

SECOND REGULAR SESSION

SENATE BILL NO. 543

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODE.

Pre-filed December 1, 1997, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S2103.011

AN ACT

To repeal sections 640.102, 640.115, 640.120, 640.125, 640.130, 644.101, 644.116 and 644.122, RSMo 1994, and sections 640.100 and 644.026, RSMo Supp. 1997, relating to public drinking water, and to enact in lieu thereof sixteen new sections relating to the same subject, with penalty provisions and an emergency clause.

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

Section A. Sections 640.102, 640.115, 640.120, 640.125, 640.130, 644.101, 644.116 and 644.122, RSMo 1994, and sections 640.100 and 644.026, RSMo Supp. 1997, are repealed and sixteen new sections enacted in lieu thereof, to be known as sections 640.100, 640.102, 640.107, 640.115, 640.120, 640.125, 640.130, 640.131, 640.137, 644.018, 644.026, 644.037, 644.042, 644.101, 644.116 and 644.122, to read as follows:

640.100. 1. The safe drinking water commission created in section 640.105 shall promulgate rules necessary for the implementation, administration and enforcement of sections 640.100 to 640.140 **and the federal Safe Drinking Water Act as amended.**

2. No standard, rule or regulation or any amendment or repeal thereof shall be adopted except after a public hearing to be held by the commission after at least thirty days prior notice in the manner prescribed by the rulemaking provisions of chapter 536, RSMo, and an opportunity given to the public to be heard; the commission may solicit the views, in writing, of persons who may be affected by, knowledgeable about, or interested in proposed rules and regulations, or standards. Any person heard or registered at the hearing, or making written request for notice, shall be given written notice of the action of the commission with respect to the subject thereof. No rule or portion of a rule promulgated under the authority of this chapter shall become

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

effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo. **All rulemaking authority delegated prior to the effective date of this section is of no force and effect and repealed; however, nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to the effective date of this section if it fully complied with the provisions of chapter 536, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after the effective date of this section shall be invalid and void.**

3. The commission shall promulgate rules and regulations for the certification of [laboratories and] **public water system operators, backflow prevention assembly testers and laboratories conducting tests pursuant to sections 640.100 to 640.140. Any person seeking to be a certified backflow prevention assembly tester shall satisfactorily complete standard, nationally-recognized written and performance examinations designed to ensure that the person is competent to determine if the assembly is functioning within its design specifications. Any such state certification shall satisfy any need for local certification. The commission shall promulgate rules and regulations** for collection of samples and analysis of water furnished by municipalities, corporations, companies, state establishments, federal establishments or individuals to the public. The department of natural resources or the department of health shall, at the request of any supplier, make any analyses or tests required pursuant to the terms of section 192.320, RSMo, and sections 640.100 to 640.140. The department shall collect fees to cover the reasonable cost of laboratory services, both within the department of natural resources and the department of health, laboratory certification and program administration as required by sections 640.100 to 640.140. The laboratory services and program administration fees pursuant to this subsection shall not exceed two hundred dollars for a supplier supplying less than four thousand one hundred service connections, three hundred dollars for supplying less than seven thousand six hundred service connections, five hundred dollars for supplying seven thousand six hundred or more service connections, and five hundred dollars for testing surface water. Such fees shall be deposited in the safe drinking water fund as specified in section 640.110. The analysis of all drinking water required by section 192.320, RSMo, and sections 640.100 to 640.140 shall be made by the department of natural resources laboratories, department of health laboratories or laboratories certified by the department of natural resources.

4. The department of natural resources shall establish and maintain an inventory of public water supplies and conduct sanitary surveys of public water systems. Such records shall be available for public inspection during regular business hours.

