

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 82

103RD GENERAL ASSEMBLY

0251S.03C

KRISTINA MARTIN, Secretary

AN ACT

To amend chapter 640, RSMo, by adding thereto two new sections relating to water resources.

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 two new sections, to be known as sections 640.406 and 640.408,
3 to read as follows:

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

3 (1) "Applicant", any person applying for a water
4 exportation permit;

5 (2) "Beneficial uses", water uses, which include but
6 are not limited to domestic, agricultural, industrial,
7 recreational, and other legitimate beneficial uses;

8 (3) "Commission", the Missouri water resources
9 commission as established in section 640.408;

10 (4) "Department", the Missouri department of natural
11 resources;

12 (5) "Director", the director of the department of
13 natural resources;

14 (6) "End use", the final location for which the
15 exported water will be used, consumed, or applied for a
16 stated beneficial use;

17 (7) "Person", any individual, partnership,
18 copartnership, firm, company, public or private corporation,

19 association, joint stock company, trust, estate, political
20 subdivision, water district, or any agency, board,
21 department, or bureau of the federal or any state
22 government, or any other legal entity which is recognized by
23 law as the subject of rights and duties;

24 (8) "Water exportation permit", a permit issued by the
25 department, approved by the commission, granting the
26 exportation of water outside the state of Missouri subject
27 to the provisions of this section;

28 (9) "Water resources", any Missouri water source
29 occurring on the surface, in natural or artificial channels,
30 lakes, reservoirs, or impoundments, and in subsurface
31 aquifers which are available or which may be made available.

32 2. In order to protect the access, use, and enjoyment
33 of Missouri's water resources, it shall be unlawful for any
34 person to export water resources outside the state of
35 Missouri unless such person holds a water exportation permit
36 issued by the department, subject to the following
37 exemptions:

38 (1) If the withdrawal and end use of water resources
39 are within thirty miles of the border of the state, any
40 person exempt under the provision of this section shall
41 report to the director annually the person's water use
42 volumes and withdrawal rates in a format and timeline
43 determined by the director. Such report shall also be
44 provided to the commission; and

45 (2) Exportation of bottled water, or water packaged in
46 containers intended for single use.

47 3. The director shall review each water exportation
48 permit application and all supporting materials to ensure
49 all the following conditions have been met prior to

50 accepting a water exportation permit application for public
51 comment and review by the commission:

52 (1) There are water resources available in the volumes
53 and withdrawal rates requested by the applicant for export;

54 (2) The applicant has demonstrated both a present need
55 and beneficial use for the water resources. In making the
56 determination of need and beneficial use, the director shall
57 consider the availability of all water sources, whether in
58 state or out of state, along with other relevant factors as
59 the director and the commission deem appropriate;

60 (3) The volume and withdrawal rates requested by the
61 applicant shall not interfere with existing and projected in-
62 state beneficial uses;

63 (4) The applicant has demonstrated that water in the
64 amounts and rates requested can feasibly be exported to meet
65 its intended beneficial uses;

66 (5) The applicant has provided relevant information
67 and the director and the commission confirmed that issuance
68 of a water exportation permit is necessary for the
69 beneficial use of the applicant or the applicant's
70 customers, and the beneficial use at the end use location is
71 not reasonably attainable through a method other than
72 granting a water exportation permit under this section;

73 (6) In the event of a conflict between the beneficial
74 use outside the state and the beneficial use needs in the
75 state, the director and the commission shall prioritize the
76 beneficial use needs of the state and its citizens over the
77 applicant or other state; and

78 (7) Whenever a person applies for a water exportation
79 permit or water exportation permit renewal, the department
80 of natural resources shall send a written notice within
81 thirty business days after receiving the permit application

82 to the county commission of the county where the water for
83 exportation is located.

84 4. Within one hundred twenty days after the receipt of
85 a complete application, the director shall determine whether
86 the applicant complied with provisions of subsection 3 of
87 this section. The director shall, after making such
88 determination, hold a thirty-day public comment period
89 regarding the director's determination. Within sixty days
90 after the comment period, the director shall recommend
91 approval or denial of the permit. Such recommendation,
92 along with all public comments, shall be submitted to the
93 commission. The commission shall have a public hearing
94 within thirty days after receipt of the director's
95 recommendation. This public hearing may be scheduled during
96 one of the commission's regular quarterly meetings. The
97 commission shall make a final decision to approve or deny
98 the water exportation permit within thirty days after the
99 public hearing. A three-fourths majority of the commission
100 members present shall be required to approve the issuance or
101 renewal of a water exportation permit.

