

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 82
103RD GENERAL ASSEMBLY

0251H.08C

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 68.080, 160.077, and 701.200, RSMo, and to enact in lieu thereof three new sections relating to water resources.

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

Section A. Sections 68.080, 160.077, and 701.200, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 68.080, 160.077, and 640.406, to read as follows:

68.080. 1. There is hereby established in the state treasury the "Waterways and Ports Trust Fund". The fund shall consist of revenues appropriated to it by the general assembly.

2. The fund may also receive any gifts, contributions, grants, or bequests received from federal, private, or other sources.

3. The fund shall be a revolving trust fund exempt from the provisions of section 33.080 relating to the transfer of unexpended balances by the state treasurer to the general revenue fund of the state. All interest earned upon the balance in the fund shall be deposited to the credit of the fund.

4. Moneys in the fund shall be withdrawn only **at the request of a Missouri port authority for statutorily permitted port purposes and** upon appropriation by the general assembly, to be administered by the state highways and transportation commission and the department of transportation, in consultation with Missouri public ports, for the purposes in subsection 2 of section 68.035 and for no other purpose. To be eligible to receive an appropriation from the fund, a project shall be:

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.

15 (1) A capital improvement project implementing physical improvements designed to
16 improve commerce or terminal and transportation facilities on or adjacent to the navigable
17 rivers of this state;

18 (2) Located on land owned or held in long-term lease by a Missouri port authority, **or**
19 **on land owned by a city not within a county and managed by a Missouri port authority,**
20 or within a navigable river adjacent to such land, and within the boundaries of a port
21 authority;

22 (3) Funded by alternate sources so that moneys from the fund comprise no more than
23 eighty percent of the cost of the project;

24 (4) Selected and approved by the highways and transportation commission, in
25 consultation with Missouri public ports, to support a statewide plan for waterborne
26 commerce, in accordance with subdivision (1) of section 68.065; and

27 (5) Capable of completion within two years of approval by the highways and
28 transportation commission.

29 5. Appropriations made from the fund established in this section may be used as a
30 local share in applying for other grant programs.

31 6. The provisions of this section shall terminate on August 28, 2033, pending the
32 discharge of all warrants. On December 31, 2033, the fund shall be dissolved and the
33 unencumbered balance shall be transferred to the general revenue fund.

160.077. 1. This section shall be known and may be cited as the "Get the Lead Out of
2 School Drinking Water Act".

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

4 (1) "Department", the Missouri department of health and senior services;

5 (2) "Disadvantaged school district", any school district that serves students from a
6 county in which at least twenty-five percent of the households in such county are below the
7 federal poverty guidelines updated periodically in the Federal Register by the U.S.
8 Department of Health and Human Services under the authority of 42 U.S.C. Section 9902(2),
9 as amended, or any school district in which more than seventy percent of students in the
10 district qualify for a free or reduced price lunch under the federal Richard B. Russell National
11 School Lunch Act, 42 U.S.C. Section 1751 et seq.;

12 (3) "Drinking water outlet", a potable water fixture that is used for drinking or food
13 preparation. Drinking water outlet includes, but is not limited to:

14 (a) A water fountain, faucet, or tap that is used or potentially used for drinking or food
15 preparation **or for cleaning cooking or eating utensils;** and

16 (b) Ice-making and hot drink machines;

17 (4) "First draw", a two hundred fifty-milliliter sample immediately collected from a
18 drinking water outlet that has been turned on after a stagnation period of at least eight hours;

