

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 647
95TH GENERAL ASSEMBLY

1798L.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 256.620, 360.106, 386.756, 414.530, 414.560, 414.570, and 644.570, RSMo, and to enact in lieu thereof eighteen new sections relating to the environment.

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

Section A. Sections 256.620, 360.106, 386.756, 414.530, 414.560, 414.570, and
2 644.570, RSMo, are repealed and eighteen new sections enacted in lieu thereof, to be known as
3 sections 256.620, 360.106, 386.756, 393.1122, 414.530, 414.560, 414.570, 640.300, 640.305,
4 640.310, 640.315, 640.320, 640.325, 640.330, 640.335, 640.340, 640.345, and 644.570, to read
5 as follows:

256.620. **1.** Except as provided in section 256.615, operational wells in existence on
2 September 28, 1985, shall not be required to conform to the provisions of sections 256.600 to
3 256.640, or any rules or regulations adopted pursuant thereto unless such wells or pump
4 installations for such wells are determined to present a threat to groundwater.

5 **2. Any water system that serves a charitable or benevolent organization, if the total**
6 **volume of water drawn from such wells does not exceed fifteen thousand gallons per**
7 **calendar month, shall be exempt from all rules relating to well construction except any**
8 **rules applying to domestic wells and rules that require proof of the quantity of water**
9 **drawn from such wells, unless such wells or pump installations for such wells are**
10 **determined to present a threat to groundwater.**

360.106. 1. As used in this section and sections 360.111 to 360.118, the following terms
2 mean:

3 (1) "Funding agreement", any loan agreement, financing agreement or other agreement
4 between the authority and a participating district under this section, providing for the use of
5 proceeds of, security for, and the repayment of, school district bonds, and shall include a

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

6 complete waiver by the participating district of all powers, rights and privileges conferred upon
7 the participating district to institute any action authorized by any act of the Congress of the
8 United States relating to bankruptcy on the part of the participating district;

9 (2) "Participating district", with respect to a particular issue of bonds, notes or other
10 financial obligations, any school district and any public community college in this state which
11 voluntarily enters into a funding agreement with the authority pursuant to this section;

12 (3) "School district bonds", any bonds, notes or other obligations issued by the authority
13 for the purpose of making loans to, purchasing the bonds or notes of or otherwise by agreement
14 using or providing for the use of the proceeds of the obligations by a participating district under
15 this section and all related costs of issuance of the obligations including, but not limited to, all
16 costs, charges, fees and expenses of underwriters, financial advisors, attorneys, consultants,
17 accountants and of the authority.

18 2. In addition to other powers granted to the authority by sections 360.010 to 360.140,
19 the authority shall have the power to issue school district bonds or notes for the purpose of
20 making loans to, or purchasing the bonds, notes or other financial instruments of:

21 (1) Any school district or any public community college in this state for the use of the
22 various funds of such school district or public community college for any lawful purpose; and

23 (2) Any school district in this state with respect to obligations issued by such school
24 district pursuant to sections 164.121 to 164.301, RSMo, or otherwise by law.

25 3. In connection with the issuance of school district bonds pursuant to the powers
26 granted in this section, the authority shall have all powers as set forth elsewhere in sections
27 360.010 to 360.140, and the provisions of sections 360.010 to 360.140 shall be applicable to the
28 issuance of school district bonds to the extent that they are not inconsistent with the provisions
29 of this section.

30 4. School district bonds issued pursuant to this section may be secured by a pledge of
31 payments made to the authority by the participating district, by the bonds or notes of the
32 participating district, or by a pooling of such payments, bonds or notes of two or more of such
33 participating districts or as otherwise set forth in the funding agreements.

34 5. The authority may invest any funds held pursuant to powers granted under this section,
35 which are not required for immediate disbursement, in any investment approved by the authority
36 and specified in the trust indenture or resolution pursuant to which such bonds or notes are issued
37 without regard to any limitation otherwise imposed by section 360.120 or otherwise by law;
38 provided, however, that each participating district shall receive the earnings, or a credit for such
39 earnings, to the extent any such amounts invested are attributable to a particular participating
40 district.