5. (1) For the purpose of complying with federal requirements for maintaining the primacy of state enforcement of the federal Safe Drinking Water Act, the department is hereby directed to request appropriations from the general revenue fund and all other appropriate sources to fund the activities of the public drinking water program and in addition to the fees authorized pursuant to subsection 3 of this section, an annual fee for each customer service connection with a public water system is hereby authorized to be imposed upon all customers of public water systems in this state. The fees collected shall not exceed the amounts specified in this subsection and the commission may set the fees, by rule, in a lower amount by proportionally reducing all fees charged pursuant to this subsection from the specified maximum amounts. Each customer of a public water system shall pay an annual fee for each customer service connection.

(2) The annual fee per customer service connection for unmetered customers and customers with meters not greater than one inch in size, shall be based upon the number of service connections in the water system serving that customer, and shall not exceed:

1 to 1,000 connections	\$2.00
1,001 to 4,000 connections	1.84
4,001 to 7,000 connections	1.67
7,001 to 10,000 connections	1.50
10,001 to 20,000 connections	1.34
20,001 to 35,000 connections	1.17
35,001 to 50,000 connections	1.00
50,001 to 100,000 connections	.84
More than 100,000 connections	.66.

(3) The annual user fee for customers having meters greater than one inch but less than or equal to two inches in size shall not exceed five dollars; for customers with meters greater than two inches but less than or equal to four inches in size shall not exceed twenty-five dollars; and for customers with meters greater than four inches in size shall not exceed fifty dollars.

(4) Customers served by multiple connections shall pay an annual user fee based on the above rates for each connection, except that no single facility served by multiple connections shall pay a total of more than five hundred dollars per year.

6. Fees imposed pursuant to subsection 5 of this section shall become effective on August 28, 1992, and shall be collected by the public water system serving the customer. The commission shall promulgate rules and regulations on the procedures for billing, collection and delinquent payment. Fees collected by a public water system pursuant to subsection 5 of this section are state fees. The annual fee shall be enumerated separately from all other charges, and shall be collected in monthly, quarterly or annual increments. Such fees shall be transferred to the director of the department of revenue at frequencies not less than quarterly. Two percent of the revenue arising from the fees shall be retained by the public water system for the purpose of reimbursing its

expenses for billing and collection of such fees.

7. Imposition and collection of the fees authorized in subsection 5 of this section shall be suspended on the first day of a calendar quarter if, during the preceding calendar quarter, the federally delegated authority granted to the safe drinking water program within the department of natural resources to administer the Safe Drinking Water Act, 42 U.S.C. 300g-2, is withdrawn. The fee shall not be reinstated until the first day of the calendar quarter following the quarter during which such delegated authority is reinstated.

8. Fees imposed pursuant to subsection 5 of this section shall expire on September 1, 2002.

640.102. When used in sections 640.100 to 640.140 and in rules promulgated under authority of sections 640.100 to 640.140, the following words and phrases shall have the meanings ascribed to them in this section:

(1) "Commission", the safe drinking water commission established in section 640.105;

(2) "Conference, conciliation and persuasion", a process of verbal or written communications consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;

[2] **(3)** "Customer", any person who receives water from a public water system, except those persons receiving water for resale;

[3] **(4)** "Director", the director of the department of natural resources;

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

[4] **(6)** "Public water system", a system for the provision to the public of [piped] water for human consumption **through pipes or other constructed conveyances**, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days per calendar year. Such system includes any collection, treatment, storage or distribution facilities used in connection with such system.

640.107. 1. There is hereby established, as a subfund of the water and wastewater fund established in section 644.122, RSMo, the "Drinking Water Revolving Fund", which shall be maintained and accounted for separately, and which shall consist of moneys from all lawful public and private sources including legislative appropriations, federal capitalization grants, interest on investments and principal and interest payments with respect to loans made from the drinking water revolving

fund. Money in the drinking water revolving fund may be used only for purposes as are authorized in the federal Safe Drinking Water Act, as amended.

2. Consistent with the eligibility requirements of the federal Safe Drinking Water Act for the drinking water revolving fund to receive capitalization grants from the United States Environmental Protection Agency, the commission shall establish criteria and procedures for the selection of projects and the making of loans or the grant of loan subsidies for disadvantaged communities.

