

FIRST REGULAR SESSION

# HOUSE BILL NO. 1546

## 103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BURTON.

2549H.011

JOSEPH ENGLER, Chief Clerk

### AN ACT

To amend chapter 640, RSMo, by adding thereto one new section relating to water exportation across state boundaries.

*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 known as section 640.406, to read as follows:

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

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

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

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

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

(5) "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 that is recognized by law as the subject of rights and duties;

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

2. In order to protect the access, use, and enjoyment of Missouri's water resources, it shall be unlawful for any person to withdraw water from any water source

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 for export outside the state of Missouri unless such person holds a water exportation  
19 permit issued by the department. A water exportation permit shall not be required to  
20 withdraw water from any water source for export outside of the state by a public water  
21 system, as defined in section 640.102, where the withdrawal and ultimate end use are  
22 within the same six-digit hydrological unit code as defined by the United States  
23 Geological Survey and within thirty miles of the state border.

24 3. It shall be unlawful for any permit exempted from the requirements of  
25 subsection 2 of this section to be used for any purpose other than a beneficial use,  
26 specifically where the withdrawal and ultimate end use of water are within thirty miles  
27 of the state border.

28 4. During the review process of any permit required by this section, the director  
29 shall determine from the application for a water exportation permit and any supporting  
30 materials whether the following conditions have been met:

31 (1) There is water available in the amount specified in the application to export  
32 for water use outside the state of Missouri;

33 (2) The applicant has a present need for the water and intends to put the water  
34 into beneficial use. In making the determinations of need and beneficial use, the  
35 director shall consider the availability of all water sources and other relevant matters as  
36 the director deems appropriate, and may consider the availability of groundwater as an  
37 alternative source;

38 (3) The proposed use will not interfere with existing in-state uses;

39 (4) The proposed use will not interfere with proposed beneficial uses within the  
40 state, including recreational use. In making this determination, the director shall  
41 conduct a review pursuant to subsection 6 of this section; and

42 (5) The water subject to the permit applications could feasibly be transported to  
43 alleviate water shortages in the state.

44 5. Within one hundred eighty days after the department's receipt of a complete  
45 application, the director shall issue a proposed decision to either approve the application  
46 if the conditions in subsection 4 of this section have been met or deny the application if  
47 the conditions in subsection 4 of this section have not been met and shall hold a thirty-  
48 day public comment period on the proposed approval or denial. After the comment  
49 period, the department shall respond to comments received and shall either approve the  
50 application or deny the application if the conditions in subsection 4 of this section have  
51 not been met. If the department approves the application, it shall send its findings to the  
52 clean water commission and Missouri soil and water districts commission for review  
53 using the criteria described in subsection 4 of this section. At the next scheduled  
54 meeting, the clean water commission and Missouri soil and water districts commission

55 shall review the department's findings. If the clean water commission and Missouri soil  
56 and water districts commission agrees with the department's decision that a permit  
57 should be issued, the clean water commission and Missouri soil and water districts  
58 commission shall send its decision back to the department for the issuance of the permit.  
59 If the clean water commission or Missouri soil and water districts commission disagrees  
60 with the department's decision for the issuance of the permit, the clean water  
61 commission and Missouri soil and water districts commission shall send its decision  
62 back to the department and the department shall deny the application. Any permit  
63 issued pursuant to this section shall state the time within which the water shall be  
64 applied to beneficial use. Permits issued pursuant to this section shall be issued for a  
65 period not to exceed three years after the date of issuance.

66 (1) In the absence of appeal as provided under chapter 536, the decision of the  
67 director, subject to approval or disapproval of the clean water commission and Missouri  
68 soil and water districts commission, shall be final.

69 (2) Applications for renewal of a water export permit shall be filed at least one  
70 hundred eighty days prior to the expiration date of the existing permit, and the director  
71 shall determine whether the conditions in subsection 4 of this section are still satisfied.  
72 The director's decision to renew the permit shall be subject to the clean water  
73 commission's and Missouri soil and water districts commission's review and approval or  
74 denial pursuant to this subsection.

75 6. The department shall promulgate rules regarding the process of sending the  
76 department's findings to the Missouri soil and water districts commission and the clean  
77 water commission for review under this section. Any rule or portion of a rule, as that  
78 term is defined in section 536.010, that is created under the authority delegated in this  
79 section shall become effective only if it complies with and is subject to all of the  
80 provisions of chapter 536 and, if applicable, section 536.028. This section and chapter  
81 536 are nonseverable and if any of the powers vested with the general assembly  
82 pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul  
83 a rule are subsequently held unconstitutional, then the grant of rulemaking authority  
84 and any rule proposed or adopted after August 28, 2025, shall be invalid and void.

