

SECOND REGULAR SESSION

# HOUSE BILL NO. 2405

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE ROSS.

5953H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapters 60 and 640, RSMo, by adding thereto six new sections relating to water rights.

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

Section A. Chapters 60 and 640, RSMo, are amended by adding thereto six new sections, to be known as sections 60.700, 60.702, 60.704, 60.706, 60.708, and 640.800, to read as follows:

**60.700. For purposes of sections 60.700 to 60.708, the following terms shall mean:**

(1) “Accretion”, the slow and imperceptible building up of land to the shore of a watercourse;

(2) “Avulsion”, the sudden changing of the bed of a watercourse;

(3) “Low water mark”, the water’s edge, that being the only line continuously touched by the water and being the only way the riparian owner will have continuous access to the water;

(4) “Natural watercourse”, a stream or body of water flowing in a definite channel with beds, sides, and banks that normally discharges into a larger stream or body of water. A natural watercourse provides more than mere surface drainage. The term does not include hollows, ravines, or sloughs. The existence of a channel is not, of itself, sufficient to establish the existence of a natural watercourse. The term shall not include surface water;

(5) “Navigable watercourse of the state”, a natural watercourse that has been deemed navigable by a Missouri court;

(6) “Nonnavigable watercourse of the state”, a natural watercourse that has not been deemed navigable by a Missouri court;

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.

18           (7) “Public navigable watercourse”, a natural watercourse that is or may be used  
19 for interstate commerce;

20           (8) “Reliction”, the receding of water;

21           (9) “Riparian owner”, the owner of land adjacent to a natural watercourse or  
22 through which a natural watercourse runs;

23           (10) “Thalweg”, the line of a watercourse that constitutes the lowest or deepest part  
24 of the channel;

25           (11) “Thread”, the midpoint of a watercourse between the low water marks.

          60.702. 1. A riparian owner has the right to the natural flow of the natural  
2 watercourse including its volume and purity, except as affected by the reasonable use by  
3 other riparian owners. The factors for determining the reasonableness of a particular use  
4 are:

5           (1) The purpose of the use;

6           (2) The suitability of the use to the natural watercourse;

7           (3) The economic value of the use;

8           (4) The social value of the use;

9           (5) The extent and amount of harm the use causes;

10          (6) The practicality of avoiding the harm by adjusting the use or method of use of  
11 one riparian owner or the other;

12          (7) The practicality of adjusting the quantity of water used by each riparian owner;

13          (8) The protection of existing values or water uses, lands, investments, and  
14 enterprises; and

15          (9) The justice of requiring the user causing the harm to bear the loss.

16          2. A riparian owner has title in fee to the low water mark of a navigable  
17 watercourse of the state or a public navigable watercourse and to the thread of a  
18 nonnavigable watercourse.

19          3. A riparian owner has the right of access to the water from the riparian owner’s  
20 frontage including the right to wharf out, provided the riparian owner does not interfere  
21 with the public’s right of navigation and floatage.

22          4. Riparian rights or regulations shall not attach to artificial watercourses such as  
23 farm ponds or dug drains. Riparian rights shall attach to artificially enlarged watercourses  
24 such as reservoirs in streams or rivers.

          60.704. 1. If a watercourse is navigable, the bed of the watercourse below the low  
2 water mark belongs to the state. A riparian owner along a navigable watercourse of the  
3 state or a public navigable watercourse shall not own to the middle thereof, but only to the  
4 water’s edge at its low water mark.

5           2. If a watercourse is nonnavigable, the bed of the watercourse belongs to the  
6 riparian owner of the land if the watercourse is bounded on both sides by the same  
7 riparian owner's land. Absent a showing of contrary intent, if a watercourse is  
8 nonnavigable and is the dividing line between landowners, the owner of each side owns to  
9 the thread of the watercourse. A contrary intent may be found if the deed makes a specific  
10 reference other than to the nonnavigable watercourse.

11           3. No adjoining parts of a watercourse shall be considered navigable unless they are  
12 deemed navigable by a Missouri court.

60.706. 1. Accretions along a watercourse belong to the riparian owner against  
2 whose property the accretions were deposited. The riparian owner becomes the owner of  
3 the property formed at the time of the accretion.

4           2. Accretion caused by dikes, by filling or dumping along the shore, or by other  
5 artificial means shall be subject to the same ownership rights as if caused naturally.  
6 However, no riparian owner shall claim title to any land added by accretion caused by an  
7 artificial condition he or she created.

8           3. If all or a part of the bank or island is washed away by a navigable watercourse  
9 of the state or a public navigable watercourse, the riparian owner's title to the part  
10 washing away ceases and vests in the state as successor. If the space washed away  
11 afterward becomes dry land and only part was washed away, the riparian owner may  
12 reacquire title by accretion. If all was washed away, the riparian owner cannot acquire  
13 title by accretion. Washing away obliterates lines in a watercourse, and new accretion shall  
14 be measured as though the old lines never existed.

15           4. Accretion shall be measured by dividing the new bank in the same proportion  
16 as the old bank was divided even though former lines now washed away shall be  
17 disregarded. Accretions to an island belong to the owner of the island. The provisions of  
18 this subsection shall not apply to nonnavigable watercourses.

60.708. 1. The line between counties divided by a navigable watercourse of the state  
2 or a public navigable watercourse shall be the thread of the watercourse. A slow,  
3 imperceptible, and gradual change of the watercourse due to accretion or reliction shall  
4 change the county line, but a sudden change by avulsion shall not.

5           2. If a watercourse forms the boundary between adjoining property owners, a slow,  
6 imperceptible, and gradual change of the watercourse due to accretion or reliction shall  
7 change the boundary, but a sudden change by avulsion shall not.

640.800. 1. The department of natural resources shall not implement or enforce  
2 any portion of a federal proposed rule finalized after January 1, 2015, to revise or provide  
3 guidance on the regulatory definition of "waters of the United States" or "navigable

4 waters” under the federal Clean Water Act, as amended, 33 U.S.C. Section 1251 et seq.,  
5 without the approval of the general assembly.

6 2. For the purposes of establishing regulations, conditions, or permit requirements,  
7 no federal agency shall make a determination or designate any watercourse within the state  
8 of Missouri as navigable.

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