3. After providing for review and public comment, and in accordance with the requirements for such plans set forth in the federal Safe Drinking Water Act, the commission shall annually prepare an intended use plan for the funds available in the drinking water revolving fund.

4. Consistent with the requirements of the federal Safe Drinking Water Act, and only to the extent funds are able to be obligated for eligible projects of public water systems, in developing its annual intended use plan, the commission shall make available no less than thirty-five percent, but may make available greater than thirty-five percent, of the moneys credited to the drinking water revolving fund solely for project loans and loan subsidies for projects of systems serving fewer than ten thousand people in accordance with the following:

Systems Serving	Percentage
0 - 3300 people	20%
3301 - 9,999 people	15%

provided that, in any fiscal year, loan subsidies may not exceed the maximum percentage as specified in the federal Safe Drinking Water Act. In any fiscal year in which there are insufficient applicants and projects in the population categories listed above to allocate the percentages of funds specified pursuant to this subsection, any balance of funds otherwise reserved for systems serving fewer than ten thousand people shall be available for obligation to eligible projects from any eligible applicant. Such uncommitted balances shall be redistributed in accordance with the intended use plan.

640.115. 1. Every municipal corporation, private corporation, company, partnership, federal establishment, state establishment or individual supplying or authorized to supply drinking water to the public within the state shall file with the department of natural resources a certified copy of the plans and surveys of the waterworks with a description of the methods of purification, **treatment technology** and [of the] source from which the supply of water is derived, and no source of supply shall be used without a written permit of approval [from] **issued to the continuing operating authority by** the department of natural resources, or water dispensed to the public without first obtaining such written permit of approval. **Prior to a change of permittee, the current permittee shall notify the department of the proposed**

change and the department shall perform a permit review.

2. Construction, extension or alteration of a public water system shall be in accordance with the rules and regulations of the [department of natural resources] **safe drinking water commission.**

3. Permit applicants shall show, as part of their application, that a permanent organization exists which will serve as the continuing operating authority for the management, operation, replacement, maintenance and modernization of the facility. Such continuing operating authority for all community water systems and nontransient, noncommunity water systems commencing operation after October 1, 1999, shall be required to have and maintain the managerial, and technical capacity and may be required to have and maintain financial capacity, as determined by the department, to comply with sections 640.100 to 640.140.

4. Any community water system or nontransient, noncommunity water system against which an administrative order has been issued for significant noncompliance with the federal Safe Drinking Water Act, as amended, sections 640.100 to 640.140 or any rule or regulation promulgated thereunder shall be required to show that a permanent organization exists that serves as the continuing operating authority for the facility and that such continuing operating authority has the managerial and technical capacity and may be required to have and maintain financial capacity to comply with sections 640.100 to 640.140 and regulations promulgated thereunder. If the water system cannot show to the department's satisfaction that such continuing operating authority exists, or if the water system is not making substantial progress toward compliance, the water system's permit may be revoked. The continuing operating authority may reapply for a permit in accordance with rules promulgated by the commission.

640.120. 1. The department of natural resources shall require tests for those contaminants in water which are included in the state drinking water regulations, for those contaminants included in the national primary drinking water regulations, for those contaminants for which monitoring is otherwise required [under] **pursuant to the provisions of** the federal Safe Drinking Water Act, and for any other contaminants which the department of natural resources finds may be hazardous to public health.

2. A water system shall be tested for each contaminant at the frequency required under federal drinking water regulations **or a flexible monitoring program allowed under the federal Safe Drinking Water Act, as amended**, unless the department determines, after public notice and comment, that testing at a greater frequency for that contaminant is necessary to protect the health of persons served by that system. In an emergency situation, the director may order more frequent testing in order to protect the public health.

3. Water sampling conducted pursuant to this section for lead or other contaminants

suspected to be originating in privately owned plumbing attached to the water system shall include a representative number of first draw samples collected at the tap. Samples taken from private property not part of the facilities owned by a public water system may be taken only with the permission of the owner or lessee of the property.

