

FIRST REGULAR SESSION

# SENATE BILL NO. 656

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY SENATOR KLINDT.

Read 1st time February 27, 2003, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1731S.01I

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### AN ACT

To repeal sections 640.700, 640.703, 640.710, 640.715, 640.725, 640.730, 640.735, 640.740, 640.745, 640.747, 640.750, and 640.755, RSMo, and to enact in lieu thereof sixteen new sections relating to concentrated animal feeding operations.

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

Section A. Sections 640.700, 640.703, 640.710, 640.715, 640.725, 640.730, 640.735, 640.740, 640.745, 640.747, 640.750, and 640.755, RSMo, are repealed and sixteen new sections enacted in lieu thereof, to be known as sections 644.200, 644.203, 644.206, 644.209, 644.212, 644.215, 644.218, 644.221, 644.224, 644.227, 644.230, 644.233, 644.236, 644.239, 644.242, and 644.245, to read as follows:

**644.200. Sections 644.200, 644.215, 644.218, 644.221, and 644.233 shall only apply to class IA facilities as defined by the commission rules in effect as of January 30, 1996, which use a flush system.**

**644.203. For the purposes of sections 644.200 to 644.236, the following terms mean:**

- (1) "Animal units", shall be defined by rules of the commission in effect as of January 30, 1996;**
- (2) "Animal waste wet handling facility", includes all gravity outfall lines, recycle pump stations, recycle force mains and appurtenances;**
- (3) "Class IA", any concentrated animal feeding operation with a capacity of seven thousand animal units or more;**
- (4) "Class IB", any concentrated animal feeding operation with a capacity**

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

between three thousand animal units and six thousand nine hundred and ninety-nine animal units inclusive;

(5) "Class IC", any concentrated animal feeding operation with a capacity between one thousand animal units and two thousand nine hundred and ninety-nine animal units inclusive;

(6) "Class II", any concentrated animal feeding operation with a capacity of at least three hundred animal units, but less than one thousand animal units;

(7) "Commission", the clean water commission;

(8) "Facility", any class IA concentrated animal feeding operation which uses a flush system;

(9) "Flush system", an automated system of moving or removing manure utilizing liquid as the primary agent as opposed to a primarily mechanical or manually operated system such as a pull plug or scraper system;

(10) "Sensitive areas", areas in the watershed located within five miles upstream of any stream or river drinking water intake structure, other than those intake structures on the Missouri and Mississippi rivers.

644.206. 1. The clean water commission shall promulgate rules regulating the establishment, permitting, design, construction, operation, and management of class I facilities. The commission shall have the authority and jurisdiction to regulate the establishment, permitting, design, construction, operation, and management of any class I facility. Such rules may require monitoring wells on a site-specific basis when, in the determination of the division of geological survey and resource assessment, class IA concentrated animal feeding operation lagoons are located in hydrologically sensitive areas where the quality of groundwater may be compromised. Such rules and regulations shall be designed to afford a prudent degree of environmental protection while accommodating modern agricultural practices. Regulatory or local controls imposed by any county, township, or other form of government concerning the establishment, permitting, design, construction, operation, and management of any class I or class II facility shall be consistent with the provisions of sections 644.200 to 644.236. Local governing bodies may impose enhanced controls based upon reasonably available, empirical, peer reviews, scientific, and economic data that clearly documents the need and cost effectiveness for the more restrictive provisions. Such data shall include an assessment of the effectiveness and the cost of the controls to the state and to any private or public person or entity affected by such local control. In any challenge of local controls governing the establishment, permitting, design, construction, operation, and management of any class I or class II facility, the burden of proof shall be on the local governing body.

2. Except as provided in subsections 3 and 4 of this section, the commission shall require at least but not more than the following buffer distances between the nearest confinement building or lagoon and any public building or occupied residence, except a residence which is owned by the concentrated animal feeding operation or a residence from which a written agreement for operation is obtained:

(1) For concentrated animal feeding operations with at least one thousand animal units, one thousand feet;

(2) For concentrated animal feeding operations with between three thousand and six thousand nine hundred ninety-nine animal units inclusive, two thousand feet; and

(3) For concentrated animal feeding operations of seven thousand or more animal units, three thousand feet.

3. All concentrated animal feeding operations in existence as of June 25, 1996, shall be exempt from the buffer distances prescribed in subsection 2 of this section. Such distances shall not apply to concentrated animal feeding operations which have received a written agreement which has been signed by all affected property owners within the buffer distance.