41 6. (1) In connection with school district bonds, upon certification by the authority to the
42 commissioner of education and the state treasurer that the funding agreement provides for
43 consent by a participating district for direct deposit of its state payments to the trustee, the state
44 treasurer shall transfer, but only out of funds described in this section, directly to the trustee for
45 such school district bonds, the amounts needed to pay the principal and interest when due on the
46 school district bonds attributable to a particular participating district. Such transfers for any
47 school district bonds attributable to a particular participating district shall only be made out of,
48 and to the extent of, the state payments and distributions from all funds to be made by the state
49 to such participating district pursuant to sections 163.011 to 163.195, RSMo. Any such transfer
50 by the state on behalf of a participating district shall discharge the state's obligation to make such
51 state payments to such participating district to the extent of such transfer;

52 (2) A participating district shall withdraw amounts from any of its funds established
53 pursuant to section 165.011, RSMo, to the extent such amounts could have been used to make
54 the payments made on its behalf by the state treasurer as provided in subdivision (1) of this
55 subsection. Notwithstanding any provisions of section 108.180, RSMo, to the contrary, such
56 amounts shall be deposited into the participating district's funds as provided by law in lieu of the
57 state payments transferred to the trustee under the funding agreement;

58 (3) The authority shall from time to time develop guidelines containing certain criteria
59 with respect to participating school districts and with respect to the issuance of school district
60 bonds;

61 (4) Transfers made under this subsection pursuant to a school district's participation in
62 a funding agreement under this section shall be made at no cost to the school district.

63 7. The authority shall provide for the payment of costs of issuance, costs of credit
64 enhancement and any other costs or fees related to the issuance of any school district bonds other
65 than reserve funds, out of the proceeds thereof or out of amounts distributed annually to the
66 authority pursuant to sections 160.534 and 164.303, RSMo. The authority shall annually submit
67 a request for funding of such costs to the commissioner of education in such form and at such
68 time as he may request. A copy of such request shall be forwarded to the commissioner of
69 administration. The authority shall provide for the payment of costs pursuant to this subsection
70 only for bonds issued for the purpose of financing construction or renovation projects approved
71 by voters after January 1, 1995, or refinancing construction or renovation projects or for
72 refinance of lease purchase obligations with general obligation bonds.

73 8. Any refunding or refinancing of existing bonds of a school district under this section
74 shall have a net present value savings of at least one and one-half percent of the par amount of
75 the refunded bonds.

76 9. The commissioner of education shall serve as an ex officio, nonvoting, advisory
77 member of the authority solely with regard to the exercise of powers granted pursuant to this
78 section.

79 10. Nothing in this section or sections 360.111 to 360.118 shall be construed to relieve
80 a school district or public community college of its obligation to levy a debt service levy or
81 capital projects levy sufficient to retire any obligation of the district or college as otherwise
82 provided by law.

83 11. Any professional services provided in connection with the sale of such bonds
84 pursuant to this section, including, but not limited to, underwriters, bond counsel, underwriters'
85 counsel, trustee and financial advisors, shall be obtained through competitive bidding. The
86 initial bid for professional services shall be for a period of not longer than two years, and
87 thereafter such bids shall be awarded for a period not longer than one year.

88 12. The authority shall review the cost effectiveness of the program established under
89 this section and sections 360.111 to 360.118 and shall, on or before the fifteenth of August of
90 each year, provide a report to the general assembly which shall contain a report on the program,
91 the authority's findings and a recommendation of whether this section should be repealed,
92 strengthened or otherwise amended.

93 **13. Any public school district contemplating new construction or renovation of any**
94 **public school building shall certify a cost analysis of building to LEED certification or**
95 **equivalent certification verses the long-term cost of ownership and operation of a new or**
96 **renovated building without LEED certification or equivalent certification. The school**
97 **district shall include reasons in their certification for their recommendation to build or not**
98 **to build to LEED certification or equivalent certification, taking into account the**
99 **differences in the cost analysis. For purposes of this section, "LEED certification" shall**
100 **mean any certification issued by the United States Green Building Council under the**
101 **Leadership in Energy and Environmental Design Green Building Rating System.**

102 **14. Notwithstanding any other law, no funding of any type shall be provided to a**
103 **public school district under the provisions of this section for new construction or**
104 **renovation of any public school building unless the requirements of subsection 13 of this**
105 **section are satisfied.**

386.756. 1. Except by an affiliate, a utility may not engage in HVAC services, unless
2 otherwise provided in subsection [7 or] 8 or 9 of this section.

3 2. No affiliate or utility contractor may use any vehicles, service tools, instruments,
4 employees, or any other utility assets, the cost of which are recoverable in the regulated rates for
5 utility service, to engage in HVAC services unless the utility is compensated for the use of such
6 assets at cost to the utility.

7 3. A utility may not use or allow any affiliate or utility contractor to use the name of such
8 utility to engage in HVAC services unless the utility, affiliate or utility contractor discloses, in
9 plain view and in bold type on the same page as the name is used on all advertisements or in
10 plain audible language during all solicitations of such services, a disclaimer that states the
11 services provided are not regulated by the public service commission.