4. The department of natural resources may authorize variances and exemptions from state primary water regulations.

5. Duly authorized representatives of the department of natural resources, with prior notice, may enter at reasonable times upon any private or public property to inspect and investigate conditions relating to the construction, maintenance and operation of a public water supply, and take samples for analysis. If the director or **[his] the director's** representative has probable cause to believe that a public water supply system is located on any premises, **[he] the director or the director's representative** shall be granted entry for the purpose of inspection and sample collection. Should entry be denied, a suitably restricted search warrant, upon a showing of probable cause in writing and upon oath, shall be issued by any judge or associate circuit judge having jurisdiction to any representative of the department to enable **[him] the director or the director's representative** to make such inspections.

6. The department of natural resources shall publish annually a census of Missouri public water systems[,which shall state]. **The department shall make available for public review** for each public water system the most recent level found of each contaminant for which it is required to test **[under] pursuant to** subsection 1 of this section. The department shall notify the public annually by press release directed to the newspaper or newspapers of general circulation or radio stations in the area served by each community water system as to the **availability of an annual report on the** condition of **[the] drinking** water quality **[of the community]**. The **[press release] report** shall describe testing procedures, identify contaminants tested for and the levels of contamination found, and indicate trends which have been observed in water quality in **[the community] public water [system] systems**.

7. Only lead-free materials, as determined by the department by rule, shall be used in construction and repair of any public water system and on plumbing in any building in this state which is connected to any public water system; provided, however, that lead may be used to repair lead joints connecting cast iron pipes which were in use prior to August 28, 1989.

640.125. 1. The **[supplier of] public water system** shall report to the department of natural resources[, in accordance with the rules and regulations promulgated under section 192.320, RSMo, and sections 640.100 to 640.140,] the results of all tests required by the state drinking water regulations **and shall report to each customer in accordance with the federal Safe Drinking Water Act, as amended, and regulations promulgated thereunder**.

2. Any owner or operator of a public water system subject to the provisions of section 192.320, RSMo, and sections 640.100 to 640.140 shall retain in its premises, or at a convenient

location near its premises, for a period of time specified by the department of natural resources the following records: records of operation; records of bacteriological analyses; records of chemical and physical analyses made pursuant to section 192.320, RSMo, and sections 640.100 to 640.140; records of action taken by the system to correct violations of state drinking water rules and regulations; copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any local, state or federal agency; and records concerning a variance or exemption granted to the system. If a **public** water system fails to comply with the state drinking water rules and regulations, monitoring requirements, or has been granted a variance or exemption, or fails to comply with the schedule or conditions prescribed pursuant to a variance or exemption, the department of natural resources shall require the supplier of water to notify its users and the public of the extent and nature of the noncompliance. Notification shall be in form and manner prescribed or otherwise approved by the department of natural resources.

3. When an investigation of any water supply, plant or methods used is undertaken by the department of natural resources, the person in charge of the water supply shall furnish on demand to the department such information as the rules and regulations promulgated require to determine the quality of the water being dispensed.

640.130. 1. Whenever the department of natural resources determines that an emergency exists which endangers or could be expected to endanger the public health and safety with regard to drinking water supplies, the department of natural resources may, without notice or hearing, issue an order reciting the existence of such a condition and requiring the person to take such action as will lessen or abate the danger. Notwithstanding any provisions of section 192.320, RSMo, and sections 640.100 to 640.140, such order shall be effective immediately.

2. At the request of the department, the attorney general may bring an injunctive action or other appropriate action in the name of the people of the state to enforce provisions of section 192.320, RSMo, and sections 640.100 to 640.140, the rules promulgated pursuant to section 192.320, RSMo, and sections 640.100 to 640.140 and the orders of the department of natural resources issued [under] **pursuant to** section 192.320, RSMo, and sections 640.100 to 640.140.

3. Whenever the department of natural resources determines that a public water system is in violation of sections 640.100 to 640.140, or any rules promulgated pursuant thereunder, the department of natural resources may issue an administrative order requiring the public water system to comply with such rule or statute.

