

SECOND REGULAR SESSION

# SENATE BILL NO. 994

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BERNSKOETTER.

Read 1st time February 11, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5132S.02I

## AN ACT

To repeal sections 266.355, 643.050, 643.079, and 643.245, RSMo, and to enact in lieu thereof three new sections relating to anhydrous ammonia.

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

Section A. Sections 266.355, 643.050, 643.079, and 643.245, RSMo, are  
2 repealed and three new sections enacted in lieu thereof, to be known as sections  
3 643.050, 643.079, and 643.245, to read as follows:

643.050. 1. In addition to any other powers vested in it by law the  
2 commission shall have the following powers:

3 (1) Adopt, promulgate, amend and repeal rules and regulations consistent  
4 with the general intent and purposes of sections 643.010 to 643.355, chapter 536,  
5 [and] Titles V and VI of the federal Clean Air Act, as amended, 42 U.S.C. 7661,  
6 et seq., **and 42 U.S.C. 7412(r) for covered processes of agricultural**  
7 **stationary sources that use, store, or sell anhydrous ammonia**, including  
8 but not limited to:

9 (a) Regulation of use of equipment known to be a source of air  
10 contamination;

11 (b) Establishment of maximum quantities of air contaminants that may  
12 be emitted from any air contaminant source; [and]

13 (c) Regulations necessary to enforce the provisions of Title VI of the Clean  
14 Air Act, as amended, 42 U.S.C. 7671, et seq., regarding any Class I or Class II  
15 substances as defined therein; **and**

16 (d) **Regulations necessary to implement and enforce the risk**  
17 **management plans under 42 U.S.C. 7412(r) for agricultural facilities**  
18 **that use, store, or sell anhydrous ammonia;**

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

19 (2) After holding public hearings in accordance with section 643.070,  
20 establish areas of the state and prescribe air quality standards for such areas  
21 giving due recognition to variations, if any, in the characteristics of different  
22 areas of the state which may be deemed by the commission to be relevant;

23 (3) (a) To require persons engaged in operations which result in air  
24 pollution to monitor or test emissions and to file reports containing information  
25 relating to rate, period of emission and composition of effluent;

26 (b) Require submission to the director for approval of plans and  
27 specifications for any article, machine, equipment, device, or other contrivance  
28 specified by regulation the use of which may cause or control the issuance of air  
29 contaminants; but any person responsible for complying with the standards  
30 established under sections 643.010 to 643.355 shall determine, unless found by  
31 the director to be inadequate, the means, methods, processes, equipment and  
32 operation to meet the established standards;

33 (4) Hold hearings upon appeals from orders of the director or from any  
34 other actions or determinations of the director hereunder for which provision is  
35 made for appeal, and in connection therewith, issue subpoenas requiring the  
36 attendance of witnesses and the production of evidence reasonably relating to the  
37 hearing;

38 (5) Enter such order or determination as may be necessary to effectuate  
39 the purposes of sections 643.010 to 643.355. In making its orders and  
40 determinations hereunder, the commission shall exercise a sound discretion in  
41 weighing the equities involved and the advantages and disadvantages to the  
42 person involved and to those affected by air contaminants emitted by such person  
43 as set out in section 643.030. If any small business, as defined by section  
44 643.020, requests information on what would constitute compliance with the  
45 requirements of sections 643.010 to 643.355 or any order or determination of the  
46 department or commission, the department shall respond with written criteria to  
47 inform the small business of the actions necessary for compliance. No  
48 enforcement action shall be undertaken by the department or commission until  
49 the small business has had a period of time, negotiated with the department, to  
50 achieve compliance;

51 (6) Cause to be instituted in a court of competent jurisdiction legal  
52 proceedings to compel compliance with any final order or determination entered  
53 by the commission or the director;

54 (7) Settle or compromise in its discretion, as it may deem advantageous

55 to the state, any suit for recovery of any penalty or for compelling compliance  
56 with the provisions of any rule;