12 4. A utility may not engage in or assist any affiliate or utility contractor in engaging in
13 HVAC services in a manner which subsidizes the activities of such utility, affiliate or utility
14 contractor to the extent of changing the rates or charges for the utility's regulated services above
15 or below the rates or charges that would be in effect if the utility were not engaged in or assisting
16 any affiliate or utility contractor in engaging in such activities.

17 5. Any affiliates or utility contractors engaged in HVAC services shall maintain
18 accounts, books and records separate and distinct from the utility.

19 6. The provisions of this section shall apply to any affiliate or utility contractor engaged
20 in HVAC services that is owned, controlled or under common control with a utility providing
21 regulated utility service in this state or any other state.

22 7. A utility engaging in HVAC services in this state five years prior to August 28, 1998,
23 may continue providing, to existing as well as new customers, the same type of services as those
24 provided by the utility five years prior to August 28, 1998. The provisions of this section only
25 apply to the area of service which the utility was actually supplying service to on a regular basis
26 prior to August 28, 1993. The provisions of this section shall not apply to any subsequently
27 expanded areas of service made by a utility through either existing affiliates or subsidiaries or
28 through affiliates or subsidiaries purchased after August 28, 1993, unless such services were
29 being provided in the expanded area prior to August 28, 1993.

30 8. The provisions of this section shall not be construed to prohibit a utility from
31 providing emergency service, providing any service required by law or providing a program
32 pursuant to an existing tariff, rule or order of the public service commission.

33 9. A utility that violates any provision of this section is guilty of a civil offense and may
34 be subject to a civil penalty of up to twelve thousand five hundred dollars for each violation. The
35 attorney general may enforce the provisions of this section pursuant to any powers granted to him
36 or her pursuant to any relevant provisions provided by Missouri statutes or the Missouri
37 Constitution.

38 10. Any utility claiming an exemption as provided in subsection 7 of this section shall
39 comply with all applicable state and local laws, ordinances or regulations relating to the
40 installation or maintenance of HVAC systems including all permit requirements. A continuing
41 pattern of failure to comply with said requirements shall provide the basis for a finding by any

42 court of competent jurisdiction or the public service commission that the utility has waived its
43 claim of exemption pursuant to subsection 7 of this section.

44 **11. Every utility in this state shall comply with all local permit and code**
45 **requirements.**

393.1122. 1. There is hereby established as a governmental instrumentality of the
2 **state of Missouri the "Missouri Alternative Energy Loan Authority", which shall constitute**
3 **a body corporate and politic.**

4 **2. The authority shall ensure all applicants including local governments,**
5 **municipalities, cooperatives, utilities, and owners of residential, commercial, and**
6 **agricultural property receive a low-interest loan for the purpose of financing renewable**
7 **energy producing products or facilities or qualifying energy efficient and energy**
8 **conserving appliances and products in this state. The authority shall develop a method for**
9 **such applicants to apply to the authority for loans and approve disbursements of the loans.**
10 **Loan applications shall be considered as according to efficiency and size of the project with**
11 **priority given to larger and more efficient proposed renewable energy and energy**
12 **efficiency projects. Priorities only apply to new projects and not for existing projects.**

13 **3. As used in this section, the following terms mean:**

14 **(1) "Alternative energy", sources, including but not limited to, energy from wind,**
15 **solar, thermal, photovoltaic cells and panels, animal waste and by products, dedicated**
16 **crops grown for energy production, plant-based residues, fuel cells using hydrogen**
17 **produced by a renewable energy source, and other alternative sources of energy as defined**
18 **by rule by the department;**

19 **(2) "Applicant", any local government, municipality, cooperative, utility, and**
20 **owner of residential, commercial, and agricultural property, which submits an application**
21 **for loans on financial assistance to the authority;**

22 **(3) "Authority", the Missouri renewable energy loan authority;**

23 **(4) "Commission", the Missouri public service commission;**

24 **(5) "Department", the Missouri department of natural resources;**

25 **(6) "Energy efficiency project", any project that reduces the energy use of an entity**
26 **and results in a reduced cost over the life cycle of the project.**

27 **4. The authority shall consist of seven members appointed by the governor by and**
28 **with the advice and consent of the senate. Not more than three members shall be of the**
29 **same political party. All members shall be residents of this state. In making appointments**
30 **to the authority, the governor shall take into consideration nominees recommended to him**
31 **for appointment by the department. The members of the authority first appointed by the**
32 **governor shall be appointed to serve for terms of one, two, and three years, the term of**