[3.] **4.** The court may impose a [fine] **civil penalty** of not more than fifty dollars for the first violation of section 192.320, RSMo, and sections 640.100 to 640.140; one hundred dollars for the second violation and for each violation thereafter[.], **including any order issued under this section, or any rules or regulations promulgated pursuant to sections 640.100 to 640.140. The department shall not seek a civil monetary penalty under this section for**

a violation where an administrative penalty was assessed and collected. Any offer of settlement to resolve a civil penalty under this section shall be in writing, shall state that an action for imposition of a civil penalty may be initiated by the attorney general under authority of this section and shall identify any dollar amount as an offer of settlement which shall be negotiated in good faith through conference, conciliation and persuasion.

[4.] **5.** Any person aggrieved by an emergency order may appeal within thirty days after the issuance of the order to the circuit court of the county in which the public water [supply] system is located or if the public water [supply] system is located in more than one county, to the circuit court of any such county. The circuit court shall within ten days after the filing of the appeal hear the cause and determine the same.

640.131. 1. In addition to any other remedy provided by law, upon a determination by the director that a provision of sections 640.100 to 640.140 or a standard, limitation, order, rule or regulation promulgated thereunder, or a term or condition of any permit has been violated, the director may issue an order assessing an administrative penalty upon the violator under this section. An administrative penalty shall not be imposed until the director has sought to resolve the violations through conference, conciliation and persuasion. If the violation is resolved through conference, conciliation and persuasion, no administrative penalty shall be assessed unless the violation has caused a risk to human health or to the environment, or has caused or has potential to cause pollution or was knowingly committed.

2. The maximum amount of administrative penalties assessed under this section for public water systems serving ten thousand or more persons shall be no more than one thousand dollars per day, or part thereof, for each violation. Administrative penalties for public water systems serving less than ten thousand persons shall be no more than two hundred fifty dollars per day, or part thereof, for each violation. The maximum amount of administrative penalties that may be assessed on a public water system, per violation, is twenty-five thousand dollars. In determining the amount of the administrative penalty, the department shall take into consideration all relevant circumstances, including, but not limited to, the harm which the violation causes or may cause, the violator's previous compliance record, the nature and persistence of the violation, any corrective actions taken, the number of connections served by the system and any other factors which the department may reasonably deem relevant.

3. Any order assessing an administrative penalty shall state that an administrative penalty is being assessed under this section and that the person subject to the penalty may appeal as provided by this section. Any such order which fails to state the law or regulation under which the penalty is being sought, the manner of collection or rights of appeal shall result in the state's waiving any right to collection

of the penalty. An administrative penalty shall be paid within sixty days from the date of issuance of the order assessing the penalty. Any person subject to an administrative penalty may appeal to the commission. Any appeal shall stay the due date of such administrative penalty until the appeal is resolved. Any person who fails to pay an administrative penalty by the final due date shall be liable to the state for a surcharge of fifteen percent of the penalty plus ten percent per annum on any amounts owed. Any administrative penalty paid pursuant to this section shall be handled in accordance with section 7 of article IX of the Missouri Constitution. An action may be brought in the appropriate circuit court to collect any unpaid administrative penalty, and for attorney's fees and costs incurred directly in the collection thereof.

4. An administrative penalty shall not be increased in those instances where department action, or failure to act, has caused a continuation of the violation that was a basis for the penalty. Any administrative penalty shall be assessed within two years following the department's initial discovery of such alleged violation, or from the date the department in the exercise of ordinary diligence should have discovered such alleged violation.

5. Any final order imposing an administrative penalty is subject to judicial review upon the filing of a petition pursuant to section 536.100, RSMo, by any person subject to the administrative penalty. No judicial review shall be available, however, until all administrative remedies are exhausted.

6. The state may elect to assess an administrative penalty, or, in lieu thereof, to request that the attorney general or prosecutor file an appropriate legal action seeking a civil penalty in the appropriate circuit court.

