

CONFERENCE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 664

AN ACT

To repeal sections 260.273, 643.055, and 644.145, RSMo, and to enact in lieu thereof five new sections relating to natural resources.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Sections 260.273, 643.055, and 644.145, RSMo,
2 are repealed and five new sections enacted in lieu thereof, to be
3 known as sections 260.273, 643.055, 643.640, 644.058, and
4 644.145, to read as follows:

5 260.273. 1. Any person purchasing a new tire may present
6 to the seller the used tire or remains of such used tire for
7 which the new tire purchased is to replace.

8 2. A fee for each new tire sold at retail shall be imposed
9 on any person engaging in the business of making retail sales of
10 new tires within this state. The fee shall be charged by the
11 retailer to the person who purchases a tire for use and not for
12 resale. Such fee shall be imposed at the rate of fifty cents for
13 each new tire sold. Such fee shall be added to the total cost to
14 the purchaser at retail after all applicable sales taxes on the

1 tires have been computed. The fee imposed, less six percent of
2 fees collected, which shall be retained by the tire retailer as
3 collection costs, shall be paid to the department of revenue in
4 the form and manner required by the department of revenue and
5 shall include the total number of new tires sold during the
6 preceding month. The department of revenue shall promulgate
7 rules and regulations necessary to administer the fee collection
8 and enforcement. The terms "sold at retail" and "retail sales"
9 do not include the sale of new tires to a person solely for the
10 purpose of resale, if the subsequent retail sale in this state is
11 to the ultimate consumer and is subject to the fee.

12 3. The department of revenue shall administer, collect and
13 enforce the fee authorized pursuant to this section pursuant to
14 the same procedures used in the administration, collection and
15 enforcement of the general state sales and use tax imposed
16 pursuant to chapter 144 except as provided in this section. The
17 proceeds of the new tire fee, less four percent of the proceeds,
18 which shall be retained by the department of revenue as
19 collection costs, shall be transferred by the department of
20 revenue into an appropriate subaccount of the solid waste
21 management fund, created pursuant to section 260.330.

22 4. Up to five percent of the revenue available may be
23 allocated, upon appropriation, to the department of natural
24 resources to be used cooperatively with the department of
25 elementary and secondary education for the purposes of developing
26 environmental educational materials, programs, and curriculum
27 that assist in the department's implementation of sections
28 260.200 to 260.345.

1 5. Up to fifty percent of the moneys received pursuant to
2 this section may, upon appropriation, be used to administer the
3 programs imposed by this section. Up to forty-five percent of
4 the moneys received under this section may, upon appropriation,
5 be used for the grants authorized in subdivision (2) of
6 subsection 6 of this section. All remaining moneys shall be
7 allocated, upon appropriation, for the projects authorized in
8 section 260.276, except that any unencumbered moneys may be used
9 for public health, environmental, and safety projects in response
10 to environmental or public health emergencies and threats as
11 determined by the director.

12 6. The department shall promulgate, by rule, a statewide
13 plan for the use of moneys received pursuant to this section to
14 accomplish the following:

15 (1) Removal of waste tires from illegal tire dumps;

16 (2) Providing grants to persons that will use products
17 derived from waste tires, or used waste tires as a fuel or fuel
18 supplement; and

19 (3) Resource recovery activities conducted by the
20 department pursuant to section 260.276.

21 7. The fee imposed in subsection 2 of this section shall
22 begin the first day of the month which falls at least thirty days
23 but no more than sixty days immediately following August 28,
24 2005, and shall terminate January 1, ~~[2015]~~ 2020.

25 643.055. 1. Other provisions of law notwithstanding, the
26 Missouri air conservation commission shall have the authority to
27 promulgate rules and regulations, pursuant to chapter 536, to
28 establish standards and guidelines to ensure that the state of

1 Missouri is in compliance with the provisions of the federal
2 Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.). The
3 standards and guidelines so established shall not be any stricter
4 than those required under the provisions of the federal Clean Air
5 Act, as amended; nor shall those standards and guidelines be
6 enforced in any area of the state prior to the time required by
7 the federal Clean Air Act, as amended. The restrictions of this
8 section shall not apply to the parts of a state implementation
9 plan developed by the commission to bring a nonattainment area
10 into compliance and to maintain compliance when needed to have a
11 United States Environmental Protection Agency approved state
12 implementation plan. The determination of which parts of a state
13 implementation plan are not subject to the restrictions of this
14 section shall be based upon specific findings of fact by the air
15 conservation commission as to the rules, regulations and criteria
16 that are needed to have a United States Environmental Protection
17 Agency approved plan.