4. The commission may, upon review of the information contained in the site plan including, but not limited to, the prevailing winds, topography, and other local environmental factors, authorize a distance which is less than the distance prescribed in subsection 2 of this section. The commission's recommendation shall be sent to the governing body of the county in which such site is proposed. The commission's authorized buffer distance shall become effective unless the county governing body rejects the commission's recommendation by a majority vote at the next meeting of the governing body after the recommendation is received.

5. Nothing in this section shall be construed as restricting local controls.

644.209. 1. Prior to filing an application to acquire a construction permit from the commission, the owner or operator of any class IA, class IB, or class IC concentrated animal feeding operation shall provide the following information to the commission, to the county governing body:

(1) The number of animals anticipated at such facility;

(2) The waste handling plan and general layout of the facility;

(3) The location and number of acres of such facility;

(4) Name, address, telephone number, and registered agent for further information as it relates to subdivisions (1) to (3) of this subsection;

(5) Notice that the commission will accept written comments from the public for a period of thirty days; and

**(6) The address of the regional or state office of the commission.**

The commission shall require proof of such notification upon accepting an application for a construction permit. The commission shall accept written comments from the public for thirty days after receipt of application for construction permit.

2. The commission shall not issue a permit to a facility described in subsection 1 of this section to engage in any activity regulated by the commission unless the applicant is in compliance with sections 644.200 to 644.236.

3. The commission shall issue a permit or respond with a letter of comment to the owner or operator of such facility within forty-five days of receiving a completed permit application and verification of compliance with subsection 1 of this section.

644.212. 1. The owner or operator of any flush system animal waste wet handling facility shall employ one or more persons who shall visually inspect the animal waste wet handling facility and lagoons for unauthorized discharge and structural integrity at least every twelve hours with a deviation of not to exceed three hours. The owner or operator of the facility shall keep records of each inspection. Such records shall be retained for three years. The commission shall provide or approve a form provided by the owner or operator for each facility for such inspections.

2. All new construction permits for flush system animal waste wet handling facilities shall have an electronic or mechanical shutoff of the system in the event of pipe stoppage. As of July 1, 1997, all existing flush system animal waste wet handling facilities shall have, at a minimum, an electronic or mechanical shutoff of the system in the event of pipe stoppage or backflow.

644.215. 1. The owner or operator of any class IA flush system animal waste wet handling facility shall employ one or more persons who shall visually inspect the animal waste wet handling facility for unauthorized discharge and structural integrity of any lagoon whose water level with less than twelve inches of freeboard at least every twelve hours with a deviation not to exceed three hours. The owner or operator of the facility shall keep records of each inspection. Such records shall be retained for three years. The commission shall provide or approve a form provided by the owner or operator for each facility for such inspections.

2. All new construction permits for flush system animal waste wet handling facilities shall have an electronic or mechanical shutoff of the system in the event of pipe stoppage. As of July 1, 1997, all existing flush system animal waste wet handling facilities shall have, at a minimum, an electronic or mechanical shutoff of the system in the event of pipe stoppage or backflow.

644.218. 1. The owner or operator of every facility, with a flush system animal

waste wet handling facility that poses a risk as determined by the commission to any public drinking water supply or any aquatic life, or lies within a drainage basin and is within three hundred feet of any adjacent landowner, shall have a failsafe containment structure or earthen dam that will contain, in the event of an unauthorized discharge, a minimum volume equal to the maximum capacity of flushing in any twenty-four hour period from all gravity outfall lines, recycle pump station, and recycle force mains.

2. Construction of such structure or dam, as provided in subsection 1 of this section, shall commence within ninety days of June 25, 1996.

644.221. Within twenty-four hours, any unauthorized discharge by a flush system animal waste wet handling facility that has crossed the property line of the facility or any unauthorized discharge by a flush system animal waste wet handling facility of which the failsafe containment structure or earthen dam has failed to contain and has crossed the property line of the facility, or enters waters of the state shall be reported to the commission and to all adjoining property owners of the facility as listed on the site-specific permit.

