

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 2153

102ND GENERAL ASSEMBLY

4344S.03C

KRISTINA MARTIN, Secretary

## 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  
2 one new section, to be known as section 640.406, to read as  
3 follows:

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

3 (1) "Beneficial uses", water uses, which include but  
4 are not limited to domestic, agricultural, industrial, and  
5 other legitimate beneficial uses;

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

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

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

13 (5) "Person", any individual, partnership,  
14 copartnership, firm, company, public or private corporation,  
15 association, joint stock company, trust, estate, political  
16 subdivision, water district, or any agency, board,

17 department, or bureau of the federal or any state  
18 government, or any other legal entity which is recognized by  
19 law as the subject of rights and duties;

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

24 2. In order to protect the access, use, and enjoyment  
25 of Missouri's water resources, it shall be unlawful for any  
26 person to withdraw water from any water source for export  
27 outside the state of Missouri unless such person holds a  
28 water exportation permit issued by the department. A water  
29 exportation permit shall not be required to withdraw water  
30 from any water source for export outside of the state by a  
31 public water system, as defined in section 640.102, where  
32 the withdrawal and ultimate end use are within the same six-  
33 digit hydrological unit code as defined by the United States  
34 Geological Survey and within thirty miles of the state  
35 border.

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

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

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

49           (2) The applicant has a present need for the water and  
50 intends to put the water into beneficial use. In making the  
51 determinations of need and beneficial use, the director  
52 shall consider the availability of all water sources and  
53 other relevant matters as the director deems appropriate,  
54 and may consider the availability of groundwater as an  
55 alternative source;

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

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

62           (5) The water subject to the permit applications could  
63 feasibly be transported to alleviate water shortages in the  
64 state.

65           5. Within one hundred eighty days after the  
66 department's receipt of a complete application, the director  
67 shall issue a proposed decision to either approve the  
68 application if the conditions in subsection 4 of this  
69 section have been met or deny the application if the  
70 conditions in subsection 4 of this section have not been met  
71 and shall hold a thirty-day public comment period on the  
72 proposed approval or denial. After the comment period, the  
73 department shall respond to comments received and shall  
74 either approve the application or deny the application if  
75 the conditions in subsection 4 of this section have not been  
76 met. If the department approves the application, it shall  
77 send its findings to the clean water commission and Missouri  
78 soil and water districts commission for review using the  
79 criteria described in subsection 4 of this section. At the  
80 next scheduled meeting, the clean water commission and

81 Missouri soil and water districts commission shall review  
82 the department's findings. If the clean water commission  
83 and Missouri soil and water districts commission agrees with  
84 the department's decision that a permit should be issued,  
85 the clean water commission and Missouri soil and water  
86 districts commission shall send its decision back to the  
87 department for the issuance of the permit. If the clean  
88 water commission or Missouri soil and water districts  
89 commission disagrees with the department's decision for the  
90 issuance of the permit, the clean water commission and  
91 Missouri soil and water districts commission shall send its  
92 decision back to the department and the department shall  
93 deny the application. Any permit issued pursuant to this  
94 section shall state the time within which the water shall be  
95 applied to beneficial use. Permits issued pursuant to this  
96 section shall be issued for a period not to exceed three  
97 years after the date of issuance.

98 (1) In the absence of appeal as provided under chapter  
99 536, the decision of the director subject to approval or  
100 disapproval of the clean water commission and Missouri soil  
101 and water districts commission shall be final.

102 (2) Applications for renewal of a water export permit  
103 shall be filed at least one hundred eighty days prior to the  
104 expiration date of the existing permit, and the director  
105 shall determine whether the conditions in subsection 4 of  
106 this section are still satisfied. The director's decision  
107 to renew the permit shall be subject to the clean water  
108 commission's and Missouri soil and water districts  
109 commission's review and approval or denial pursuant to this  
110 subsection.

111 6. The department shall promulgate rules regarding the  
112 process of sending the department's findings to the Missouri

113 soil and water districts commission and the clean water  
114 commission for review under this section. Any rule or  
115 portion of a rule, as that term is defined in section  
116 536.010, that is created under the authority delegated in  
117 this section shall become effective only if it complies with  
118 and is subject to all of the provisions of chapter 536 and,  
119 if applicable, section 536.028. This section and chapter  
120 536 are nonseverable and if any of the powers vested with  
121 the general assembly pursuant to chapter 536 to review, to  
122 delay the effective date, or to disapprove and annul a rule  
123 are subsequently held unconstitutional, then the grant of  
124 rulemaking authority and any rule proposed or adopted after  
125 August 28, 2024, shall be invalid and void.