18 2. The Missouri air conservation commission shall also have
19 the authority to grant exceptions and variances from the rules
20 set under subsection 1 of this section when the person applying
21 for the exception or variance can show that compliance with such
22 rules:

- 23 (1) Would cause economic hardship; or
- 24 (2) Is physically impossible; or
- 25 (3) Is more detrimental to the environment than the
26 variance would be; or
- 27 (4) Is impractical or of insignificant value under the
28 existing conditions.

1 3. The department shall not regulate the manufacture,
2 performance, or use of residential wood burning heaters or
3 appliances through a state implementation plan or otherwise,
4 unless first specifically authorized to do so by the general
5 assembly. No rule or regulation respecting the establishment or
6 the enforcement of performance standards for residential wood
7 burning heaters or appliances shall become effective unless and
8 until first approved by the joint committee on administrative
9 rules.

10 4. New rules or regulations shall not be applied to
11 existing wood burning furnaces, stoves, fireplaces, or heaters
12 that individuals are currently using as their source of heat for
13 their homes or businesses. All wood burning furnaces, stoves,
14 fireplaces, and heaters existing on August 28, 2014 shall not be
15 subject to any rules or regulations enacted after such date. No
16 employee of the state or a state agency shall enforce any new
17 rules or regulations against such existing wood burning furnaces,
18 stoves, fireplaces, and heaters.

19 643.640. 1. The commission shall develop emission
20 standards under 42 U.S.C. Section 7411(d) and 40 CFR 60.24
21 through a unit-by-unit analysis of each existing affected source
22 of carbon dioxide within the state. As used in this section,
23 "unit-by-unit analysis" means an analysis of each generation
24 plant individually, regardless of the number of turbines at each
25 plant site.

26 2. The commission shall consider in developing and
27 implementing emission standards for each existing affected source
28 of carbon dioxide, among other factors, the remaining useful life

1 of the existing affected source to which such standard applies,
2 consistent with 42 U.S.C. Section 7411(d).

3 3. The commission shall consider, consistent with its
4 statutory duties to achieve the prevention, abatement, and
5 control of air pollution by all commercially available and
6 economically feasible methods, the overall economic impact from
7 any and all emission standards and compliance schedules developed
8 and implemented under 42 U.S.C. Section 7411(d).

9 4. The commission may develop, on a unit-by-unit basis for
10 individual existing affected sources and emissions of carbon
11 dioxide at these existing affected sources, consistent with 40
12 CFR 60.24(f), emission standards that are less stringent, but not
13 more stringent, than applicable federal emission guidelines or
14 longer compliance schedules than those required by federal
15 regulations. This determination shall be based on:

16 (1) Unreasonable cost of control resulting from plant age,
17 location, or basic process design;

18 (2) Physical impossibility of installing necessary control
19 equipment; or

20 (3) Other factors specific to the existing affected source
21 or class of existing affected sources that make application of a
22 less stringent standard or final compliance time significantly
23 more reasonable including, but not limited to, the absolute cost
24 of applying the emission standard and compliance schedule to the
25 existing affected source; the outstanding debt associated with
26 the existing affected source; the economic impacts of closing the
27 existing affected source, including expected job losses if the
28 existing affected source is unable to comply with the performance

1 standard; and the customer impacts of applying the emission
2 standard and compliance schedule to the existing affected source,
3 including any disproportionate electric rate impacts on low
4 income populations.

5 5. As required by 40 CFR 60.26, the commission has legal
6 authority to carry out any state implementation plan with
7 emission standards and compliance schedules that are developed
8 and implemented consistent with this chapter.

9 6. If any provision of this section or the application
10 thereof to any person or circumstance is held invalid, such
11 invalidity shall not affect other provisions or applications of
12 this section that can be given effect without the invalid
13 provision or application, and to this end the provisions of this
14 section are declared to be severable.