102 (1) To renew a valid water exportation permit, an
103 applicant shall file a renewal application for a water
104 exportation permit with the department no later than two
105 hundred seventy-one days prior to the expiration of the
106 existing water exportation permit. The applicant, director,
107 and the commission shall follow the same procedures and
108 timelines as required for the issuance of a new water
109 exportation permit under this section. The director may
110 impose additional conditions to address any substantial or
111 material change in factors under subsection 3 of this
112 section or may deny a renewal application as necessary to
113 comply with this section based on any such substantial or

material changes in factors under subsection 3 of this section. If the director or the commission are in the process of reviewing the renewal application before the final decision is made and the existing applicant's water exportation permit expires, such applicant shall be able to operate under the terms of the expired water exportation permit until a final decision is made by the commission on the renewal of such permit.

(2) In the absence of an appeal as provided under chapter 536, the decision of the commission shall be final.

5. A water exportation permit shall be in effect for three years from the date of issuance. The permit holder shall annually report the water use volumes and withdrawal rates to the department in a manner and on timelines determined by the department.

6. The water exportation permit application shall include all water exportation requested by the applicant. The water exportation permit may be approved in whole or in part by the director or the commission. This section shall be interpreted to allow one applicant to include multiple water withdrawals for export from various locations within one water exportation permit application.

7. A water exportation permit application shall include a designee or agent in the state of Missouri for service of process and to receive other notices.

8. A major water user, as defined in section 256.400, may request the department to reevaluate any existing water exportation permit using the criteria under subsection 3 of this section. The department shall create a mechanism for a major water user to submit a request for reevaluation and shall provide the major water user with the director's findings within one hundred and twenty days of the request

for reevaluation. After reevaluating the permit, the director shall impose additional conditions necessary for the continued exportation of water outside the state if the director determines that the existing permit is negatively impacting the requesting major water user's beneficial use of his or her water resources. The director's decision to modify or to decline to modify the conditions in an existing permit pursuant to this subsection shall be subject to approval by the Missouri water resources commission.

9. Nothing in this section shall preclude a person from bringing any constitutional, statutory, or common law claim to vindicate or otherwise defend the person's water rights. A permit issued under this section shall not serve as a defense to any claim brought against a water permit holder for the infringement of water rights.

10. If the attorney general receives a complaint that provisions of this section have been violated, or, at the request of the department, the attorney general shall bring an injunctive action or other appropriate action in the name of the people of the state to enforce provisions of this section. Suit may be brought in Cole County, or in any county where the defendant's principal place of business is located or where the withdrawal of water occurred in violation of this section.

11. Whenever a state of emergency is declared by the governor under section 44.100 for all, or any part of the state, based on drought conditions, the department shall reevaluate any existing water exportation permit. Any reevaluation completed under this section shall use the criteria under subsection 3 of this section. After reevaluation of the permit is complete, the department shall have the authority to impose additional conditions or revoke

178 the permit if necessary for the continued exportation of
179 water outside the state if the director determines that the
180 existing permit negatively impacts beneficial use of water
181 resources. The director's decision to modify, revoke, or
182 make no changes to the permit shall be subject to the
183 approval or denial of the Missouri water resources
184 commission.

640.408. 1. There is hereby established the "Missouri
2 Water Resources Commission". The commission shall consist
3 of nine members:

4 (1) The director of the department of natural
5 resources or the director's designee;

6 (2) Two members of the house of representatives
7 appointed by the speaker of the house of representatives,
8 with one of the appointees having substantial agricultural
9 knowledge;

10 (3) Two members of the senate appointed by the
11 president pro tempore of the senate, with one of the
12 appointees having substantial agricultural knowledge;

13 (4) Chief of administration of the southeast Missouri
14 water district established under section 256.643 or the
15 chief's designee;

16 (5) The director of the department of agriculture or
17 the director's designee;

18 (6) The chair of the Missouri clean water commission
19 or the chair's designee;

20 (7) The chair of the Missouri soil and water districts
21 commission or the chair's designee.

22 2. Each member of the Missouri water resources
23 commission shall serve without compensation but shall be
24 reimbursed for actual and necessary expenses incurred in the
25 performance of their official duties.

26 3. Each legislative member of the Missouri water
27 resources commission is entitled to receive the same per
28 diem, mileage, and travel allowances paid to members of the
29 general assembly serving on interim committees. The
30 allowances specified in this subsection shall be paid from
31 the amounts appropriated for that purpose.

32 4. The Missouri water resources commission shall meet
33 at least quarterly to receive general updates by the
34 director of the department of natural resources regarding
35 Missouri water resource availability. They shall, as
36 required by section 640.406, meet in an expeditious manner
37 to fulfill the duties set forth in section 640.406. The
38 commission shall elect a chairman bi-annually and shall have
39 a quorum when at least five members are present.

40 5. No member appointed under subdivision (2) or (3) of
41 subsection 1 of this section shall serve for more than six
42 years total in his or her capacity as a member of the
43 general assembly.

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