

FIRST REGULAR SESSION  
[PERFECTED]  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 82

## 103RD GENERAL ASSEMBLY

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INTRODUCED BY SENATOR BURGER.

0251S.05P

KRISTINA MARTIN, Secretary

### AN ACT

To amend chapter 640, RSMo, by adding thereto one new section relating to water preservation in the state of Missouri.

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*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) "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 state soil and water districts  
9 commission under section 278.080;  
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;

35                   (10) "Water resources", any Missouri water source  
36 occurring on the surface, in natural or artificial channels,  
37 lakes, reservoirs, or impoundments, and in subsurface  
38 aquifers which are available or which may be made available.

39           2. In order to protect the access, use, and enjoyment  
40 of Missouri's water resources, it shall be unlawful for any  
41 person to export water resources outside the state of  
42 Missouri unless such person holds a water exportation permit  
43 issued by the department, subject to the following  
44 exemptions:

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

56           3. It shall be unlawful for any person to withdraw  
57 water from any water resource for exportation outside the  
58 state of Missouri by use of a pipeline facility, unless the  
59 withdrawal and ultimate end use of the water by the pipeline  
60 facility is within thirty miles of the state border. Any  
61 person who withdraws water for exportation under this  
62 subsection shall annually report the water use volumes,  
63 withdrawal rates, and end use to the department in a manner  
64 and on timelines determined by the department.

65           4. The director shall review each water exportation  
66 permit application and all supporting materials to ensure  
67 all the following conditions have been met prior to  
68 accepting a water exportation permit application for public  
69 comment and review by the commission:

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

72 (2) The applicant has demonstrated both a present need  
73 and beneficial use for the water resources. In making the  
74 determination of need and beneficial use, the director shall  
75 consider the availability of all water sources, whether in

76 state or out of state, along with other relevant factors as  
77 the director and the commission deem appropriate;

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

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

84 (5) The applicant has provided relevant information  
85 and the director and the commission confirmed that issuance  
86 of a water exportation permit is necessary for the  
87 beneficial use of the applicant or the applicant's  
88 customers, and the beneficial use at the end use location is  
89 not reasonably attainable through a method other than  
90 granting a water exportation permit under this section;

91 (6) In the event of a conflict between the beneficial  
92 use outside the state and the beneficial use needs in the  
93 state, the director and the commission shall prioritize the  
94 beneficial use needs of the state and its citizens over the  
95 applicant or other state; and

96 (7) Whenever a person applies for a water exportation  
97 permit or water exportation permit renewal, the department  
98 shall send a written notice within thirty business days  
99 after receiving the permit application to the county  
100 commission of the county where the water for exportation is  
101 located.

102 5. Within one hundred twenty days after the receipt of  
103 a complete application, the director shall determine whether  
104 the applicant complied with provisions of subsection 3 of  
105 this section. The director shall, after making such  
106 determination, hold a thirty-day public comment period  
107 regarding the director's determination. Within sixty days

108 after the comment period, the director shall recommend  
109 approval or denial of the permit. Such recommendation,  
110 along with all public comments, shall be submitted to the  
111 commission. The commission shall have a public hearing  
112 within thirty days after receipt of the director's  
113 recommendation. This public hearing may be scheduled during  
114 one of the commission's regular scheduled meetings. The  
115 commission shall make a final decision to approve or deny  
116 the water exportation permit within thirty days after the  
117 public hearing. A three-fourths majority of the commission  
118 members present shall be required to approve the issuance or  
119 renewal of a water exportation permit.

