

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1295
103RD GENERAL ASSEMBLY

2111H.04C

JOSEPH ENGLER, Chief Clerk

AN ACT

To amend chapter 640, RSMo, by adding thereto one new section 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 one new section, to be
2 known as section 640.406, to read as follows:

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

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

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

5 **(3) "Commission", the state soil and water districts commission established**
6 **under section 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**

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 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 export permit", a permit issued by the department, approved by the
21 commission, granting the exportation of water outside the state of Missouri subject to
22 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 that are available or that 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 export permit issued by the department,
29 subject to the following exceptions:

30 (1) The withdrawal and end use are within thirty miles of the border of the state
31 of Missouri, provided that any person exempt under this subdivision shall request an
32 exemption from the director and, if approved, shall report to the director annually their
33 water use volumes and withdrawal rates as determined by the director. Such report
34 shall be made available to the public by the department on the department's website.
35 Such report shall also be provided to the commission;

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

38 (3) The exportation of ice.

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

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

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

51 (2) The applicant has demonstrated both a present need and beneficial use for
52 the water resources. In making the determinations of need and beneficial use, the
53 director shall consider the availability of all water sources, whether in state or out of

54 state, along with other relevant factors as the director and commission deem
55 appropriate;

56 (3) The volume and withdrawal rates requested by the applicant shall not
57 interfere with existing and projected in-state beneficial uses. In making this
58 determination, the department shall conduct the review under subsection 6 of this
59 section;

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

62 (5) The applicant has provided relevant information and the director and
63 commission confirm the issuance of a water export permit is necessary for the beneficial
64 use of the applicant or the applicant's customer and the beneficial use at the end location
65 is not reasonably attainable through a method other than granting a water export
66 permit under this section.

67 5. In the event of conflict between a beneficial use outside Missouri and the needs
68 in Missouri, the director and commission shall prioritize the needs of Missouri and its
69 citizens over the applicants from other states.

70 6. Whenever a person applies for a water export permit or water export permit
71 renewal, the department shall send a written notice within thirty business days from
72 receiving the permit application to the county commission of the county in which the
73 water for exportation is located.

74 7. (1) Within one hundred eighty days after the department's receipt of a
75 complete application, the director shall determine the application's compliance with
76 subsection 4 of this section. The director shall, after making such determination,
77 provide for a thirty-day public comment period. Within sixty days after closure of the
78 public comment period, the director shall recommend approval or denial of the permit.
79 Such recommendation, along with all public comments, shall be submitted to the
80 commission. The commission shall have a public hearing within thirty days after receipt
81 of the director's recommendation. This public hearing may be scheduled during one of
82 the commission's regular quarterly meetings. The commission shall make a final
83 decision to approve or deny the water export permit within thirty days after the public
84 hearing. A three-fourths majority vote of the commission is required to approve the
85 issuance of a water export permit.

86 (2) To renew a valid water export permit, applicants shall file a renewal
87 application for a water export permit with the department no later than two hundred
88 seventy-one days prior to the expiration of their existing water export permit. The
89 applicant, director, and commission shall follow the same procedures and timelines as
90 required for issuance of a new permit. The director may impose additional conditions to

91 address any such substantial or material change in factors evaluated under subsections
92 4 and 5 of this section or may deny the water export renewal application as necessary to
93 comply with this section or based on any such substantial or material changes in factors
94 evaluated under subsections 4 and 5 of this section. If the director or commission has
95 not completed the review of such renewal application and the existing applicant's water
96 export permit expires, such applicant shall be able to operate under the terms of the
97 expired water export permit until a final decision is made by the commission on the
98 renewal of such permit.

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

101 8. A water export permit shall be in effect for three years from the date of
102 issuance. Such permit holder shall annually report the water use volumes, withdrawal
103 rates, and end use to the department in a manner and timeframe determined by the
104 department. Such report shall be made available to the public by the department on the
105 department's website.

106 9. The water export permit application shall include all water exportation
107 requests by the applicant. The water export permit may be approved in whole or in
108 part by the director or commission. This section shall be interpreted to allow one
109 applicant to include multiple water withdrawals for water exportation from various
110 locations within one water export permit application.

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

113 11. A water permit applicant shall consent to suit within the state of Missouri or
114 otherwise avail itself to the state's jurisdiction. In the event of a conflict between the
115 conditions of use required in Missouri and conditions required in another state, the
116 water permit holder shall consent to conditions imposed by the director.

117 12. A major water user, as defined in section 256.400, may request the
118 department to reevaluate any existing water export permit using the criteria under
119 subsections 4 and 11 of this section. The department shall create a mechanism for a
120 major water user to submit such a request for reevaluation and shall provide to the
121 major water user the director's findings within one hundred twenty days of the request
122 for reevaluation. After reevaluating the permit, the director shall impose additional
123 conditions necessary for the continued exportation of water outside the state if the
124 director determines that the existing permit is negatively impacting the requesting
125 major water user's beneficial use of his or her water resources. The director's decision
126 to modify or to decline to modify the conditions in an existing permit pursuant to this
127 subsection shall be subject to the approval by the commission.

128 **13. Nothing in this section shall preclude a person from bringing any**
129 **constitutional, statutory, or common law claim to vindicate or otherwise defend the**
130 **user's water rights. A permit issued under this section shall not serve as a defense to any**
131 **claim brought against a water export permit holder for the infringement of water rights.**
132 **In addition, any person harmed by the issuance of a water export permit may bring an**
133 **injunctive action or other appropriate action to enforce the provisions of this section.**

134 **14. If the attorney general receives a complaint that provisions of this section**
135 **have been violated, or, at the request of the department, the attorney general may bring**
136 **an injunctive action or other appropriate action in the name of the people of the state to**
137 **enforce provisions of this section. Suit may be brought in Cole County, or in any county**
138 **where the defendant's principal place of business is located or where the withdrawal of**
139 **water occurred in violation of this section.**

140 **15. Whenever a state of emergency is declared by the governor under section**
141 **44.100 for all or any part of the state based upon drought conditions, the department**
142 **shall reevaluate any existing water export permit. Any reevaluation completed under**
143 **this section shall use the criteria under subsections 4 and 5 of this section. After**
144 **reevaluation of the permit is complete, the department shall have the authority to**
145 **impose additional conditions or revoke the permit if necessary for the continued**
146 **exportation of water outside the state if the director determines that the existing permit**
147 **negatively impacts beneficial use of water resources. The director's decision to modify,**
148 **revoke, or make no changes to the permit shall be subject to approval by the**
149 **commission.**

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