126 7. (1) Before granting water supply for access and  
127 use outside the state of Missouri, the director shall  
128 consider existing and proposed in-state uses in order to  
129 guarantee that in-state users will have access to and use of  
130 all of the water required to adequately supply for  
131 beneficial uses.

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

137 8. Subsections 4 to 7 of this section are subject to  
138 the most recent reports, data, and information in  
139 consideration of each permit application, whether the  
140 application is for an initial permit or renewal of an active  
141 or expired permit.

142 9. The review conducted pursuant to subsection 4 of  
143 this section shall not be used to reduce the quantity of

144 water authorized to be transferred pursuant to the active  
145 life of permits issued prior to such review.

146 10. On the filing of an application to export water  
147 outside the state, the applicant shall designate an agent in  
148 the state of Missouri for service of process and to receive  
149 other notices.

150 11. In the event of a conflict between the conditions  
151 of use required in Missouri and conditions required in  
152 another state, the water permit holder shall consent to  
153 conditions imposed by the director.

154 12. A major water user, as defined in section 256.400,  
155 may, at any time, request the director to reevaluate any  
156 existing water exportation permit using the criteria under  
157 subsections 4 and 7 of this section. The director shall  
158 create a mechanism for a major water user to submit to him  
159 or her such a request for reevaluation and shall provide to  
160 the major water user his or her findings within sixty days  
161 of the request for reevaluation. After reevaluating the  
162 permit, the director shall impose additional conditions  
163 necessary for the continued exportation of water outside the  
164 state if the director determines that the existing permit is  
165 negatively impacting the requesting major water user's  
166 beneficial use of his or her water resources. The  
167 director's decision to modify or to decline to modify the  
168 conditions in an existing permit pursuant to this subsection  
169 shall be subject to the clean water commission's and  
170 Missouri soil and water districts commission's review and  
171 approval or denial pursuant to subsection 5 of this section.

172 13. Nothing in this section shall preclude a person  
173 from bringing any constitutional, statutory, or common law  
174 claim to vindicate or otherwise defend the user's water  
175 rights. A permit issued under this section shall not serve

176 as a defense to any claim brought against a water permit  
177 holder for the infringement of water rights.

178 14. The time-limited, active life of the permit, not  
179 to exceed three years, requires the director to determine  
180 whether there has been a substantial or material change  
181 relating to any matters set forth in subsections 3 to 5 of  
182 this section in response to renewal applications requesting  
183 a permit for authorization of the continued export of water  
184 outside the state. The director may impose additional  
185 conditions to address any such substantial or material  
186 change or may deny the permit renewal application as  
187 necessary to comply with this section based on any such  
188 substantial or material changes. The director's decision to  
189 renew the permit shall be subject to the requirements of  
190 subsection 5 of this section.

191 15. If the attorney general receives a complaint that  
192 provisions of this section have been violated, or, at the  
193 request of the department, the attorney general may bring an  
194 injunctive action or other appropriate action in the name of  
195 the people of the state to enforce provisions of this  
196 section. Suit may be brought in any county where the  
197 defendant's principal place of business is located or where  
198 the withdrawal of water occurred in violation of this  
199 section.

200 16. Whenever a person applies for a water exportation  
201 permit, the department of natural resources shall send a  
202 written notice to the county commission of the county where  
203 the water for exportation is located.

204 17. Whenever the United States Drought Monitor (USDM)  
205 indicates a D2 level drought for any county for which an  
206 export permit has been issued, the department of natural  
207 resources shall reevaluate such export permit. If the USDM

208 indicates a D3 or worse drought condition in any county, the  
209 department shall reevaluate all existing permits within the  
210 state. Whenever a state of emergency is declared by the  
211 governor under section 44.100 for all, or any part of the  
212 state, based on drought conditions, the department may  
213 reevaluate any existing water exportation permit. Any  
214 reevaluation completed under this section shall use the  
215 criteria under subsections 3 to 5 of this section. After  
216 reevaluation of the permit is complete, the department shall  
217 have the authority to impose additional conditions or revoke  
218 the permit if necessary for the continued exportation of  
219 water outside the state if the director determines that the  
220 existing permit negatively impacts beneficial use of water  
221 resources. The director's decision to modify, revoke, or  
222 make no changes to the permit shall be subject to the clean  
223 water commission's and Missouri soil and water districts  
224 commission's review and approval or denial pursuant to  
225 subsection 5 of this section.

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