33 each member to be designated by the governor. The successor of each member shall be
34 appointed for a term of three years or until their successors have been appointed, but any
35 person appointed to fill a vacancy shall be appointed to serve only for the unexpired term.
36 Any member shall be eligible for reappointment. The authority shall elect one of its
37 members as chairman and another as vice chairman and shall appoint a secretary and a
38 treasurer, which offices may be combined, and who need not be members of the authority.
39 Five members of the authority shall constitute a quorum for the purpose of conducting
40 business and exercising the powers of the authority. Action may be taken by the authority
41 upon the affirmative vote of at least three of its members. Each member of the authority
42 shall not be entitled to compensation except for their reasonable and necessary expenses
43 actually incurred in discharging their duties under the provisions of this section. Any
44 member of the authority may be removed by the governor for misfeasance, malfeasance,
45 willful neglect of duty, or other cause after notice and a public hearing unless the notice or
46 hearing shall be expressly waived in writing.

47 5. There is hereby established in the state treasury a fund to be known as the
48 "Missouri Alternative Energy Loan Authority Fund", which shall consist of moneys
49 appropriated annually by the general assembly, which includes a one-time start-up amount
50 of fourteen million dollars to establish such fund. In addition the fund may include any
51 gifts, contributions, grants, or bequests received from federal, state, private, or other
52 sources. The fund shall be administered by the authority. Upon appropriation, money in
53 the fund shall be used solely to provide low-interest loans for renewable energy projects
54 and energy efficiency and related expenses. If any amount is used for purposes not
55 otherwise provided in this section, two hundred percent of the loan amount shall be repaid
56 and deposited into the fund created under this section. Notwithstanding the provisions of
57 section 33.080, RSMo, to the contrary, moneys in the fund shall not be transferred to the
58 credit of the general revenue fund at the end of the biennium. Interest and moneys earned
59 on the fund shall be credited to the fund. The state treasurer shall invest moneys in the
60 fund in the same manner as other funds are invested. Interest and moneys earned on such
61 investment shall be credited to the fund.

62 6. The authority shall have the following powers, together with all powers
63 incidental thereto or necessary for the performance thereof:

- 64 (1) To have perpetual succession as a body politic and corporate;
65 (2) To adopt bylaws for the regulation of its affairs and the conduct of its business;
66 (3) To sue and be sued and to prosecute and defend, at law or in equity, in any
67 court having jurisdiction of the subject matter and of the parties;
68 (4) To have and to use a corporate seal and to alter the same at pleasure;

69 **(5) To maintain an office at such place or places in the state of Missouri as it may**
70 **designate;**

71 **(6) To accept appropriations, gifts, grants, bequests, and devises and to utilize or**
72 **dispose of the same to carry out its purpose;**

73 **(7) To make and execute contracts, releases, compromises, and other instruments**
74 **necessary or convenient for the exercise of its powers, or to carry out its purpose;**

75 **(8) To collect reasonable fees and charges in connection with making and servicing**
76 **its loans, notes, bonds, obligations, commitments, and other evidences of indebtedness, and**
77 **in connection with providing technical, consultative and project assistant services. Such**
78 **fees and charges shall be used to pay the costs of the authority;**

79 **(9) To acquire, hold and dispose of personal property for its purposes;**

80 **(10) To enter into agreements or other transactions with any federal or state**
81 **agency, any person and any domestic or foreign partnership, corporation, association or**
82 **organization.**

83 **7. The authority may from time to time issue renewal notes. Renewal notes may**
84 **be sold at public or private sale and the proceeds applied to the purchase, redemption, or**
85 **payment of the notes to be refunded.**

86 **8. (1) The authority may set interest rates between one percent and two points**
87 **below the prime interest rates.**

88 **(2) The ratio of loan to project cost and the amortization period of loans made by**
89 **the authority shall be determined in accordance with regulations promulgated by the**
90 **authority.**

91 **9. The renewable energy loan authority is assigned to the department. The**
92 **authority shall annually file with the director of the department a report of its previous**
93 **year's income, expenditures and bonds or other forms of indebtedness issued and**
94 **outstanding.**

414.530. 1. The director shall conduct a referendum as soon as possible among
2 producers and Missouri retail marketers of propane to authorize the creation of the "Missouri
3 Propane Education and Research Council" and the levying of an assessment on odorized
4 propane. Upon approval of those persons representing two-thirds of the total gallonage of
5 odorized propane voted in the retail marketer class and two-thirds of all propane voted in the
6 producer class, meaning propane sold or produced in the previous calendar year or other
7 representative period, the director shall issue an order establishing the council and call for
8 nominations to the council from qualified industry organizations. All persons voting in the
9 referendum shall certify to the director the number of gallons represented by their vote.