57 (8) Develop such facts and make such investigations as are consistent  
58 with the purposes of sections 643.010 to 643.355, and, in connection therewith,  
59 to enter or authorize any representative of the department to enter at all  
60 reasonable times and upon reasonable notice in or upon any private or public  
61 property for the purpose of inspecting or investigating any condition which the  
62 commission or director shall have probable cause to believe to be an air  
63 contaminant source or upon any private or public property having material  
64 information relevant to said air contaminant source. The results of any such  
65 investigation shall be reduced to writing, and a copy thereof shall be furnished  
66 to the owner or operator of the property. No person shall refuse entry or access,  
67 requested for purposes of inspection under this provision, to an authorized  
68 representative of the department who presents appropriate credentials, nor  
69 obstruct or hamper the representative in carrying out the inspection. A suitably  
70 restricted search warrant, upon a showing of probable cause in writing and upon  
71 oath, shall be issued by any judge having jurisdiction to any such representative  
72 for the purpose of enabling him to make such inspection;

73 (9) Secure necessary scientific, technical, administrative and operational  
74 services, including laboratory facilities, by contract or otherwise, with any  
75 educational institution, experiment station, or any board, department, or other  
76 agency of any political subdivision or state or the federal government;

77 (10) Classify and identify air contaminants; and

78 (11) Hold public hearings as required by sections 643.010 to 643.355.

79 2. No rule or portion of a rule promulgated under the authority of this  
80 chapter shall become effective unless it has been promulgated pursuant to the  
81 provisions of section 536.024.

82 3. The commission shall have the following duties with respect to the  
83 prevention, abatement and control of air pollution:

84 (1) Prepare and develop a general comprehensive plan for the prevention,  
85 abatement and control of air pollution;

86 (2) Encourage voluntary cooperation by persons or affected groups to  
87 achieve the purposes of sections 643.010 to 643.355;

88 (3) Encourage political subdivisions to handle air pollution problems  
89 within their respective jurisdictions to the extent possible and practicable and  
90 provide assistance to political subdivisions;

- 91 (4) Encourage and conduct studies, investigations and research;  
92 (5) Collect and disseminate information and conduct education and  
93 training programs;  
94 (6) Advise, consult and cooperate with other agencies of the state, political  
95 subdivisions, industries, other states and the federal government, and with  
96 interested persons or groups;  
97 (7) Represent the state of Missouri in all matters pertaining to interstate  
98 air pollution including the negotiations of interstate compacts or agreements.

99 4. Nothing contained in sections 643.010 to 643.355 shall be deemed to  
100 grant to the commission or department any jurisdiction or authority with respect  
101 to air pollution existing solely within commercial and industrial plants, works,  
102 or shops or to affect any aspect of employer-employee relationships as to health  
103 and safety hazards.

104 5. Any information relating to secret processes or methods of manufacture  
105 or production discovered through any communication required under this section  
106 shall be kept confidential.

643.079. 1. Any air contaminant source required to obtain a permit  
2 issued under sections 643.010 to 643.355 shall pay annually beginning April 1,  
3 1993, a fee as provided herein. For the first year the fee shall be twenty-five  
4 dollars per ton of each regulated air contaminant emitted. Thereafter, the fee  
5 shall be set every three years by the commission by rule and shall be at least  
6 twenty-five dollars per ton of regulated air contaminant emitted but not more  
7 than forty dollars per ton of regulated air contaminant emitted in the previous  
8 calendar year. If necessary, the commission may make annual adjustments to the  
9 fee by rule. The fee shall be set at an amount consistent with the need to fund  
10 the reasonable cost of administering sections 643.010 to 643.355, taking into  
11 account other moneys received pursuant to sections 643.010 to 643.355. For the  
12 purpose of determining the amount of air contaminant emissions on which the  
13 fees authorized under this section are assessed, a facility shall be considered one  
14 source under the definition of subsection 2 of section 643.078, except that a  
15 facility with multiple operating permits shall pay the emission fees authorized  
16 under this section separately for air contaminants emitted under each individual  
17 permit.

18 2. A source which produces charcoal from wood shall pay an annual  
19 emission fee under this subsection in lieu of the fee established in subsection 1  
20 of this section. The fee shall be based upon a maximum fee of twenty-five dollars

21 per ton and applied upon each ton of regulated air contaminant emitted for the  
22 first four thousand tons of each contaminant emitted in the amount established  
23 by the commission pursuant to subsection 1 of this section, reduced according to  
24 the following schedule:

25 (1) For fees payable under this subsection in the years 1993 and 1994, the  
26 fee shall be reduced by one hundred percent;

27 (2) For fees payable under this subsection in the years 1995, 1996 and  
28 1997, the fee shall be reduced by eighty percent;

29 (3) For fees payable under this subsection in the years 1998, 1999 and  
30 2000, the fee shall be reduced by sixty percent.

