

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 782
AN ACT

To amend chapter 640, RSMo, by adding thereto one new section relating to water exportation across state boundaries.

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

Section A. Chapter 640, RSMo, is amended by adding thereto
2 one new section, to be known as section 640.406, to read as
3 follows:

640.406. 1. For the purposes of this section, the
2 following terms mean:

3 (1) "Beneficial uses", water uses, which include but
4 are not limited to domestic, agricultural, industrial, and
5 other legitimate beneficial uses;

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

8 (3) "Director", the director of the department of
9 natural resources;

10 (4) "Person", any individual, partnership,
11 copartnership, firm, company, public or private corporation,
12 association, joint stock company, trust, estate, political
13 subdivision, water district, or any agency, board,
14 department, or bureau of the federal or any state
15 government, or any other legal entity which is recognized by
16 law as the subject of rights and duties;

17 (5) "Water resources", any Missouri water source
18 occurring on the surface, in natural or artificial channels,

19 lakes, reservoirs, or impoundments, and in subsurface
20 aquifers which are available or which may be made available.

21 2. In order to protect the access, use, and enjoyment
22 of Missouri's water resources, it shall be unlawful for any
23 person to withdraw water from any water source for export
24 outside the state of Missouri unless such person holds a
25 water exportation permit issued by the department. A water
26 exportation permit shall not be required to withdraw water
27 from any water source for export outside of the state by a
28 public water system, as defined in section 640.102, where
29 the withdrawal and ultimate end use are within the same six-
30 digit hydrological unit code as defined by the United States
31 Geological Survey and within twenty miles of the state
32 border.

33 3. During the review process of any permit required by
34 this section, the director shall determine from the
35 application for a water exportation permit and any
36 supporting materials whether the following conditions have
37 been met:

38 (1) There is water available in the amount specified
39 in the application to export for water use outside the state
40 of Missouri;

41 (2) The applicant has a present need for the water and
42 intends to put the water into beneficial use. In making the
43 determinations of need and beneficial use, the director
44 shall consider the availability of all water sources and
45 other relevant matters as the director deems appropriate,
46 and may consider the availability of groundwater as an
47 alternative source;

48 (3) The proposed use will not interfere with existing
49 in-state uses;

50 (4) The proposed use will not interfere with proposed
51 beneficial uses within the state, including recreational

52 use. In making this determination, the director shall
53 conduct a review pursuant to subsection 5 of this section;

54 (5) The water subject to the permit applications could
55 feasibly be transported to alleviate water shortages in the
56 state.

57 4. Within one hundred eighty days after the
58 department's receipt of a complete application, the director
59 shall issue a proposed decision to either approve the
60 application if the conditions in subsection 3 of this
61 section have been met or deny the application if the
62 conditions in subsection 3 of this section have not been met
63 and shall hold a thirty-day public comment period on the
64 proposed approval or denial. After the comment period, the
65 department shall respond to comments received and shall
66 either approve the application or deny the application if
67 the conditions in subsection 3 of this section have not been
68 met. If the department approves the application, it shall
69 send its findings to the Missouri soil and water districts
70 commission for review. At the next scheduled meeting, the
71 Missouri soil and water districts commission shall review
72 the department's findings. If the Missouri soil and water
73 districts commission agrees with the department's decision
74 that a permit should be issued, the commission shall send
75 its decision back to the department for the issuance of the
76 permit. If the commission disagrees with the department's
77 decision for the issuance of the permit, the commission
78 shall send its decision back to the department and the
79 department shall deny the application. Any permit issued
80 pursuant to this section shall state the time within which
81 the water shall be applied to beneficial use. Permits
82 issued pursuant to this section shall be issued for a period
83 not to exceed three years after the date of issuance.

84 (1) In the absence of appeal as provided under chapter
85 536, the decision of the director subject to approval or
86 disapproval of the Missouri soil and water districts
87 commission shall be final.

88 (2) Applications for renewal of a water export permit
89 shall be filed at least one hundred eighty days prior to the
90 expiration date of the existing permit, and the director
91 shall determine whether the conditions in subsection 3 of
92 this section are still satisfied. The director's decision
93 to renew the permit shall be subject to the Missouri soil
94 and water districts commission's review and approval or
95 denial pursuant to this subsection.

96 5. (1) Before granting water supply for access and
97 use outside the state of Missouri, the director shall
98 consider existing and proposed in-state uses in order to
99 guarantee that in-state users will have access to and use of
100 all of the water required to adequately supply for
101 beneficial uses.

102 (2) The director shall review the needs for water
103 supply export every three years to determine whether the
104 water supply continues to be adequate for municipal,
105 agricultural, industrial, domestic, and other beneficial
106 uses within the state.

107 6. Subsections 3 to 5 of this section are subject to
108 the most recent reports, data, and information in
109 consideration of each permit application, whether the
110 application is for an initial permit or renewal of an active
111 or expired permit.

112 7. The review conducted pursuant to subsection 3 of
113 this section shall not be used to reduce the quantity of
114 water authorized to be transferred pursuant to the active
115 life of permits issued prior to such review.

116 8. On the filing of an application to export water
117 outside the state, the applicant shall designate an agent in
118 the state of Missouri for service of process and to receive
119 other notices.

120 9. In the event of a conflict between the conditions
121 of use required in Missouri and conditions required in
122 another state, the water permit holder shall consent to
123 conditions imposed by the director.

124 10. A major water user, as defined in section 256.400,
125 may, at any time, request the director to reevaluate any
126 existing water exportation permit using the criteria under
127 subsections 3 and 5 of this section. The director shall
128 create a mechanism for a major water user to submit to him
129 or her such a request for reevaluation and shall provide to
130 the major water user his or her findings within sixty days
131 of the request for reevaluation. After reevaluating the
132 permit, the director shall impose additional conditions
133 necessary for the continued exportation of water outside the
134 state if the director determines that the existing permit is
135 negatively impacting the requesting major water user's
136 beneficial use of his or her water resources. The
137 director's decision to modify or to decline to modify the
138 conditions in an existing permit pursuant to this subsection
139 shall be subject to the Missouri soil and water districts
140 commission's review and approval or denial pursuant to
141 subsection 4 of this section.

142 11. Nothing in this section shall preclude a major
143 water user, as defined in section 256.400, from bringing any
144 constitutional, statutory, or common law claim to vindicate
145 or otherwise defend the user's water rights. A permit
146 issued under this section shall not serve as a defense to
147 any claim brought against a water permit holder for the
148 infringement of water rights.

149 12. The time-limited, active life of the permit, not
150 to exceed three years, requires the director to determine
151 whether there has been a substantial or material change
152 relating to any matters set forth in subsections 3 to 5 of
153 this section in response to renewal applications requesting
154 a permit for authorization of the continued export of water
155 outside the state. The director may impose additional
156 conditions to address any such substantial or material
157 change or may deny the permit renewal application as
158 necessary to comply with this section based on any such
159 substantial or material changes. The director's decision to
160 renew the permit shall be subject to the requirements of
161 subsection 4 of this section.

162 13. At the request of the department, the attorney
163 general may bring an injunctive action or other appropriate
164 action in the name of the people of the state to enforce
165 provisions of this section. Suit may be brought in any
166 county where the defendant's principal place of business is
167 located or where the withdrawal of water occurred in
168 violation of this section.

169 14. Whenever a person applies for a water exportation
170 permit, the department of natural resources shall send a
171 written notice to the county commissioner of the county
172 where the water for exportation is located.