- 19 (5) "Parent", a parent, guardian, or other person having control or custody of a child;
- 20 (6) "Private school", the same definition as in section 166.700;
- 21 (7) "Public school", the same definition as in section 160.011;
- 22 (8) "Remediation", decreasing the lead concentration in water from a drinking water
23 outlet to less than five parts per billion ~~[without relying solely on flushing practices, or]~~ using
24 methods such as the replacement of lead-containing pipes, solder, fittings, or fixtures with
25 lead-free components **or filtering when the water supply is the source of contamination.**
26 Flushing ~~[as a stand-alone action]~~ shall not be considered remediation;
- 27 (9) "School", any public school, private school, or provider of an early childhood
28 education program that receives state funding.
- 29 3. Beginning in the 2023-24 school year and for each subsequent school year, each
30 school shall provide drinking water with a lead concentration level below five parts per
31 billion in sufficient amounts to meet the drinking water needs of all students and staff as
32 provided in this section.
- 33 4. (1) On or before January 1, 2024, each school shall:
- 34 (a) Conduct an inventory of all drinking water outlets ~~[and all outlets that are used for~~
35 ~~dispensing water for cooking or for cleaning cooking and eating utensils]~~ in each of the
36 school's buildings;
- 37 (b) Develop a plan for testing each outlet inventoried under paragraph (a) of this
38 subdivision and make such plan available to the public; and
- 39 (c) Upon request, provide general information on the health effects of lead
40 contamination and additional informational resources for employees and parents of children
41 at each school.
- 42 (2) Each school shall make buildings housing early childhood education programs,
43 kindergartens, and elementary schools the priority when complying with paragraphs (a) and
44 (b) of subdivision (1) of this subsection.
- 45 (3) Before August 1, 2024, or the first day on which students will be present in the
46 building, whichever is later, each school shall:
- 47 (a) Perform all testing as required by subsection 5 of this section and within two
48 weeks after receiving test results, make all testing results and any lead remediation plans
49 available on the school's website;
- 50 (b) Remove and replace any drinking water coolers or drinking water outlets that the
51 United States Environmental Protection Agency has determined are not lead-free under the
52 federal Lead Contamination Control Act of 1988, as amended; except the school shall not be
53 required to replace those drinking water outlets or water coolers that tested under the
54 requirements of this section and have been determined to be dispensing drinking water with a
55 lead concentration less than five part per billion; however, such drinking water outlet or water

56 cooler shall be subject to all testing requirements and shall not be excluded from testing under
57 **subdivision (3) of subsection [H] 5** of this section.

58 (4) If testing indicates that the water source is causing the contamination and until
59 such time that the source of the contamination has been remediated, the school shall:

60 (a) Install a filter **that reduces lead in drinking water** at each point at which the
61 water supply enters the building **in accordance with any relevant requirements set forth**
62 **by the department of natural resources to ensure lead concentrations are below the**
63 **standard set in subsection 3 of this section;**

64 (b) Install a filter that reduces lead in drinking water on each water outlet inventoried
65 under paragraph (a) of subdivision (1) of this subsection to ensure lead concentrations are
66 below five parts per billion; or

67 (c) Provide purified water at each water outlet inventoried under paragraph (a) of
68 subdivision (1) of this subsection.

69 (5) If testing indicates that the internal building piping is causing the contamination
70 and until such time that the source of the contamination has been remediated, the school shall:

71 (a) Install a filter that reduces lead in drinking water on each water outlet inventoried
72 under paragraph (a) of subdivision (1) of this subsection to ensure lead concentrations are
73 below five parts per billion; ~~[H]~~

74 (b) Provide purified water at each water outlet inventoried under paragraph (a) of
75 subdivision (1) of this subsection; **or**

76 **(c) Remove the outlet from service.**

77 (6) If a pipe, solder, fitting, or fixture is replaced as part of remediation, the
78 replacement shall be lead free, as such term is defined in 40 CFR 143.12, as amended.

79 (7) If a test result exceeds five parts per billion, the affected school shall:

80 (a) Contact parents and staff via written notification within seven business days after
81 receiving the test result. The notification shall include at least:

82 a. The test results and a summary that explains such results;

83 b. A description of any remedial steps taken; and

84 c. A description of general health effects of lead contamination and community
85 specific resources; and

86 (b) Provide bottled water if there is not enough water to meet the drinking water
87 needs of the students, teachers, and staff.

88 (8) School districts shall submit such annual testing results to the department.

89 (9) This subsection shall not be construed to prevent a school from conducting more
90 frequent testing than required under this section.

91 5. (1) Before August 1, 2024, or the first day on which students will be present in the
92 building, whichever is later, and annually thereafter, each school shall conduct testing for lead

93 by first-draw and follow-up flush samples of a random sampling of at least twenty-five
94 percent of remediated drinking water outlets until all remediated sources have been tested as
95 recommended by the 2018 version of the United States Environmental Protection Agency's
96 Training, Testing, and Taking Action program. The testing shall be conducted and the results
97 analyzed for both types of tests by an entity or entities approved by the department. **All**
98 **drinking water outlets with test results of less than five parts per billion for lead shall be**
99 **retested at intervals described in subdivision (3) of this subsection.**

100 (2) If, in the ten years prior to the 2023-24 school year, a fixture tested above five
101 parts per billion for lead, such fixture does not need to be repeat tested for lead, but instead
102 remediation shall begin on such fixture.

