

FIRST REGULAR SESSION

HOUSE BILL NO. 1295

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PARKER.

2111H.02I

JOSEPH ENGLER, Chief Clerk

AN ACT

To amend chapter 640, RSMo, by adding thereto two new sections relating to natural resources.

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

Section A. Chapter 640, RSMo, is amended by adding thereto two new sections, to be known as sections 640.406 and 640.407, to read as follows:

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

(1) "Applicant", any person applying for a water export permit;

(2) "Beneficial uses", water uses including, but not limited to, domestic, agricultural, industrial, recreational, and other legitimate beneficial uses;

(3) "Commission", the Missouri water resources commission established under 640.407;

(4) "Department", the Missouri department of natural resources;

(5) "Director", the director of the department of natural resources;

(6) "End use", the final location for which the exported water will be used, consumed, or applied for a stated beneficial use;

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

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.

16 (8) "Water export permit", a permit issued by the department, approved by the
17 commission, granting the exportation of water outside the state of Missouri subject to
18 the provisions of this section;

19 (9) "Water resources", any Missouri water source occurring on the surface, in
20 natural or artificial channels, lakes, reservoirs, or impoundments, and in subsurface
21 aquifers that are available or that may be made available.

22 2. In order to protect the access, use, and enjoyment of Missouri's water
23 resources, it shall be unlawful for any person to export water resources outside the state
24 of Missouri unless such person holds a water export permit issued by the department,
25 subject to the following exceptions:

26 (1) The withdrawal and end use are within thirty miles of the border of the state
27 of Missouri, provided that any person exempt under this subdivision shall request an
28 exemption from the director and, if approved, shall report to the director annually their
29 water use volumes and withdrawal rates as determined by the director. Such report
30 shall also be provided to the commission;

31 (2) The exportation of bottled water or water packaged in containers intended
32 for single use; and

33 (3) The exportation of ice.

34 3. The director shall review each water export permit application and all
35 supporting materials to ensure the following conditions have been met prior to
36 accepting a water export permit application for public comment and review by the
37 commission:

38 (1) There are water resources available in the volume and withdrawal rates
39 requested by the applicant for export;

40 (2) The applicant has demonstrated both a present need and beneficial use for
41 the water resources. In making the determinations of need and beneficial use, the
42 director shall consider the availability of all water sources, whether in state or out of
43 state, along with other relevant factors as the director and commission deem
44 appropriate;

45 (3) The volume and withdrawal rates requested by the applicant will not
46 interfere with existing and projected instate beneficial uses. In making this
47 determination, the department shall conduct the review under subsection 6 of this
48 section;

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

51 (5) The applicant has provided relevant information and the director and
52 commission confirm the issuance of a water export permit is necessary for the beneficial

53 use of the applicant or the applicant's customer and the beneficial use at the end location
54 is not reasonably attainable through a method other than granting a water export
55 permit under this section.

56 4. In the event of conflict between a beneficial use outside Missouri and the needs
57 in Missouri, the director and commission shall prioritize the needs of Missouri and its
58 citizens over the applicants from other states.

59 5. Whenever a person applies for a water export permit or water export permit
60 renewal, the department shall send a written notice to the county commission of the
61 county in which the water for exportation is located.

62 6. (1) Within one hundred eighty days after the department's receipt of a
63 complete application, the director shall determine the application's compliance with
64 subsection 3 of this section. The director shall, after making such determination,
65 provide for a thirty-day public comment period. Within sixty days after closure of the
66 public comment period, the director shall recommend approval or denial of the permit.
67 Such recommendation, along with all public comments, shall be submitted to the
68 commission. The commission shall have a public hearing within thirty days after receipt
69 of the director's recommendation. This public hearing may be scheduled during one of
70 the commission's regular quarterly meetings. The commission shall make a final
71 decision to approve or deny the water export permit within thirty days after the public
72 hearing. A three-fourths majority vote of the commission is required to approve the
73 issuance of a water export permit.

74 (2) To renew a valid water export permit, applicants shall file a renewal
75 application for a water export permit with the department no later than two hundred
76 seventy-one days prior to the expiration of their existing water export permit. The
77 applicant, director, and commission shall follow the same procedures and timelines as
78 required for issuance of a new permit. The director may impose additional conditions to
79 address any such substantial or material change in factors evaluated under subsections
80 3 and 4 of this section or may deny the water export renewal application as necessary to
81 comply with this section or based on any such substantial or material changes in factors
82 evaluated under subsections 3 and 4 of this section. If the director or commission has
83 not completed the review of such renewal application and the existing applicant's water
84 export permit expires, such applicant shall be able to operate under the terms of the
85 expired water export permit until a final decision is made by the commission on the
86 renewal of such permit.

