

FIRST REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 82

103RD GENERAL ASSEMBLY

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.

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;

24 (8) "Pipeline facility", all parts of a facility
25 through which water moves in transportation including, but
26 not limited to, pipe, valves, and other appurtenances
27 connected to pipe, pumping units, fabricated assemblies
28 associated with pumping units, metering, and delivery
29 stations and fabricated assemblies therein, and breakout
30 tanks;

31 (9) "Water exportation permit", a permit issued by the
32 department, approved by the commission, granting the
33 exportation of water outside the state of Missouri subject
34 to the provisions of this section;

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:

45 (1) If the withdrawal and end use of water resources
46 are within thirty miles of the border of the state, any
47 person exempt under the provision of this section shall
48 report to the director annually the person's water use
49 volumes and withdrawal rates in a format and timeline
50 determined by the director. Such report shall be made
51 available to the public by the department on the
52 department's website. Such report shall also be provided to
53 the commission; and

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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