31 3. The fees imposed in subsection 2 of this section shall not be imposed  
32 or collected after the year 2000 unless the general assembly reimposes the fee.

33 4. Each air contaminant source with a permit issued under sections  
34 643.010 to 643.355 shall pay the fee for the first four thousand tons of each  
35 regulated air contaminant emitted each year but no air contaminant source shall  
36 pay fees on total emissions of regulated air contaminants in excess of twelve  
37 thousand tons in any calendar year. A permitted air contaminant source which  
38 emitted less than one ton of all regulated pollutants shall pay a fee equal to the  
39 amount per ton set by the commission. An air contaminant source which pays  
40 emission fees to a holder of a certificate of authority issued pursuant to section  
41 643.140 may deduct such fees from any amount due under this section. The fees  
42 imposed in this section shall not be applied to carbon oxide emissions. The fees  
43 imposed in subsection 1 and this subsection shall not be applied to sulfur dioxide  
44 emissions from any Phase I affected unit subject to the requirements of Title IV,  
45 Section 404, of the federal Clean Air Act, as amended, 42 U.S.C. Section 7651, et  
46 seq., any sooner than January 1, 2000. The fees imposed on emissions from  
47 Phase I affected units shall be consistent with and shall not exceed the provisions  
48 of the federal Clean Air Act, as amended, and the regulations promulgated  
49 thereunder. Any such fee on emissions from any Phase I affected unit shall be  
50 reduced by the amount of the service fee paid by that Phase I affected unit  
51 pursuant to subsection 8 of this section in that year. Any fees that may be  
52 imposed on Phase I sources shall follow the procedures set forth in subsection 1  
53 and this subsection and shall not be applied retroactively.

54 5. Moneys collected under this section shall be transmitted to the director  
55 of revenue for deposit in appropriate subaccounts of the natural resources  
56 protection fund created in section 640.220. A subaccount shall be maintained for

57 fees paid by air contaminant sources which are required to be permitted under  
58 Title V of the federal Clean Air Act, as amended, 42 U.S.C. Section 7661, et seq.,  
59 and used, upon appropriation, to fund activities by the department to implement  
60 the operating permits program authorized by Title V of the federal Clean Air Act,  
61 as amended. Another subaccount shall be maintained for fees paid by air  
62 contaminant sources which are not required to be permitted under Title V of the  
63 federal Clean Air Act as amended, and used, upon appropriation, to fund other  
64 air pollution control program activities. Another subaccount shall be maintained  
65 for service fees paid under subsection 8 of this section by Phase I affected units  
66 which are subject to the requirements of Title IV, Section 404, of the federal  
67 Clean Air Act Amendments of 1990, as amended, 42 U.S.C. Section 7651, and  
68 used, upon appropriation, to fund air pollution control program activities. The  
69 provisions of section 33.080 to the contrary notwithstanding, moneys in the fund  
70 shall not revert to general revenue at the end of each biennium. Interest earned  
71 by moneys in the subaccounts shall be retained in the subaccounts. The per-ton  
72 fees established under subsection 1 of this section may be adjusted annually,  
73 consistent with the need to fund the reasonable costs of the program, but shall  
74 not be less than twenty-five dollars per ton of regulated air contaminant nor more  
75 than forty dollars per ton of regulated air contaminant. The first adjustment  
76 shall apply to moneys payable on April 1, 1994, and shall be based upon the  
77 general price level for the twelve-month period ending on August thirty-first of  
78 the previous calendar year.

79           6. The department may initiate a civil action in circuit court against any  
80 air contaminant source which has not remitted the appropriate fees within thirty  
81 days. In any judgment against the source, the department shall be awarded  
82 interest at a rate determined pursuant to section 408.030 and reasonable  
83 attorney's fees. In any judgment against the department, the source shall be  
84 awarded reasonable attorney's fees.

85           7. The department shall not suspend or revoke a permit for an air  
86 contaminant source solely because the source has not submitted the fees pursuant  
87 to this section.

