

# SENATE AMENDMENT NO. \_\_\_\_\_

Offered by \_\_\_\_\_ of \_\_\_\_\_

Amend Senate Bill No. 497, Page 4, Section 67.955, Line 11,

by inserting immediately after all of said line the following:

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

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

(a) Issuing collection system extension permits;

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

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

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

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

14 (1) "Affordability", with respect to payment of a utility  
15 bill, a measure of whether an individual customer or household  
16 with an income equal to [the] or lower [of] than the median  
17 household income for their community [or the state of Missouri]  
18 can pay the bill without undue hardship or unreasonable sacrifice  
19 in the essential lifestyle or spending patterns of the individual  
20 or household, taking into consideration the criteria described in  
21 subsection 4 of this section;

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

25 (3) "Finding of affordability", a department statement as  
26 to whether an individual or a household receiving as income an  
27 amount equal to [the] or lower [of] than the median household  
28 income for the applicant community [or the state of Missouri]  
29 would be required to make unreasonable sacrifices in [their] the

1 individual's or the household's essential lifestyle or spending  
2 patterns or undergo hardships in order to make the projected  
3 monthly payments for sewer services. The department shall make a  
4 statement that the proposed changes meet the definition of  
5 affordable, or fail to meet the definition of affordable, or are  
6 implemented as a federal mandate regardless of affordability.

7 4. The department of natural resources shall adopt  
8 procedures by which it will make affordability findings that  
9 evaluate the affordability of permit requirements and enforcement  
10 actions described in subsection 1 of this section, and may begin  
11 implementing such procedures prior to promulgating implementing  
12 regulations. The commission shall have the authority to  
13 promulgate rules to implement this section pursuant to chapters  
14 536 and 644, and shall promulgate such rules as soon as  
15 practicable. Affordability findings shall be based upon  
16 reasonably verifiable data and shall include an assessment of  
17 affordability with respect to persons or entities affected. The  
18 department shall offer the permittee an opportunity to review a  
19 draft affordability finding, and the permittee may suggest  
20 changes and provide additional supporting information, subject to  
21 subsection 6 of this section. The finding shall be based upon  
22 the following criteria:

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

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

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

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

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

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

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

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

20           (7) An assessment of factors set forth in the United States  
21 Environmental Protection Agency's guidance, including but not  
22 limited to the "Combined Sewer Overflow Guidance for Financial  
23 Capability Assessment and Schedule Development" that may ease the  
24 cost burdens of implementing wet weather control plans, including  
25 but not limited to small system considerations, the attainability  
26 of water quality standards, and the development of wet weather  
27 standards; and

28           (8) An assessment of any other relevant local community  
29 economic condition.

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

8           6. Reasonable time spent preparing draft affordability  
9 findings, allowing permittees to review draft affordability  
10 findings or draft permits, or revising draft affordability  
11 findings, shall be allowed in addition to the department's  
12 deadlines for making permitting decisions pursuant to section  
13 644.051.

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

18           8. The department of natural resources' findings under this  
19 section may be appealed to the commission pursuant to subsection  
20 6 of section 644.051.

21           9. The department shall file an annual report by the  
22 beginning of the fiscal year with the governor, the speaker of  
23 the house of representatives, the president pro tempore of the  
24 senate, and the chairs of the committees in both houses having  
25 primary jurisdiction over natural resource issues showing at  
26 least the following information on the findings of affordability  
27 completed in the previous calendar year:

28           (1) The total number of findings of affordability issued by  
29 the department, those categorized as affordable, those

1 categorized as not meeting the definition of affordable, and  
2 those implemented as a federal mandate regardless of  
3 affordability;

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

6 (3) The average increase in sewer rates as a percentage of  
7 median house income in the communities for those findings  
8 determined to be affordable and a separate calculation of average  
9 increases in sewer rates for those found not to meet the  
10 definition of affordable;

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

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

16 (b) Projected monthly residential sewer rates as a  
17 percentage of median [house] household income;

18 (c) Percentage of households at or below the state poverty  
19 rate."; and

20 Further amend the title and enacting clause accordingly.