644.224. 1. There is hereby established in the state treasury the "Concentrated Animal Feeding Operation Indemnity Fund", to be known as the "fund" for the purposes of sections 644.224 to 644.230. All fees or other moneys payable pursuant to the provisions of section 644.227 or other moneys received including gifts, grants, appropriations, and bequests from federal, private, or other sources made for the purpose of the provisions of this act shall be payable to and collected by the commission and deposited in this fund. The money in this fund, upon appropriation, shall be expended to close class IA, class IB, class IC, and class II concentrated animal feeding operations as defined in the commission's rules, that have been placed in the control of the government due to bankruptcy or failure to pay property taxes, or if the class IA, class IB, class IC, or class II concentrated animal feeding operation is abandoned property. "Abandoned property", for the purposes of this section, means real property previously used for, or which has the potential to be used for, agricultural purposes which has been placed in the control of the state, a county, or municipal government, or an agency thereof, through donation, purchase, tax delinquency, foreclosure, default, or settlement, including conveyance by deed in lieu of foreclosure, and has been vacant for a period of not less than three years. Any portion of the fund not immediately needed for the purposes authorized shall be invested by the state treasurer as provided by the constitution and laws of this state. All income from such investments shall be deposited in the fund. Any unexpended balance in the fund at the end of any appropriation period shall not be transferred to

the general revenue fund and, accordingly, shall be exempt from the provisions of section 33.080, RSMo, relating to the transfer of funds to the general revenue funds of the state by the state treasurer.

2. Any unexpended balance remaining in the concentrated animal feeding operation indemnity fund established pursuant to section 640.740, RSMo, on August 28, 2003, shall be transferred and credited to the concentrated animal feeding operation indemnity fund created pursuant to the provisions of subsection 1 of this section.

644.227. 1. The owner or operator of each class IA concentrated animal feeding operation utilizing flush systems shall remit to the commission a fee of ten cents per animal unit permitted to be deposited in the fund. The fee is due and payable to the commission on the first anniversary of issuance of each owner or operator permit to operate such a facility and for nine years thereafter on the same date. The commission shall provide forms which such owner or operator shall use to file and pay this fee.

2. The fund shall be administered by the commission for the purpose of carrying out the provisions of sections 644.200 to 644.236, relating to closure of class IA, class IB, class IC, and class II concentrated animal feeding operation wastewater lagoons.

3. The fund administrators may only expend moneys for animal waste lagoon closure activities on real property which:

(1) Has been placed in the control of the state, a county, or municipal government, or an agency thereof, through donation, purchase, tax delinquency, foreclosure, default, or settlement, including conveyance by deed in lieu of foreclosure, and pose a threat to human health, the environment, or a threat to groundwater; and

(2) The state, county, or municipal government, or an agency thereof, has made reasonable and prudent efforts to sell said property to a qualifying purchaser.

4. The fund administrators shall expend no more than one hundred thousand dollars per lagoon for animal waste lagoon closure activities. The fund administrators shall only expend those moneys necessary to achieve a minimum level of closure and still protect human health and the environment. Closure activities shall include lagoon dewatering and removal of animal waste sludge, if any, both of which shall be land applied at a nutrient management application rate based on the most limiting nutrient as determined by Missouri clean water commission regulation. After dewatering, lagoons which are located in a drainage basin and are capable of meeting all applicable pond requirements of the Natural Resources Conservation Service (NRCS) with minimal additional expense should be maintained as a pond. Otherwise,

the lagoon berms should be breached and graded in such a manner to reasonably conform to the surrounding land contours.

644.230. In the event the commission determines that a class IA, class IB, class IC, or class II concentrated animal feeding operation has been successfully closed by the owner or operator, all moneys paid by such operation into the concentrated animal feeding operation indemnity fund shall be returned to such operation.

644.233. The commission shall conduct at least one on-site inspection of each facility quarterly.

644.236. 1. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

2. Sections 644.200 to 644.236 shall be administered by the clean water commission pursuant to the provisions and requirements of this chapter.

644.239. The provisions of sections 644.200 to 644.236 shall have no effect on pending litigation.

644.242. The provisions of sections 644.200 to 644.239 shall not be construed to apply to any livestock market.

644.245. Any permit issued prior to August 28, 2003, pursuant to the provisions of section 640.700 to 640.758, RSMo, shall be valid pursuant to the provisions of sections 644.200 to 644.245.

[640.700. Sections 640.700, 640.725, 640.730, 640.735 and 640.750 shall only apply to class IA facilities as defined by the department rules in effect as of January 30, 1996, which use a flush system.]

[640.703. For the purposes of sections 640.700 to 640.755, the following terms mean:

(1) "Animal units", shall be defined by rules of the department in effect as of January 30, 1996;

(2) "Animal waste wet handling facility", includes all gravity outfall lines, recycle pump stations, recycle force mains and appurtenances;

(3) "Class IA", any concentrated animal feeding operation with a capacity of seven thousand animal units or more;

(4) "Class IB", any concentrated animal feeding operation with a capacity between three thousand animal units and six thousand nine hundred and ninety-nine animal units inclusive;

(5) "Class IC", any concentrated animal feeding operation with a capacity between one thousand animal units and two thousand nine hundred and ninety-nine animal units inclusive;

(6) "Class II", any concentrated animal feeding operation with a capacity of at least three hundred animal units, but less than one thousand animal units;

(7) "Department", the department of natural resources;

(8) "Facility", any class IA concentrated animal feeding operation which uses a flush system;

(9) "Flush system", a system of moving or removing manure utilizing liquid as the primary agent as opposed to a primarily mechanical or automatic device;

(10) "Sensitive areas", areas in the watershed located within five miles upstream of any stream or river drinking water intake structure, other than those intake structures on the Missouri and Mississippi rivers.]