87 (3) In the absence of appeal as provided under chapter 536, the decision of the
88 commission shall be final.

89 7. A water export permit shall be in effect from the date of issuance. Such
90 permit holder shall annually report the water use volumes and withdrawal rates to the
91 department in a manner and timeframe determined by the department.

92 8. The water export permit application shall include all exports requested by the
93 applicant. The water export permit can be approved in whole or in part by the director
94 or commission. This section shall be interpreted to allow one applicant to include
95 multiple water withdrawals for export from various locations within one water export
96 permit application.

97 9. A water export permit application shall include a designee or agent in the state
98 of Missouri for service of process and to receive other notices.

99 10. A water permit applicant shall consent to suit within the state of Missouri or
100 otherwise avail itself to the state's jurisdiction. In the event of a conflict between the
101 conditions of use required in Missouri and conditions required in another state, the
102 water permit holder shall consent to conditions imposed by the director.

103 11. A major water user, as defined in section 256.400, may request the
104 department to reevaluate any existing water export permit using the criteria under
105 subsections 3 and 10 of this section. The department shall create a mechanism for a
106 major water user to submit such a request for reevaluation and shall provide to the
107 major water user the director's findings within one hundred twenty days of the request
108 for reevaluation. After reevaluating the permit, the director shall impose additional
109 conditions necessary for the continued exportation of water outside the state if the
110 director determines that the existing permit is negatively impacting the requesting
111 major water user's beneficial use of his or her water resources. The director's decision
112 to modify or to decline to modify the conditions in an existing permit pursuant to this
113 subsection shall be subject to the approval by the commission.

114 12. Nothing in this section shall preclude a person from bringing any
115 constitutional, statutory, or common law claim to vindicate or otherwise defend the
116 user's water rights. A permit issued under this section shall not serve as a defense to any
117 claim brought against a water export permit holder for the infringement of water rights.

118 13. If the attorney general receives a complaint that provisions of this section
119 have been violated, or, at the request of the department, the attorney general may bring
120 an injunctive action or other appropriate action in the name of the people of the state to
121 enforce provisions of this section. Suit may be brought in any county where the
122 defendant's principal place of business is located or where the withdrawal of water
123 occurred in violation of this section.

124 14. Whenever a state of emergency is declared by the governor under section
125 44.100 for all or any part of the state based upon drought conditions, the department

126 shall reevaluate any existing water export permit. Any reevaluation completed under
127 this section shall use the criteria under subsections 3 and 4 of this section. After
128 reevaluation of the permit is complete, the department shall have the authority to
129 impose additional conditions or revoke the permit if necessary for the continued
130 exportation of water outside the state if the director determines that the existing permit
131 negatively impacts beneficial use of water resources. The director's decision to modify,
132 revoke, or make no changes to the permit shall be subject to approval by the
133 commission.

640.407. 1. There is hereby established the "Missouri Water Resources
2 Commission". The commission shall consist of nine members as follows:

3 (1) One member appointed by the governor;

4 (2) Two members of the house of representatives appointed by the speaker of the
5 house of representatives, with one of the appointees having substantial agricultural
6 knowledge;

7 (3) Two members of the senate appointed by the president pro tempore of the
8 senate, with one of the appointees having substantial agricultural knowledge;

9 (4) The chief of administrative officer of the water district statutorily established
10 under section 256.643, or his or her designee;

11 (5) The director of the Missouri department of agriculture, or his or her
12 designee;

13 (6) The chair of the Missouri clean water commission, or his or her designee;
14 and

15 (7) The chair of the Missouri soil and water district commission, or his or her
16 designee.

17 2. Each member of the Missouri water resources commission shall serve without
18 compensation but shall be reimbursed for actual and necessary expenses incurred in the
19 performance of their official duties.

20 3. Each legislative member of the Missouri water resources commission is
21 entitled to receive the same per diem, mileage, and travel allowance paid to members of
22 the general assembly serving on interim committees. The allowances specified in this
23 subsection shall be paid from the amount appropriated for that purpose.

24 4. The Missouri water resources commission shall meet on a quarterly basis to
25 receive general updates from the director of the department of natural resources
26 regarding Missouri's water resource availability. The commission shall, as required by
27 section 640.046, meet in an expeditious manner to fulfill the duties set forth in that
28 section. The commission shall elect a chair biannually and five members shall be
29 considered a quorum.

30 **5. No member of the general assembly shall serve more than six years total on**
31 **the commission in their capacity as a member of the house of representatives or the**
32 **senate.**

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