) Projected monthly residential sewer rates as a percentage of median
121 [house] **household** income;

122 (c) Percentage of households at or below the state poverty rate.

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