[640.710. 1. The department shall promulgate rules regulating the establishment, permitting, design, construction, operation and management of class I facilities. The department shall have the authority and jurisdiction to regulate the establishment, permitting, design, construction, operation and management of any class I facility. Such rules may require monitoring wells on a site-specific basis when, in the determination of the division of geology and land survey, class IA concentrated animal feeding operation lagoons are located in hydrologically sensitive areas where the quality of groundwater may be compromised. Such rules and regulations shall be designed to afford a prudent degree of environmental protection while accommodating modern agricultural practices.

2. Except as provided in subsections 3 and 4 of this section, the department shall require at least but not more than the following buffer distances between the nearest confinement building or lagoon and any public building or occupied residence, except a residence which is owned by the concentrated animal feeding operation or a residence from which a written agreement for operation is obtained:

(1) For concentrated animal feeding operations with at least one thousand animal units, one thousand feet;

(2) For concentrated animal feeding operations with between three thousand and six thousand nine hundred ninety-nine animal units inclusive, two thousand feet; and

(3) For concentrated animal feeding operations of seven thousand or more animal units, three thousand feet.

3. All concentrated animal feeding operations in existence as of June 25, 1996,

shall be exempt from the buffer distances prescribed in subsection 2 of this section. Such distances shall not apply to concentrated animal feeding operations which have received a written agreement which has been signed by all affected property owners within the buffer distance.

4. The department may, upon review of the information contained in the site plan including, but not limited to, the prevailing winds, topography and other local environmental factors, authorize a distance which is less than the distance prescribed in subsection 2 of this section. The department's recommendation shall be sent to the governing body of the county in which such site is proposed. The department's authorized buffer distance shall become effective unless the county governing body rejects the department's recommendation by a majority vote at the next meeting of the governing body after the recommendation is received.

5. Nothing in this section shall be construed as restricting local controls.]

[640.715. 1. Prior to filing an application to acquire a construction permit from the department, the owner or operator of any class IA, class IB, or class IC concentrated animal feeding operation shall provide the following information to the department, to the county governing body and to all adjoining property owners of property located within one and one- half times the buffer distance as specified in subsection 2 of section 640.710 for the size of the proposed facility:

- (1) The number of animals anticipated at such facility;
- (2) The waste handling plan and general layout of the facility;
- (3) The location and number of acres of such facility;
- (4) Name, address, telephone number and registered agent for further information as it relates to subdivisions (1) to (3) of this subsection;
- (5) Notice that the department will accept written comments from the public for a period of thirty days; and
- (6) The address of the regional or state office of the department.

The department shall require proof of such notification upon accepting an application for a construction permit. The department shall accept written comments from the public for thirty days after receipt of application for construction permit.

2. The department shall not issue a permit to a facility described in subsection 1 of this section to engage in any activity regulated by the department unless the applicant is in compliance with sections 640.700 to 640.755.

3. The department shall issue a permit or respond with a letter of comment to the owner or operator of such facility within forty-five days of receiving a completed permit application and verification of compliance with subsection 1 of this section.]

[640.725. 1. The owner or operator of any flush system animal waste wet

handling facility shall employ one or more persons who shall visually inspect the animal waste wet handling facility and lagoons for unauthorized discharge and structural integrity at least every twelve hours with a deviation of not to exceed three hours. The owner or operator of the facility shall keep records of each inspection. Such records shall be retained for three years. The department shall provide or approve a form provided by the owner or operator for each facility for such inspections.

2. All new construction permits for flush system animal waste wet handling facilities shall have an electronic or mechanical shutoff of the system in the event of pipe stoppage. As of July 1, 1997, all existing flush system animal waste wet handling facilities shall have, at a minimum, an electronic or mechanical shutoff of the system in the event of pipe stoppage or backflow.]

[640.730. 1. The owner or operator of every facility, with a flush system animal waste wet handling facility that poses a risk as determined by the department to any public drinking water supply or any aquatic life, or lies within a drainage basin and is within three hundred feet of any adjacent landowner, shall have a failsafe containment structure or earthen dam that will contain, in the event of an unauthorized discharge, a minimum volume equal to the maximum capacity of flushing in any twenty-four hour period from all gravity outfall lines, recycle pump station and recycle force mains.