103 (3) **A school that tests and does not find a drinking water outlet with a lead**
104 **concentration above the standard described in subsection 3 of this section shall be**
105 **required to test only every five years. This subdivision shall not be construed to prevent**
106 **a school from conducting more frequent testing than required under this subsection.**

107 6. (1) In addition to the apportionments payable to a school district under chapter
108 163, the department of natural resources, with support from the department of elementary and
109 secondary education and the department of health and senior services, is hereby authorized to
110 apportion to any school additional funding for the filtration, testing, and other remediation of
111 drinking water systems required under this section, subject to appropriation.

112 (2) To the extent permitted by federal law, a school district may seek reimbursement
113 or other funds for compliance incurred under this section under any applicable federal law
114 including, but not limited to, the America's Water Infrastructure Act of 2018 and the Water
115 Infrastructure Finance and Innovation Act of 2014, 33 U.S.C. Section 3901 et seq.

116 (3) Disadvantaged school districts shall receive funding priority under this
117 subsection.

118 7. The department, in conjunction with the department of elementary and secondary
119 education, shall publish a report biennially based on the findings from the water testing
120 conducted under this section. Such report shall be published on the department of natural
121 resources website.

122 8. For public schools, the department shall ensure compliance with this section. Each
123 school district shall be responsible for ensuring compliance within each school within the
124 school district's jurisdiction.

125 9. ~~[No school building constructed after January 4, 2014, as provided in the federal~~
126 ~~Reduction of Lead in Drinking Water Act (42 U.S.C. Section 300g-6), as amended, shall be~~
127 ~~required to install, maintain, or replace filters under paragraph (e) of subdivision (1) of~~
128 ~~subsection 4 of this section.~~

129 ~~10. A school that tests and does not find a drinking water source with a lead~~
130 ~~concentration above the acceptable level as described in subsection 3 of this section shall be~~
131 ~~required to test only every five years.~~

132 ~~11.]~~ The department may promulgate all necessary rules and regulations for the
133 administration of this section. Any rule or portion of a rule, as that term is defined in section
134 536.010, that is created under the authority delegated in this section shall become effective
135 only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable,
136 section 536.028. This section and chapter 536 are nonseverable and if any of the powers
137 vested with the general assembly pursuant to chapter 536 to review, to delay the effective
138 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant
139 of rulemaking authority and any rule proposed or adopted after August 28, 2022, shall be
140 invalid and void.

640.406. 1. For the purposes of this section, the following terms mean:

- 2 (1) "Applicant", any person applying for a water exportation permit;
- 3 (2) "Beneficial uses", water uses, which include, but are not limited to, domestic,
4 agricultural, industrial, recreational, and other legitimate beneficial uses;
- 5 (3) "Commission", the state soil and water districts commission under section
6 278.080;
- 7 (4) "Department", the Missouri department of natural resources;
- 8 (5) "Director", the director of the department of natural resources;
- 9 (6) "End use", the final location for which the exported water will be used,
10 consumed, or applied for a stated beneficial use;
- 11 (7) "Person", any individual, partnership, copartnership, firm, company, public
12 or private corporation, association, joint stock company, trust, estate, political
13 subdivision, water district, or any agency, board, department, or bureau of the
14 federal or any state government, or any other legal entity which is recognized by law as
15 the subject of rights and duties;
- 16 (8) "Pipeline facility", all parts of a facility through which water moves in
17 transportation including, but not limited to, pipe, valves, and other appurtenances
18 connected to pipe, pumping units, fabricated assemblies associated with pumping units,
19 metering, and delivery stations and fabricated assemblies therein, and breakout tanks;
- 20 (9) "Water exportation permit", a permit issued by the department, approved
21 by the commission, granting the exportation of water outside the state of Missouri
22 subject to the provisions of this section;
- 23 (10) "Water resources", any Missouri water source occurring on the surface, in
24 natural or artificial channels, lakes, reservoirs, or impoundments, and in subsurface
25 aquifers which are available or which may be made available.