640.137. 1. The department may, upon availability of appropriate funding, determine and specify the boundaries of the areas in the state from which one or more public water systems receive supplies of drinking water, using reasonably available hydrogeologic information and any other information the department deems appropriate. The department shall identify the origins of drinking water contaminants for which monitoring is required to determine the susceptibility of the public water system in the specified area to such contaminants. The department may use, to the extent appropriate, information from existing programs to meet the requirements of this section including, but not limited to, vulnerability assessments, sanitary surveys, monitoring, wellhead protection, or assessment of surface or groundwater sources under other federal or state laws or rules. The department shall make the results of the source water assessments available to the public.

2. The department may establish a source water protection petition program under which the owner or operator of a community water system or a political subdivision of the state may request the department's assistance in the development

of a voluntary, incentive-based partnership among the persons likely to be affected by the recommendations of the partnership.

644.018. In any contested case filed after January 1, 1998, involving surface water in any flood prone area, if any defendant has obtained and fully complied with a permit from a political subdivision which has enacted orders or ordinances as required by the Federal Emergency Management Agency as a prerequisite to participation in the National Flood Insurance Program, and which political subdivision has jurisdiction, pursuant to the zoning laws of this state or the laws and regulations of the Federal Emergency Management Agency, over the area in dispute, then the proper permitting of said project shall be conclusive proof that the project is a reasonable use and meets any reasonable use test imposed by law or by a court.

644.026. 1. The commission shall:

(1) Exercise general supervision of the administration and enforcement of sections 644.006 to 644.141 and all rules and regulations and orders promulgated thereunder;

(2) Develop comprehensive plans and programs for the prevention, control and abatement of new or existing pollution of the waters of the state;

(3) Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions and industries in furtherance of the purposes of sections 644.006 to 644.141;

(4) Accept gifts, contributions, donations, loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions, which funds shall not be expended for other than the purposes for which provided;

(5) Encourage, participate in, or conduct studies, investigations, and research and demonstrations relating to water pollution and causes, prevention, control and abatement thereof as it may deem advisable and necessary for the discharge of its duties under sections 644.006 to 644.141;

(6) Collect and disseminate information relating to water pollution and the prevention, control and abatement thereof;

(7) After holding public hearings, identify waters of the state and prescribe water quality standards for them, giving due recognition to variations, if any, and the characteristics of different waters of the state which may be deemed by the commission to be relevant insofar as possible under any federal water pollution control act. These shall be reevaluated and modified as required by any federal water pollution control act;

(8) Adopt, amend, promulgate, or repeal after due notice and hearing, rules and regulations to enforce, implement, and effectuate the powers and duties of sections 644.006 to 644.141 and any required of this state by any federal water pollution control act, and as the commission may deem necessary to prevent, control and abate existing or potential pollution;

(9) Issue, modify or revoke orders prohibiting or abating discharges of water contaminants into the waters of the state or adopting other remedial measures to prevent, control or abate pollution;

(10) Administer state and federal grants and loans to municipalities and political subdivisions for the planning and construction of sewage treatment works;

(11) Hold such hearings, issue such notices of hearings and subpoenas requiring the attendance of such witnesses and the production of such evidence, administer such oaths, and take such testimony as the commission deems necessary or as required by any federal water pollution control act. Any of these powers may be exercised on behalf of the commission by any members thereof or a hearing officer designated by it;

(12) Require the prior submission of plans and specifications, or other data including the quantity and types of water contaminants, and inspect the construction of treatment facilities and sewer systems or any part thereof in connection with the issuance of such permits or approval as are required by sections 644.006 to 644.141;

(13) Issue, continue in effect, revoke, modify or deny, under such conditions as it may prescribe, to prevent, control or abate pollution or any violations of sections 644.006 to 644.141 or any federal water pollution control act, permits for the discharge of water contaminants into the waters of this state, and for the installation, modification or operation of treatment facilities, sewer systems or any parts thereof. Such permit conditions, in addition to all other requirements of this subdivision, shall ensure compliance with all effluent regulations or limitations, water quality related effluent limitations, national standards of performance and toxic and pretreatment effluent standards, and all requirements and time schedules thereunder as established by sections 644.006 to 644.141 and any federal water pollution control act; however, no permit shall be required of any person for any emission into publicly owned treatment facilities or into publicly owned sewer systems tributary to publicly owned treatment works;