10 2. [On the director's own initiative,] Upon petition of the council or of producers and
11 marketers representing thirty-five percent of the gallons in each class, the director shall hold a
12 referendum to determine whether the industry favors termination or suspension of the order. The
13 termination or suspension shall not take effect unless it is approved by those persons representing
14 more than one-half of the total gallonage of odorized propane in the marketer class and one-half
15 of all propane in the producer class.

16 3. The director may require such reports or documentation as is necessary to document
17 the referendum process [and the nomination process for members of the council] and shall
18 protect the confidentiality of all such documentation provided by industry members. Information
19 regarding propane produced or marketed by persons voting shall be a closed record.

 414.560. 1. Upon issuance of an order by the director establishing the Missouri propane
2 education and research council, the director shall select all members of the council from a list
3 of nominees submitted by qualified industry organizations. **Subsequent appointments shall**
4 **be selected by the council following a public nomination process.** Vacancies in unfinished
5 terms of council members may be filled by the council[, subject to approval of the director].

6 2. In making nominations and appointments to the council, the qualified industry
7 organizations [and the director] shall give due regard to selecting a council that is representative
8 of the industry, and the geographic regions of the state.

9 3. The council shall consist of fifteen members, with nine members representing retail
10 marketers of propane; three members representing wholesalers or resellers of propane; two
11 members representing manufacturers and distributors of gas use equipment, wholesalers or
12 resellers, or transporters; and one public member. Other than the public member, council
13 members shall be full-time employees or owners of businesses in the industry.

14 4. Council members shall receive no compensation for their services, but shall be
15 reimbursed for reasonable expenses incurred in the performance of their duties.

16 5. Council members shall serve terms of three years; except that of the initial members
17 appointed, five shall be appointed for terms of one year, five shall be appointed for terms of two
18 years and five shall be appointed for terms of three years. Members may be appointed to a
19 maximum of two consecutive full terms. Members filling unexpired terms will not have any
20 partial term of service count against the two-term limitation. Former members of the council
21 may be reappointed to the council if they have not been members for a period of one year.

22 6. The council shall select from among its members a chairman and other officers as
23 necessary, establish committees and subcommittees of the council, and adopt rules and bylaws
24 for the conduct of business. The council may establish advisory committees of persons other
25 than council members.

26 7. The council may employ a president to serve as chief executive officer and such other
27 employees as it deems necessary. The council may enter into contracts with, use facilities and
28 equipment of, or employ personnel of a qualified industry organization in carrying out its
29 responsibilities under sections 414.500 to 414.590. It shall determine the compensation and
30 duties of each, and protect the handling of council funds through fidelity bonds.

31 8. At **least thirty days prior to** the beginning of each fiscal period, the council shall
32 prepare and submit [to the director] **for public comment** a budget plan including the probable
33 costs of all programs, projects and contracts and a recommended rate of assessment sufficient
34 to cover such costs. [The director shall approve or recommend changes to the budget after an
35 opportunity for public comment.] **The council shall approve or modify the budget following**
36 **the public comment period.**

37 9. The council shall develop programs and projects and enter into contracts or
38 agreements for implementing the policy of sections 414.500 to 414.590, including programs of
39 research, development, education, and marketing, and for the payment of the costs thereof with
40 funds collected pursuant to sections 414.500 to 414.590. The council shall coordinate its
41 activities with industry trade associations to provide efficient delivery of services and to avoid
42 unnecessary duplication of activities.

43 10. The council shall keep minutes, books, **and** records that clearly reflect all of the acts
44 and transactions of the council and regularly report such information to the director[, along with
45 such other information as the director may require]. The books of the council shall be audited
46 by a certified public accountant at least once each fiscal year and at such other times as the
47 council may designate. Copies of such audit shall be provided to the director, all members of
48 the council, all qualified industry organizations, and to other members of the industry upon
49 request. [The director shall receive notice of meetings and may require reports on the activities
50 of the council, as well as reports on compliance, violations and complaints regarding the
51 implementation of sections 414.500 to 414.590.]

52 11. From assessments collected, the council shall annually reimburse the director for
53 costs incurred in holding the referendum establishing the council[, making appointments to the
54 council,] and other expenses directly related to the council.

414.570. 1. The council shall set the initial assessment at no greater than one-tenth of
2 one cent per gallon. Thereafter, annual assessments shall be sufficient to cover the costs of the
3 plans and programs developed by the council and approved [by the director] **following public**
4 **comment.** The assessment shall not be greater than one-half cent per gallon of odorized
5 propane. The assessment may not be raised by more than one-tenth of one cent per gallon
6 annually.