26 **2. In order to protect the access, use, and enjoyment of Missouri's water**
27 **resources, it shall be unlawful for any person to export water resources outside the state**
28 **of Missouri unless such person holds a water exportation permit issued by the**
29 **department, subject to the following exemptions:**

30 **(1) If the withdrawal and end use of water resources are within thirty miles of**
31 **the border of the state, any person exempt under the provision of this section shall**
32 **report to the director annually the person's water use volumes and withdrawal rates in a**
33 **format and timeline determined by the director. Such report shall be made available to**
34 **the public by the department on the department's website. Such report shall also be**
35 **provided to the commission; and**

36 **(2) Exportation of bottled water, or water packaged in containers intended for**
37 **single use.**

38 **3. It shall be unlawful for any person to withdraw water from any water**
39 **resource for exportation outside the state of Missouri by use of a pipeline facility, unless**
40 **the withdrawal and ultimate end use of the water by the pipeline facility is within thirty**
41 **miles of the state border. Any person who withdraws water for exportation under this**
42 **subsection shall annually report the water use volumes, withdrawal rates, and end use to**
43 **the department in a manner and on timelines determined by the department.**

44 **4. The director shall review each water exportation permit application and all**
45 **supporting materials to ensure all the following conditions have been met prior to**
46 **accepting a water exportation permit application for public comment and review by the**
47 **commission:**

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

50 **(2) The applicant has demonstrated both a present need and beneficial use for**
51 **the water resources. In making the determination of need and beneficial use, the**
52 **director shall consider the availability of all water sources, whether in state or out of**
53 **state, along with other relevant factors as the director and the commission deem**
54 **appropriate;**

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

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

59 **(5) The applicant has provided relevant information and the director and the**
60 **commission confirmed that issuance of a water exportation permit is necessary for the**
61 **beneficial use of the applicant or the applicant's customers, and the beneficial use at the**

62 end use location is not reasonably attainable through a method other than granting a
63 water exportation permit under this section;

64 (6) In the event of a conflict between the beneficial use outside the state and the
65 beneficial use needs in the state, the director and the commission shall prioritize the
66 beneficial use needs of the state and its citizens over the applicant or other state; and

67 (7) Whenever a person applies for a water exportation permit or water
68 exportation permit renewal, the department shall send a written notice within thirty
69 business days after receiving the permit application to the county commission of the
70 county where the water for exportation is located.

71 5. Within one hundred twenty days after the receipt of a complete application,
72 the director shall determine whether the applicant complied with provisions of
73 subsection 4 of this section. The director shall, after making such determination, hold a
74 thirty-day public comment period regarding the director's determination. Within sixty
75 days after the comment period, the director shall recommend approval or denial of the
76 permit. Such recommendation, along with all public comments, shall be submitted to
77 the commission. The commission shall have a public hearing within thirty days after
78 receipt of the director's recommendation. This public hearing may be scheduled during
79 one of the commission's regular scheduled meetings. The commission shall make a final
80 decision to approve or deny the water exportation permit within thirty days after the
81 public hearing. A three-fourths majority of the commission members present shall be
82 required to approve the issuance or renewal of a water exportation permit.

83 (1) To renew a valid water exportation permit, an applicant shall file a renewal
84 application for a water exportation permit with the department no later than two
85 hundred seventy-one days prior to the expiration of the existing water exportation
86 permit. The applicant, director, and the commission shall follow the same procedures
87 and timelines as required for the issuance of a new water exportation permit under this
88 section. The director may impose additional conditions to address any substantial or
89 material change in factors under subsection 4 of this section or may deny a renewal
90 application as necessary to comply with this section based on any such substantial or
91 material changes in factors under subsection 4 of this section. If the director or the
92 commission are in the process of reviewing the renewal application before the final
93 decision is made and the existing applicant's water exportation permit expires, such
94 applicant shall be able to operate under the terms of the expired water exportation
95 permit until a final decision is made by the commission on the renewal of such permit.

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

98 **6. A water exportation permit shall be in effect for three years from the date of**
99 **issuance. The permit holder shall annually report the water use volumes, withdrawal**
100 **rates, and end use to the department in a manner and on timelines determined by the**
101 **department. Such report shall be made available to the public on the department's**
102 **website.**

103 **7. The water exportation permit application shall include all water exportation**
104 **requested by the applicant. The water exportation permit may be approved in whole or**
105 **in part by the director or the commission. This section shall be interpreted to allow one**
106 **applicant to include multiple water withdrawals for exportation from various locations**
107 **within one water exportation permit application.**

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

110 **9. A major water user, as defined in section 256.400, may request the department**
111 **to reevaluate any existing water exportation permit using the criteria under subsection 4**
112 **of this section. The department shall create a mechanism for a major water user to**
113 **submit a request for reevaluation and shall provide the major water user with the**
114 **director's findings within one hundred and twenty days of the request for reevaluation.**
115 **After reevaluating the permit, the director shall impose additional conditions necessary**
116 **for the continued exportation of water outside the state if the director determines that**
117 **the existing permit is negatively impacting the requesting major water user's beneficial**
118 **use of his or her water resources. The director's decision to modify or to decline to**
119 **modify the conditions in an existing permit pursuant to this subsection shall be subject**
120 **to approval by the commission.**