(14) Require proper maintenance and operation of treatment facilities and sewer systems and proper disposal of residual waste from all such facilities and systems;

(15) Exercise all incidental powers necessary to carry out the purposes of sections 644.006 to 644.141, assure that the state of Missouri complies with any federal water pollution control act, retains maximum control thereunder and receives all desired federal grants, aid and benefits;

(16) Establish effluent and pretreatment and toxic material control regulations to further the purposes of sections 644.006 to 644.141 and as required to ensure compliance with all effluent limitations, water quality related effluent limitations, national standards of performance and toxic and pretreatment effluent standards, and all requirements and any time schedules thereunder, as established by any federal water pollution control act for point sources in this state, and where necessary to prevent violation of water quality standards of this state;

(17) Prohibit all discharges of radiological, chemical, or biological warfare agent or

high-level radioactive waste into waters of this state;

(18) Require that all publicly owned treatment works or facilities which receive or have received grants or loans from the state or the federal government for construction or improvement make all charges required by sections 644.006 to 644.141 or any federal water pollution control act for use and recovery of capital costs, and the operating authority for such works or facility is hereby authorized to make any such charges;

(19) Represent the state of Missouri in all matters pertaining to interstate water pollution including the negotiation of interstate compacts or agreements;

(20) Develop such facts and make such investigations as are consistent with the purposes of sections 644.006 to 644.141, and, in connection therewith, to enter or authorize any representative of the commission to enter at all reasonable times and upon reasonable notice in or upon any private or public property for any purpose required by any federal water pollution control act or sections 644.006 to 644.141 for the purpose of developing rules, regulations, limitations, standards, or permit conditions, or inspecting or investigating any records required to be kept by sections 644.006 to 644.141 or any permit issued hereunder, any condition which the commission or executive secretary has probable cause to believe to be a water contaminant source or the site of any suspected violation of sections 644.006 to 644.141, regulations, standards, or limitations, or permits issued hereunder. The results of any such investigation shall be reduced to writing, and shall be furnished to the owner or operator of the property. No person shall refuse entry or access, requested for the purposes of inspection under this provision, to an authorized representative in carrying out the inspection. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath, shall be issued by any judge or associate circuit judge having jurisdiction to any representative for the purpose of enabling him to make such inspection. Information obtained under this section shall be available to the public unless it constitutes trade secrets or confidential information, other than effluent data, of the person from whom it is obtained, except when disclosure is required under any federal water pollution control act;

(21) Retain, employ, provide for, and compensate, within appropriations available therefor, such consultants, assistants, deputies, clerks and other employees on a full- or part-time basis as may be necessary to carry out the provisions of sections 644.006 to 644.141 and prescribe the times at which they shall be appointed and their powers and duties;

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

(23) Require persons owning or engaged in operations which do or could discharge water contaminants, or introduce water contaminants or pollutants of a quality and quantity to be

established by the commission, into any publicly owned treatment works or facility, to provide and maintain any facilities and conduct any tests and monitoring necessary to establish and maintain records and to file reports containing information relating to measures to prevent, lessen or render any discharge less harmful or relating to rate, period, composition, temperature, and quality and quantity of the effluent, and any other information required by any federal water pollution control act or the executive secretary hereunder, and to make them public, except as provided in subdivision (20) of this section. The commission shall develop and adopt such procedures for inspection, investigation, testing, sampling, monitoring and entry respecting water contaminant and point sources as may be required for approval of such a program under any federal water pollution control act;

(24) Take any action necessary to implement continuing planning processes and areawide waste treatment management as established under any federal water pollution control act or sections 644.006 to 644.141.

2. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo. **All rulemaking authority delegated prior to the effective date of this section is of no force and effect and repealed; however, nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to the effective date of this section if it fully complied with the provisions of chapter 536, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after the effective date of this section shall be invalid and void.**

644.037. Where applicable, under section 404 of the federal Clean Water Act and where the U.S. Army Corps of Engineers has determined that a nationwide permit may be utilized, the department shall certify without conditions said nationwide permit as it applies to impacts on wetlands in this state.

644.042. 1. The clean water commission may adopt, by rule, a rebuttable presumption that any stream segment located within one mile upstream of a stream segment that has been determined by the commission to be a losing stream, as defined by the commission by rule, is also a losing stream until determined otherwise by the commission based upon the evidence.

2. Except for the presumption authorized by subsection 1 of this section, the commission shall not adopt any presumption that any other stream segments are losing streams, and shall make any such determinations based on data applicable to such stream segments.

644.101. The state may provide assistance, as funds are available, pursuant to this

chapter, to any county, municipality, public water district, public sewer district, or any combination of the same to assist them in the construction of public drinking water and water pollution control projects as authorized by the clean water commission. The state may provide assistance pursuant to this chapter, including but not limited to **the purchase of** water and/or wastewater revenue or general obligation bonds, bonds of any county, **instrumentality of the state, state entity**, municipality, public sewer district, public water district, **community water system, nonprofit noncommunity water system** or any combination of the same.

644.116. The commission's determination of the relative need, the priority of projects, and the standards of construction shall be based on rules and regulations as adopted by the commission pursuant to this chapter[.] **for wastewater projects. The clean water commission shall implement the intended use plan developed by the safe drinking water commission pursuant to section 640.107, RSMo.**

644.122. 1. There is hereby created in the state treasury for use of the [commission] **department** a fund to be known as "The Water and Wastewater Loan Fund". All moneys received by the department for activities authorized in subdivisions (1), (3), (4), (5), and (6) of subsection 2 of this section shall be deposited in the fund[.] **for the use of the commission. Moneys received for the drinking water state revolving fund established in section 640.107 shall be used in accordance with the federal Safe Drinking Water Act, as amended, and shall be accounted for separately.**

2. The commission is hereby authorized to expend or use moneys deposited in the water and wastewater loan fund, upon appropriation by the general assembly to the department, for one or more of the following purposes as the same relate to the construction of public drinking water and water pollution control projects as authorized by the commission pursuant to this chapter:

(1) To make loans to any county, instrumentality of the state, municipality, public water district, public sewer district, **community water system, nonprofit noncommunity water system** or any combination of the same;

(2) For the costs of administering programs and projects financed, in part, by the water and wastewater loan fund;

(3) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds or notes issued by the state or any agency or instrumentality thereof;

(4) To buy or refinance the debt obligation of any county, instrumentality of the state, municipality, public water district, public sewer district, **community water system, nonprofit noncommunity water system**, or any combination of the same;

(5) To guarantee, or purchase insurance for, notes or obligations of any county, instrumentality of the state, municipality, public water district, public sewer district, **community water system, nonprofit noncommunity water system** or any combination of the same, where such action would improve credit market access or reduce interest rates;

(6) To provide loan guarantees for similar revolving funds established by any county, instrumentality of the state, municipality, public water district, public sewer district, or any combination of the same; and

(7) To earn interest on the water and wastewater loan fund accounts.

3. The unexpended balance in the water and wastewater loan fund at the end of the biennium shall not be transferred to the ordinary revenue fund of the state treasury and accordingly shall be exempt from the provisions of section 33.080, RSMo, relating to transfer of funds to the ordinary revenue funds of the state by the state treasurer.

4. For purposes of this section, public drinking water and water pollution control projects shall include, but not be limited to, the planning, design, and construction of [publicly owned] water [and/or] **or** wastewater facilities, **or both**, and the planning, design, and construction of nonpoint source control facilities identified in a nonpoint source control plan prepared by the department of natural resources.

Section B. Due to the immediate need to establish a fund to receive federal moneys for improving drinking water, this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and this act shall be in full force and effect upon its passage and approval.

Bill
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