15 644.058. Notwithstanding the provisions of section 644.026
16 to the contrary, in promulgating water quality standards, the
17 commission shall only revise water quality standards upon the
18 completion of an assessment by the department finding that there
19 is an environmental need for such revision. As part of the
20 implementation of any revised water quality standards
21 modifications of twenty-five percent or more, the department
22 shall conduct an evaluation which shall include the environmental
23 and economic impacts of the revised water quality criteria on a
24 subbasin basis. This evaluation shall be conducted at the eight-
25 digit hydrologic unit code level. The department shall document
26 these evaluations and use them in making individual site-specific
27 permit decisions.

28 644.145. 1. When issuing permits under this chapter that

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

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

15 (a) Issuing collection system extension permits;

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

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

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

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

4 (1) "Affordability", with respect to payment of a utility
5 bill, a measure of whether an individual customer or household
6 with an income equal to the lower of the median household income
7 for their community or the state of Missouri can pay the bill
8 without undue hardship or unreasonable sacrifice in the essential
9 lifestyle or spending patterns of the individual or household,
10 taking into consideration the criteria described in subsection 4
11 of this section;

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

15 (3) "Finding of affordability", a department statement as
16 to whether an individual or a household receiving as income an
17 amount equal to the lower of the median household income for the
18 applicant community or the state of Missouri would be required to
19 make unreasonable sacrifices in their essential lifestyle or
20 spending patterns or undergo hardships in order to make the
21 projected monthly payments for sewer services. The department
22 shall make a statement that the proposed changes meet the
23 definition of affordable, or fail to meet the definition of
24 affordable, or are implemented as a federal mandate regardless of
25 affordability.

26 4. The department of natural resources shall adopt
27 procedures by which it will make affordability findings that
28 evaluate the affordability of permit requirements and enforcement

actions described in subsection 1 of this section, and may begin implementing such procedures prior to promulgating implementing regulations. The commission shall have the authority to promulgate rules to implement this section pursuant to chapters 536 and 644, and shall promulgate such rules as soon as practicable. Affordability findings shall be based upon reasonably verifiable data and shall include an assessment of affordability with respect to persons or entities affected. The department shall offer the permittee an opportunity to review a draft affordability finding, and the permittee may suggest changes and provide additional supporting information, subject to subsection 6 of this section. The finding shall be based upon the following criteria:

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

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

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

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

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

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

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

9 [(5)] (6) An assessment of other community investments and
10 operating costs relating to environmental improvements and public
11 health protection;

12 [(6)] (7) An assessment of factors set forth in the United
13 States Environmental Protection Agency's guidance, including but
14 not limited to the "Combined Sewer Overflow Guidance for
15 Financial Capability Assessment and Schedule Development" that
16 may ease the cost burdens of implementing wet weather control
17 plans, including but not limited to small system considerations,
18 the attainability of water quality standards, and the development
19 of wet weather standards; and

20 [(7)] (8) An assessment of any other relevant local
21 community economic condition.

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

1 6. Reasonable time spent preparing draft affordability
2 findings, allowing permittees to review draft affordability
3 findings or draft permits, or revising draft affordability
4 findings, shall be allowed in addition to the department's
5 deadlines for making permitting decisions pursuant to section
6 644.051.

7 7. If the department of natural resources fails to make a
8 finding of affordability where required by this section, then the
9 resulting permit or decision shall be null, void and
10 unenforceable.

11 8. The department of natural resources' findings under this
12 section may be appealed to the commission pursuant to subsection
13 6 of section 644.051.

14 9. The department shall file an annual report by the
15 beginning of the fiscal year with the governor, the speaker of
16 the house of representatives, the president pro tempore of the
17 senate, and the chairs of the committees in both houses having
18 primary jurisdiction over natural resource issues showing at
19 least the following information on the findings of affordability
20 completed in the previous calendar year:

21 (1) The total number of findings of affordability issued by
22 the department, those categorized as affordable, those
23 categorized as not meeting the definition of affordable, and
24 those implemented as a federal mandate regardless of
25 affordability;

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

28 (3) The average increase in sewer rates as a percentage of

1 median house income in the communities for those findings
2 determined to be affordable and a separate calculation of average
3 increases in sewer rates for those found not to meet the
4 definition of affordable;

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

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

10 (b) Projected monthly residential sewer rates as a
11 percentage of median house income;

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

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22 Dan Brown

Rocky Miller