85 7. (1) Before granting water supply for access and use outside the state of  
86 Missouri, the director shall consider existing and proposed in-state uses in order to  
87 guarantee that in-state users will have access to and use of all of the water required to  
88 adequately supply for beneficial uses.

89 (2) The director shall review the needs for water supply export every three years  
90 to determine whether the water supply continues to be adequate for municipal,  
91 agricultural, industrial, domestic, and other beneficial uses within the state.

92           **8. Subsections 4 to 7 of this section are subject to the most recent reports, data,**  
93 **and information in consideration of each permit application, whether the application is**  
94 **for an initial permit or renewal of an active or expired permit.**

95           **9. The review conducted pursuant to subsection 4 of this section shall not be used**  
96 **to reduce the quantity of water authorized to be transferred pursuant to the active life of**  
97 **permits issued prior to such review.**

98           **10. On the filing of an application to export water outside the state, the applicant**  
99 **shall designate an agent in the state of Missouri for service of process and to receive**  
100 **other notices.**

101           **11. In the event of a conflict between the conditions of use required in Missouri**  
102 **and conditions required in another state, the water permit holder shall consent to**  
103 **conditions imposed by the director.**

104           **12. A major water user, as defined in section 256.400, may, at any time, request**  
105 **the director to reevaluate any existing water exportation permit using the criteria under**  
106 **subsections 4 and 7 of this section. The director shall create a mechanism for a major**  
107 **water user to submit to him or her such a request for reevaluation and shall provide to**  
108 **the major water user his or her findings within sixty days of the request for**  
109 **reevaluation. After reevaluating the permit, the director shall impose additional**  
110 **conditions necessary for the continued exportation of water outside the state if the**  
111 **director determines that the existing permit is negatively impacting the requesting**  
112 **major water user's beneficial use of his or her water resources. The director's decision**  
113 **to modify or to decline to modify the conditions in an existing permit pursuant to this**  
114 **subsection shall be subject to the clean water commission's and Missouri soil and water**  
115 **districts commission's review and approval or denial pursuant to subsection 5 of this**  
116 **section.**

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

121           **14. The time-limited, active life of the permit, not to exceed three years, requires**  
122 **the director to determine whether there has been a substantial or material change**  
123 **relating to any matters set forth in subsections 3 to 5 of this section in response to**  
124 **renewal applications requesting a permit for authorization of the continued export of**  
125 **water outside the state. The director may impose additional conditions to address any**  
126 **such substantial or material change or may deny the permit renewal application as**  
127 **necessary to comply with this section based on any such substantial or material changes.**

128 The director's decision to renew the permit shall be subject to the requirements of  
129 subsection 5 of this section.

130       **15. 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 may 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 any county where the**  
134 **defendant's principal place of business is located or where the withdrawal of water**  
135 **occurred in violation of this section.**

136       **16. Whenever a person applies for a water exportation permit, the department**  
137 **of natural resources shall send a written notice to the county commission of the county**  
138 **where the water for exportation is located.**

139       **17. Whenever the United States Drought Monitor (USDM) indicates a D2-level**  
140 **drought for any county for which an export permit has been issued, the department of**  
141 **natural resources shall reevaluate such export permit. If the USDM indicates a D3 or**  
142 **worse drought condition in any county, the department shall reevaluate all existing**  
143 **permits within the state. Whenever a state of emergency is declared by the governor**  
144 **under section 44.100 for all or any part of the state based on drought conditions, the**  
145 **department may reevaluate any existing water exportation permit. Any reevaluation**  
146 **completed under this section shall use the criteria under subsections 3 to 5 of this**  
147 **section. After reevaluation of the permit is complete, the department shall have the**  
148 **authority to impose additional conditions or revoke the permit if necessary for the**  
149 **continued exportation of water outside the state if the director determines that the**  
150 **existing permit negatively impacts beneficial use of water resources. The director's**  
151 **decision to modify, revoke, or make no changes to the permit shall be subject to the**  
152 **clean water commission's and Missouri soil and water districts commission's review and**  
153 **approval or denial pursuant to subsection 5 of this section.**

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