7 2. The owner of propane immediately prior to odorization in this state or the owner at
8 the time of import into this state of odorized propane shall be responsible for the payment of the
9 assessment on the volume of propane at the time of import or odorization, whichever is later.
10 Assessments shall be remitted to the council on a monthly basis by the twenty-fifth of the month
11 following the month of collection. Nonodorized propane shall not be subject to assessment until
12 odorized.

13 3. The [director] **council** may [by regulation, with the concurrence of the council,]
14 establish an alternative means [for the council] to collect the assessment if another means is
15 found to be more efficient and effective. The [director] **council** may [by regulation] establish
16 a late payment charge and rate of interest **not to exceed the legal rate for judgments** to be
17 imposed on any person who fails to remit to the council any amount due under sections 414.500
18 to 414.590.

19 4. Pending disbursement pursuant to a program, plan or project, the council may invest
20 funds collected through assessments and any other funds received by the council only in
21 obligations of the United States or any agency thereof, in general obligations of any state or any
22 political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank
23 that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal
24 and interest by the United States.

25 [5. The National Propane Education and Research Council, in conjunction with the
26 United States Secretary of Energy may, by regulation, establish a program coordinating the
27 operation of its council with the council established in section 414.530. This may include an
28 assessment rebate, if adopted, of an amount up to twenty-five percent of the National Propane
29 Education and Research Council assessment collected on Missouri distributed odorized propane
30 as presented and described in section nine of the federal Propane Education and Research Act
31 of 1992. Should the National Propane Education and Research Council, as part of the federal
32 Propane Education and Research Act of 1992, establish such an assessment rebate on fees
33 collected by such council, then all funds from such federal assessment rebate shall be the
34 property of the Missouri council as established by section 414.530, and the use of such funds
35 shall be determined by the Missouri council for the purposes as intended and presented in
36 sections 414.500 to 414.590.]

640.300. Nothing in sections 640.300 to 640.340 shall be interpreted to impede or
2 **excuse the disclosure of normal regulatory reporting requirements for environmental**
3 **compliance.**

640.305. As used in sections 640.300 to 640.340, the following terms shall mean:

(1) "Compliance management system" or "environmental management system", a regulated entity's documented systematic efforts, appropriate to the size and nature of its business, to prevent, detect, and correct noncompliance through all of the following:

(a) Compliance policies, standards, and procedures that identify how employees and agents are to meet the requirements of laws, regulations, permits, enforceable agreements, and other sources of authority for environmental requirements;

(b) Assignment of overall responsibility for overseeing compliance with policies, standards, and procedures, and assignment of specific responsibility for assuring compliance at each facility or operation;

(c) Mechanisms for systematically assuring that compliance policies, standards, and procedures are being carried out, including monitoring and auditing systems reasonably designed to detect and correct noncompliance, periodic evaluation of the overall performance of the compliance management system, or environmental management system, and a means for employees or agents to report noncompliance of environmental requirements without fear of retaliation;

(d) Efforts to communicate effectively the regulated entity's standards and procedures to all employees and other agents;

(e) Appropriate incentives to managers and employees to perform in accordance with the compliance policies, standards, and procedures, including consistent enforcement through appropriate disciplinary mechanisms; and

(f) Procedures for the prompt and appropriate correction of any noncompliance, and any necessary modifications to the regulated entity's compliance management system or environmental management system to prevent future noncompliance;

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

(3) "Environmental audit", a systematic, documented, periodic, and objective review by regulated entities of facility operations and practices related to meeting environmental requirements;

(4) "Environmental audit report", the documented analysis, conclusions, and recommendations resulting from an environmental audit, but not including data obtained in or testimonial evidence concerning such audit;

(5) "Regulated entity", any entity, including a federal, state, or municipal department or facility, which is regulated under federal or state environmental laws.

640.310. If a regulated entity satisfies all of the conditions of section 640.330, neither the department nor the attorney general may seek penalties, other than the recovery of the economic benefits gained through noncompliance with environmental requirements, for noncompliance of state, federal, or local laws, regulations, permits, or

5 orders relating to environmental requirements discovered and disclosed by the entity. If
6 a regulated entity satisfies all of the conditions of section 640.330, except for the periodic
7 routine assessment through an environmental audit or compliance management system,
8 the department may recover as penalties the economic benefits gained through
9 noncompliance, and reduce any other penalties up to seventy-five percent for
10 noncompliance of state or federal laws, regulations, permits, or orders relating to
11 environmental requirements discovered and disclosed by the entity.