88           8. Any Phase I affected unit which is subject to the requirements of Title  
89 IV, Section 404, of the federal Clean Air Act, as amended, 42 U.S.C. Section 7651,  
90 shall pay annually beginning April 1, 1993, and terminating December 31, 1999,  
91 a service fee for the previous calendar year as provided herein. For the first year,  
92 the service fee shall be twenty-five thousand dollars for each Phase I affected

93 generating unit to help fund the administration of sections 643.010 to  
94 643.355. Thereafter, the service fee shall be annually set by the commission by  
95 rule, following public hearing, based on an annual allocation prepared by the  
96 department showing the details of all costs and expenses upon which such fees  
97 are based consistent with the department's reasonable needs to administer and  
98 implement sections 643.010 to 643.355 and to fulfill its responsibilities with  
99 respect to Phase I affected units, but such service fee shall not exceed twenty-five  
100 thousand dollars per generating unit. Any such Phase I affected unit which is  
101 located on one or more contiguous tracts of land with any Phase II generating  
102 unit that pays fees under subsection 1 or subsection 2 of this section shall be  
103 exempt from paying service fees under this subsection. A "contiguous tract of  
104 land" shall be defined to mean adjacent land, excluding public roads, highways  
105 and railroads, which is under the control of or owned by the permit holder and  
106 operated as a single enterprise.

107       9. The department of natural resources shall determine the fees due  
108 pursuant to this section by the state of Missouri and its departments, agencies  
109 and institutions, including two- and four-year institutions of higher  
110 education. The director of the department of natural resources shall forward the  
111 various totals due to the joint committee on capital improvements and the  
112 directors of the individual departments, agencies and institutions. The  
113 departments, as part of the budget process, shall annually request by specific line  
114 item appropriation funds to pay said fees and capital funding for projects  
115 determined to significantly improve air quality. If the general assembly fails to  
116 appropriate funds for emissions fees as specifically requested, the departments,  
117 agencies and institutions shall pay said fees from other sources of revenue or  
118 funds available. The state of Missouri and its departments, agencies and  
119 institutions may receive assistance from the small business technical assistance  
120 program established pursuant to section 643.173.

121       10. **Each retail agricultural facility that uses, stores, or sells**  
122 **anhydrous ammonia that is an air contaminant source subject to the**  
123 **risk management plan under 42 U.S.C. 7412(r) shall pay an annual**  
124 **registration fee of two hundred dollars. In addition, each retail**  
125 **agricultural facility that uses, stores, or sells anhydrous ammonia shall**  
126 **pay an annual tonnage fee calculated on the number of tons of**  
127 **anhydrous ammonia sold. The initial retail tonnage fee is set at one**  
128 **dollar and twenty-five cents per ton of anhydrous ammonia used or**

129 **sold. Each distributor or terminal agricultural facility that uses, stores,**  
130 **or sells anhydrous ammonia that is an air contaminant source subject**  
131 **to the risk management plan program 3 under 40 CFR Part 68 shall pay**  
132 **an annual registration fee of five thousand dollars and shall not pay a**  
133 **tonnage fee. The annual registration fees and tonnage fee may be**  
134 **periodically revised pursuant to subsection 11 of this section. However,**  
135 **the fees collected shall be used exclusively for the purposes of**  
136 **administering the provisions of 42 U.S.C. 7412(r) for such agricultural**  
137 **facilities. Fees paid by agricultural air contaminant sources that use,**  
138 **store, or sell anhydrous ammonia for the purposes of implementing the**  
139 **requirements of 42 U.S.C. 7412(r) shall be deposited into the anhydrous**  
140 **ammonia risk management plan subaccount within the natural**  
141 **resources protection fund created in section 643.245. If the funding**  
142 **exceeds the reasonable costs to administer the programs as set forth in**  
143 **this section, the department of natural resources shall reduce fees for**  
144 **all registrants if the fees derived exceed the reasonable cost of**  
145 **administering the risk management plan under 42 U.S.C. 7412(r).**