121 **10. Nothing in this section shall preclude a person from bringing any**
122 **constitutional, statutory, or common law claim to vindicate or otherwise defend the**
123 **person's water rights. A permit issued under this section shall not serve as a defense to**
124 **any claim brought against a water permit holder for the infringement of water rights.**
125 **In addition, any person harmed by the issuance of a water exportation permit may**
126 **bring an injunctive action or other appropriate action to enforce the provisions of this**
127 **section. Suits may be brought in the county where the defendant's principal place of**
128 **business is located or where the withdrawal of water occurred in violation of this**
129 **section.**

130 **11. If the attorney general receives a complaint that provisions of this section**
131 **have been violated, or, at the request of the department, the attorney general shall bring**
132 **an injunctive action or other appropriate action in the name of the people of the state to**
133 **enforce provisions of this section. Suit may be brought in Cole County, or in any county**
134 **where the defendant's principal place of business is located or where the withdrawal of**

135 water occurred in violation of this section. Any member of the commission deemed to
136 have violated any provision of this section shall forfeit their office upon such finding of a
137 violation.

138 12. Whenever a state of emergency is declared by the governor under section
139 44.100 for all or any part of the state, based on drought conditions, the department shall
140 reevaluate any existing water exportation permit. Any reevaluation completed under
141 this section shall use the criteria under subsection 4 of this section. After reevaluation of
142 the permit is complete, the department shall have the authority to impose additional
143 conditions or revoke the permit if necessary for the continued exportation of water
144 outside the state if the director determines that the existing permit negatively impacts
145 beneficial use of water resources. The director's decision to modify, revoke, or make no
146 changes to the permit shall be subject to the approval or denial of the commission.

2 ~~[701.200. 1. Subject to appropriations, each school district, as such~~
3 ~~term is defined in section 160.011, may test a sample of a source of potable~~
4 ~~water in a public school building in that district serving students under first~~
5 ~~grade and constructed before 1996 for lead contamination in accordance with~~
6 ~~guidance provided by the department of health and senior services. The school~~
7 ~~district may submit the samples to a department-approved laboratory for~~
8 ~~analysis for lead and provide the written sampling results to the department~~
9 ~~within seven days of receipt.~~

10 2. ~~The department shall develop guidance for schools in collecting and~~
11 ~~testing first draw samples of potable water. The department shall develop and~~
12 ~~make publicly available a list of approved laboratories for lead analysis.~~

13 3. ~~If any of the samples taken in the building exceed current standards~~
14 ~~for parts per billion of lead established by the United States Environmental~~
15 ~~Protection Agency, the school district shall promptly provide individual~~
16 ~~notification of the sampling results, by written or electronic communication, to~~
17 ~~the parents or legal guardians of all enrolled students and include the following~~
18 ~~information: the corresponding sampling location within the building and the~~
19 ~~U.S. Environmental Protection Agency's website for information about lead in~~
20 ~~drinking water. If any of the samples taken in the building are at or below five~~
21 ~~parts per billion, notification may be made as provided in this subsection or by~~
22 ~~posting on the school's website.~~

23 4. ~~The department may promulgate rules and regulations necessary to~~
24 ~~implement the provisions of this section. Any rule or portion of a rule, as that~~
25 ~~term is defined in section 536.010, that is created under the authority delegated~~
26 ~~in this section shall become effective only if it complies with and is subject to~~
27 ~~all of the provisions of chapter 536 and, if applicable, section 536.028. This~~
28 ~~section and chapter 536 are nonseverable and if any of the powers vested with~~
29 ~~the general assembly pursuant to chapter 536 to review, to delay the effective~~
30 ~~date, or to disapprove and annul a rule are subsequently held unconstitutional,~~
31 ~~then the grant of rulemaking authority and any rule proposed or adopted after~~
~~August 28, 2020, shall be invalid and void.~~

32 ~~5. As used in this section, the term "source of potable water" shall~~
33 ~~mean the point at which nonbottled water that may be ingested by children or~~
34 ~~used for food preparation exits any tap, faucet, drinking fountain, wash basin~~
35 ~~in a classroom occupied by children or students under first grade, or similar~~
36 ~~point of use; provided, that all bathroom sinks and wash basins used by~~
37 ~~janitorial staff are excluded from this definition.]~~

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

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