640.315. If a regulated entity establishes that it satisfies subdivisions (1) to (9) of
2 section 640.330, the department shall not recommend to the attorney general or other
3 prosecuting authority that criminal charges be brought against the disclosing entity, as
4 long as the department determines that the noncompliance is not part of a pattern or
5 practice that demonstrates or involves:

6 (1) A prevalent management philosophy or practice that conceals or condones
7 environmental noncompliance; or

8 (2) High-level corporate officials' or managers' conscious involvement in, or willful
9 blindness to, noncompliance of federal environmental law.

640.320. Regardless of whether the department recommends the regulated entity
2 for criminal prosecution, the department may recommend for prosecution the criminal acts
3 of individual managers or employees under existing policies guiding the exercise of
4 enforcement discretion.

640.325. The department, the attorney general, and any prosecuting attorney shall
2 not request or use an environmental audit report to initiate a civil or criminal investigation
3 of an entity, including but not limited to the use of such report in routine inspections. If
4 the department has an independent reason to believe that noncompliance has occurred, the
5 department may seek any information relevant to identifying noncompliance or
6 determining liability or extent of harm.

640.330. In order to receive the benefits of sections 640.310 to 640.325, owners and
2 operators of facilities regulated under state, federal, regional, or local laws, ordinances,
3 regulations, permits, or orders shall comply with the following:

4 (1) The noncompliance was discovered through:

5 (a) An environmental audit; or

6 (b) A compliance management system, reflecting the regulated entity's due
7 diligence in preventing, detecting, and correcting noncompliance. The regulated entity
8 shall provide accurate and complete documentation to the department as to how its
9 compliance management system meets the criteria or due diligence and how the regulated
10 entity discovered the noncompliance through its compliance management system. The

11 department may require the registered entity to make available to the public a description
12 of its compliance management system;

13 (2) The noncompliance was discovered voluntarily and not through a legally
14 mandated monitoring or sampling requirement prescribed by statute, regulation, permit,
15 judicial, or administrative order, or consent agreement. For example, sections 640.310 to
16 640.325, do not apply to:

17 (a) Emissions noncompliance detected through a continuous emissions monitor, or
18 alternative monitor established in a permit, regulation, order, or other instrument, in
19 which any such monitoring is required;

20 (b) Noncompliance of National Pollutant Discharge Elimination System discharge
21 limits detected through required sampling or monitoring; and

22 (c) Noncompliance discovered through a compliance audit required to be
23 performed by the terms of a consent order or settlement agreement, unless the audit is a
24 component of agreement terms to implement a comprehensive environmental management
25 system;

26 (3) The regulated entity fully discloses the specific noncompliance in writing to the
27 department within twenty-one days, or such shorter time period as may be required by
28 law, after the entity discovers that the noncompliance has, or may have, occurred. The
29 time at which the entity discovers that a noncompliance has, or may have, occurred begins
30 when any officer, director, employee, or agent of the facility has an objectively reasonable
31 basis for believing that a noncompliance has, or may have, occurred;

32 (4) The regulated entity discovers and discloses the potential noncompliance to the
33 department prior to:

34 (a) The commencement of a federal, state, or local department inspection or
35 investigation, or the issuance by such department of an information request to the
36 registered entity, in which the department determines that the facility did not know that
37 it was under civil investigation, and the department determines that the entity is otherwise
38 acting in good faith, in which case the department is authorized to reduce or waive civil
39 penalties in accordance with section 640.310;

40 (b) Notice of a citizen suit;

41 (c) The filing of a complaint by a third party;

42 (d) The reporting of the noncompliance to the department or other governmental
43 agency by a whistle-blower employee and not be authorized to speak on behalf of the
44 regulated entity; or

45 (e) Imminent discovery of the noncompliance by a regulatory department or
46 agency;

47 (5) The regulated entity shall correct the noncompliance within sixty calendar days
48 from the date of discovery, or such shorter time period as may be required by law,
49 certifying in writing that the noncompliance has occurred and taking appropriate
50 measures as determined by the department to remedy any environmental or human harm
51 due to the noncompliance. The department retains the authority to order an entity to
52 correct a noncompliance within a specific time period shorter than sixty days whenever
53 correction in such shorter time period is necessary to protect public health and the
54 environment. If more than sixty days is needed to correct the noncompliance, the regulated
55 entity shall so request additional time from the department in writing prior to the
56 expiration of the sixty-day period. The Missouri department of natural resources will
57 approve or deny the request before the expiration of the sixty-day period. If the
58 department approves additional time, the department may require a regulated entity to
59 enter into a publicly available written agreement, administrative consent order, or judicial
60 consent decree as a condition for obtaining relief under sections 640.310 to 640.325, in
61 particular where compliance or remedial measures are complex or a lengthy schedule for
62 attaining and maintaining compliance or remediating harm is required;