146       11. Notwithstanding any statutory fee amounts or maximums to the  
147 contrary, the department of natural resources may conduct a comprehensive  
148 review and propose changes to the fee structure authorized by sections 643.073,  
149 643.075, 643.079, 643.225, 643.228, 643.232, 643.237, and 643.242 after holding  
150 stakeholder meetings in order to solicit stakeholder input from each of the  
151 following groups: the asbestos industry, electric utilities, mineral and metallic  
152 mining and processing facilities, cement kiln representatives, and any other  
153 interested industrial or business entities or interested parties. The department  
154 shall submit a proposed fee structure with stakeholder agreement to the air  
155 conservation commission. The commission shall review such recommendations  
156 at the forthcoming regular or special meeting, but shall not vote on the fee  
157 structure until a subsequent meeting. If the commission approves, by vote of  
158 two-thirds majority or five of seven commissioners, the fee structure  
159 recommendations, the commission shall authorize the department to file a notice  
160 of proposed rulemaking containing the recommended fee structure, and after  
161 considering public comments, may authorize the department to file the order of  
162 rulemaking for such rule with the joint committee on administrative rules  
163 pursuant to sections 536.021 and 536.024 no later than December first of the  
164 same year. If such rules are not disapproved by the general assembly in the



165 manner set out below, they shall take effect on January first of the following  
166 calendar year and the previous fee structure shall expire upon the effective date  
167 of the commission-adopted fee structure. Any regulation promulgated under this  
168 subsection shall be deemed to be beyond the scope and authority provided in this  
169 subsection, or detrimental to permit applicants, if the general assembly, within  
170 the first sixty calendar days of the regular session immediately following the  
171 filing of such regulation, by concurrent resolution disapproves the regulation by  
172 concurrent resolution. If the general assembly so disapproves any regulation filed  
173 under this subsection, the commission shall continue to use the previous fee  
174 structure. The authority of the commission to further revise the fee structure as  
175 provided by this subsection shall expire on August 28, 2024.

643.245. 1. All moneys received pursuant to sections 643.225 to 643.245  
2 and any other moneys so designated shall be placed in the state treasury and  
3 credited to the "Natural Resources Protection Fund — Air Pollution Asbestos Fee  
4 Subaccount", which is hereby created. Such moneys received pursuant to sections  
5 643.225 to 643.245 shall, subject to appropriation, be used solely for the purpose  
6 of administering this chapter. Any unexpended balance in such fund at the end  
7 of any appropriation period shall not be transferred to the general revenue fund  
8 of the state treasury and shall be exempt from the provisions of section 33.080.

9 **2. All moneys received pursuant to section 643.079 and any other**  
10 **moneys so designated shall be placed in the "Natural Resources**  
11 **Protection Fund - Anhydrous Ammonia Risk Management Plan**  
12 **Subaccount", which is hereby created. Such moneys received pursuant**  
13 **to section 643.079 shall, subject to appropriation, be used solely for the**  
14 **purpose of administering the provisions of section 643.079. Any**  
15 **unexpended balance in such fund at the end of any appropriation**  
16 **period shall not be transferred to the general revenue fund of the state**  
17 **treasury and shall be exempt from the provisions of section 33.080.**

18 **3.** The state treasurer, with the approval of the board of fund  
19 commissioners, is authorized to deposit all of the moneys in any of the qualified  
20 state depositories. All such deposits shall be secured in such manner and shall  
21 be made upon such terms and conditions as are now and may hereafter be  
22 approved by law relative to state deposits. Any interest received on such deposits  
23 shall be credited to the natural resources protection fund — air pollution asbestos  
24 fee subaccount.

[266.355. Unless provided for by federal law, rule or

2 regulation, the director of the department of agriculture shall  
3 promulgate, pursuant to chapter 536, and enforce regulations  
4 setting forth minimum general standards covering the design,  
5 construction, location, installation, and operation of equipment for  
6 storing, handling, transporting by tank truck, tank trailer, tank car  
7 and utilizing anhydrous ammonia. The provisions of this section  
8 shall not apply to equipment which is in use for storing anhydrous  
9 ammonia as of August 28, 2010, and which is found by the  
10 department to be in substantial compliance with generally accepted  
11 standards of safety regarding life and property. The department  
12 shall adopt the minimum general safety standards for the storage  
13 and handling of anhydrous ammonia set forth in ANSI Standard  
14 K61.1-1999, Safety Requirements for the Storage and Handling of  
15 Anhydrous Ammonia; except that, ANSI Standard K61.1-1999 shall  
16 not be adopted by the department prior to December 1, 2012. For  
17 purposes of this section, "ANSI" means the American National  
18 Standards Institute.]

Bill ✓

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