2. Construction of such structure or dam, as provided in subsection 1 of this section, shall commence within ninety days of June 25, 1996.]

[640.735. Within twenty-four hours, any unauthorized discharge by a flush system animal waste wet handling facility that has crossed the property line of the facility or any unauthorized discharge by a flush system animal waste wet handling facility of which the failsafe containment structure or earthen dam has failed to contain and has crossed the property line of the facility, or enters waters of the state shall be reported to the department and to all adjoining property owners of the facility as listed on the site-specific permit.]

[640.740. There is hereby established in the state treasury the "Concentrated Animal Feeding Operation Indemnity Fund", to be known as the "fund" for the purposes of sections 640.740 to 640.747. All fees or other moneys payable pursuant to the provisions of section 640.745 or other moneys received including gifts, grants, appropriations, and bequests from federal, private or other sources made for the purpose of the provisions of this act shall be payable to and collected by the director of the department of natural resources and deposited in this fund. The money in this fund, upon appropriation, shall be expended to close class IA, class IB, class IC and class II concentrated animal feeding operations as defined in the department's rules, that have been placed in the control of the government due to bankruptcy or failure to pay property

taxes, or if the class IA, class IB, class IC or class II concentrated animal feeding operation is abandoned property. "Abandoned property", for the purposes of this section, means real property previously used for, or which has the potential to be used for, agricultural purposes which has been placed in the control of the state, a county, or municipal government, or an agency thereof, through donation, purchase, tax delinquency, foreclosure, default or settlement, including conveyance by deed in lieu of foreclosure, and has been vacant for a period of not less than three years. Any portion of the fund not immediately needed for the purposes authorized shall be invested by the state treasurer as provided by the constitution and laws of this state. All income from such investments shall be deposited in the fund. Any unexpended balance in the fund at the end of any appropriation period shall not be transferred to the general revenue fund and, accordingly, shall be exempt from the provisions of section 33.080, RSMo, relating to the transfer of funds to the general revenue funds of the state by the state treasurer.]

[640.745. 1. The owner or operator of each class IA concentrated animal feeding operation utilizing flush systems shall remit to the department of natural resources a fee of ten cents per animal unit permitted to be deposited in the fund. The fee is due and payable to the department on the first anniversary of issuance of each owner or operator permit to operate such a facility and for nine years thereafter on the same date. The department of natural resources shall provide forms which such owner or operator shall use to file and pay this fee.

2. The fund shall be administered by the department for the purpose of carrying out the provisions of sections 640.700 to 640.755, relating to closure of class IA, class IB, class IC and class II concentrated animal feeding operation wastewater lagoons.

3. The fund administrators may only expend moneys for animal waste lagoon closure activities on real property which:

(1) Has been placed in the control of the state, a county, or municipal government, or an agency thereof, through donation, purchase, tax delinquency, foreclosure, default or settlement, including conveyance by deed in lieu of foreclosure, and pose a threat to human health, the environment, or a threat to groundwater; and

(2) The state, county, or municipal government, or an agency thereof, has made reasonable and prudent efforts to sell said property to a qualifying purchaser.

4. The fund administrators shall expend no more than one hundred thousand dollars per lagoon for animal waste lagoon closure activities. The fund administrators shall only expend those moneys necessary to achieve a minimum level of closure and still protect human health and the environment. Closure activities shall include lagoon dewatering and removal of animal waste sludge, if any, both of which shall be land

applied at a nutrient management application rate based on the most limiting nutrient as determined by Missouri clean water commission regulation. After dewatering, lagoons which are located in a drainage basin and are capable of meeting all applicable pond requirements of the Natural Resources Conservation Service (NRCS) with minimal additional expense should be maintained as a pond. Otherwise, the lagoon berms should be breached and graded in such a manner to reasonably conform to the surrounding land contours.]

[640.747. In the event the department determines that a class IA, class IB, class IC or class II concentrated animal feeding operation has been successfully closed by the owner or operator, all moneys paid by such operation into the concentrated animal feeding operation indemnity fund shall be returned to such operation.]

[640.750. The department shall conduct at least one on-site inspection of each facility quarterly.]

[640.755. 1. No rule or portion of a rule promulgated under the authority of sections 640.700 to 640.755 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

2. Sections 640.700 to 640.755 shall be administered by the clean water commission pursuant to the provisions and requirements of chapter 644, RSMo.]

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