63 (6) The regulated entity shall agree in writing or other appropriate order to take
64 steps acceptable to the director to prevent a recurrence of the noncompliance, including
65 improvements to its environmental auditing or compliance management system;

66 (7) The specific noncompliance, or a closely related noncompliance, has not
67 occurred within the previous three years at the same facility and has not occurred within
68 the past five years as part of a pattern at multiple facilities owned or operated by the same
69 entity. For the purposes of this section, noncompliance includes:

70 (a) Failure to comply with any federal, state, or local environmental law identified
71 in a judicial or administrative order, consent agreement or order, complaint, or notice of
72 noncompliance, conviction, or plea agreement; or

73 (b) Any act or omission for which the regulated entity has previously received
74 penalty mitigation from the department or another state or local department;

75 (8) The noncompliance is not one which:

76 (a) Resulted in actual harm, or may have presented an imminent and substantial
77 endangerment, to human health or the environment; or

78 (b) Violates the specific terms of any judicial or administrative order or consent
79 agreement; and

80 (9) The regulated entity cooperates as requested by the department and provides
81 such information as is necessary and requested by the department to determine
82 applicability of sections 640.310 to 640.325.

2 **640.335. The department shall make available to the public the terms and**
3 **conditions of and supporting documentation demonstrating any compliance agreement**
4 **reached under sections 640.310 to 640.325, including the nature of the noncompliance, the**
5 **remedy, and the schedule for returning to compliance.**

2 **640.340. Nothing in sections 640.300 to 640.335 shall prevent a private party from**
3 **bringing a cause of action, where otherwise permitted under the law, against an entity**
4 **whose noncompliance with any relevant environmental law has caused damage to such**
5 **private party.**

2 **640.345. The department shall not disclose from any audit report information**
3 **relating to scientific and technological innovations in which the owner has a proprietary**
4 **interest of any information which is otherwise protected from disclosure by law.**

2 644.570. 1. The board of fund commissioners of the state of Missouri, as authorized by
3 section 37(h) of article III of the Constitution of the state of Missouri, may borrow on the credit
4 of this state [the sum of twenty million dollars] for the purposes of financing and constructing
5 storm water control plans, studies and projects as set out in this chapter. The department shall
6 allocate these funds through grants or loans to municipalities, public sewer districts, sewer
7 districts established pursuant to article VI, section 30(a) of the Missouri Constitution, public
8 water districts, or any combination of the same located in a county of the first classification or
9 in any city not within a county or by any county of the first classification.

2 2. [Grants awarded under this section shall be no more than fifty percent of the cost of
3 the plan, study or project.

2 3.] Grants or loans allocated under this section shall be initially offered to eligible
3 recipients in counties of the first classification and in a city not within a county in an amount
4 equal to the percentage ratio that the population of the recipient county or city bears to the total
5 population of all counties of the first classification and cities not within a county as determined
6 by the last decennial census.

2 [4.] 3. Grants or loans offered to a city or county under subsection [3] 2 of this section
3 shall be further allocated and initially offered to eligible recipients in any city with a population
4 of at least twenty-five thousand inhabitants located in a county of the first classification in an
5 amount equal to the percentage ratio that the recipient's population bears to the total population
6 of the county.

2 5. After the initial offer of grants or loans has been made to eligible recipients under
3 subsections [3] 2 and [4] 3 of this section, any remaining funds may be reallocated to recipients
4 of the initial offer who have eligible projects for such funds until no such funds remain. The
5 reallocation of funds shall be made to eligible recipients with remaining eligible projects in an
6 amount equal to the percentage ratio that the population of the eligible recipient bears to the total

26 population of all other eligible recipients with remaining eligible projects under this subsection.

27 6. Other provisions of this section notwithstanding, in those cities or counties served by
28 a sewer district established pursuant to article VI, section 30(a) of the Constitution of the state
29 of Missouri, any grants or loans awarded shall be disbursed directly to such district.

30 7. Repayments of storm water loans and any interest payments on such loans shall be
31 deposited in the "Storm Water Loan Revolving Fund", which is hereby created. The fund shall
32 be used for the purposes of financing and constructing storm water control plans, studies, and
33 projects. The state treasurer shall be custodian of the fund and may approve disbursements from
34 the fund in accordance with sections 30.170 and 30.180, RSMo. Upon appropriation, money in
35 the fund shall be used solely for the administration of this section. Any moneys remaining in the
36 fund at the end of the biennium shall not revert to the credit of the general revenue fund. The
37 state treasurer shall invest moneys in the fund in the same manner as other funds are invested.
38 Any interest and moneys earned on such investments shall be credited to the fund.

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