120 (1) To renew a valid water exportation permit, an  
121 applicant shall file a renewal application for a water  
122 exportation permit with the department no later than two  
123 hundred seventy-one days prior to the expiration of the  
124 existing water exportation permit. The applicant, director,  
125 and the commission shall follow the same procedures and  
126 timelines as required for the issuance of a new water  
127 exportation permit under this section. The director may  
128 impose additional conditions to address any substantial or  
129 material change in factors under subsection 3 of this  
130 section or may deny a renewal application as necessary to  
131 comply with this section based on any such substantial or  
132 material changes in factors under subsection 3 of this  
133 section. If the director or the commission are in the  
134 process of reviewing the renewal application before the  
135 final decision is made and the existing applicant's water  
136 exportation permit expires, such applicant shall be able to  
137 operate under the terms of the expired water exportation  
138 permit until a final decision is made by the commission on  
139 the renewal of such permit.

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

142       6. A water exportation permit shall be in effect for  
143 three years from the date of issuance. The permit holder  
144 shall annually report the water use volumes, withdrawal  
145 rates, and end use to the department in a manner and on  
146 timelines determined by the department. Such report shall  
147 be made available to the public on the department's website.

148       7. The water exportation permit application shall  
149 include all water exportation requested by the applicant.  
150 The water exportation permit may be approved in whole or in  
151 part by the director or the commission. This section shall  
152 be interpreted to allow one applicant to include multiple  
153 water withdrawals for exportation from various locations  
154 within one water exportation permit application.

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

158       9. A major water user, as defined in section 256.400,  
159       may request the department to reevaluate any existing water  
160       exportation permit using the criteria under subsection 3 of  
161       this section. The department shall create a mechanism for a  
162       major water user to submit a request for reevaluation and  
163       shall provide the major water user with the director's  
164       findings within one hundred and twenty days of the request  
165       for reevaluation. After reevaluating the permit, the  
166       director shall impose additional conditions necessary for  
167       the continued exportation of water outside the state if the  
168       director determines that the existing permit is negatively  
169       impacting the requesting major water user's beneficial use  
170       of his or her water resources. The director's decision to  
171       modify or to decline to modify the conditions in an existing

172 permit pursuant to this subsection shall be subject to  
173 approval by the commission.

174 10. Nothing in this section shall preclude a person  
175 from bringing any constitutional, statutory, or common law  
176 claim to vindicate or otherwise defend the person's water  
177 rights. A permit issued under this section shall not serve  
178 as a defense to any claim brought against a water permit  
179 holder for the infringement of water rights. In addition,  
180 any person harmed by the issuance of a water exportation  
181 permit may bring an injunctive action or other appropriate  
182 action to enforce the provisions of this section. Suits may  
183 be brought in the county where the defendant's principal  
184 place of business is located or where the withdrawal of  
185 water occurred in violation of this section.

186 11. If the attorney general receives a complaint that  
187 provisions of this section have been violated, or, at the  
188 request of the department, the attorney general shall bring  
189 an injunctive action or other appropriate action in the name  
190 of the people of the state to enforce provisions of this  
191 section. Suit may be brought in Cole County, or in any  
192 county where the defendant's principal place of business is  
193 located or where the withdrawal of water occurred in  
194 violation of this section. Any member of the commission  
195 deemed to have violated any provision of this section shall  
196 forfeit their office upon such finding of a violation.

197 12. Whenever a state of emergency is declared by the  
198 governor under section 44.100 for all or any part of the  
199 state, based on drought conditions, the department shall  
200 reevaluate any existing water exportation permit. Any  
201 reevaluation completed under this section shall use the  
202 criteria under subsection 3 of this section. After  
203 reevaluation of the permit is complete, the department shall

204 have the authority to impose additional conditions or revoke  
205 the permit if necessary for the continued exportation of  
206 water outside the state if the director determines that the  
207 existing permit negatively impacts beneficial use of water  
208 resources. The director's decision to modify, revoke, or  
209 make no changes to the permit shall be subject to the  
210 approval or denial of the commission.

Section B. If any provision of subsection 3 of section  
2 640.406 of this act or the application thereof to anyone or  
3 to any circumstance is held invalid, the remainder of those  
4 sections and the application of such provisions to others or  
5 other circumstances shall not be affected thereby.

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