

FIRST REGULAR SESSION

SENATE BILL NO. 560

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR CHILDERS.

Read 1st time February 24, 2003, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1293S.051

AN ACT

To repeal sections 640.100, 640.115, 640.131, 640.605, 640.615, and 640.620, RSMo, and to enact in lieu thereof seven new sections relating to the regulation of clean water.

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

Section A. Sections 640.100, 640.115, 640.131, 640.605, 640.615, and 640.620, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 640.100, 640.115, 640.131, 640.605, 640.615, 640.620, and 644.145, to read as follows:

640.100. 1. The safe drinking water commission created in section 640.105 shall promulgate rules necessary for the implementation, administration and enforcement of sections 640.100 to 640.140 and the federal Safe Drinking Water Act as amended.

2. No standard, rule or regulation or any amendment or repeal thereof shall be adopted except after a public hearing to be held by the commission after at least thirty days' prior notice in the manner prescribed by the rulemaking provisions of chapter 536, RSMo, and an opportunity given to the public to be heard; the commission may solicit the views, in writing, of persons who may be affected by, knowledgeable about, or interested in proposed rules and regulations, or standards. Any person heard or registered at the hearing, or making written request for notice, shall be given written notice of the action of the commission with respect to the subject thereof. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated to administer and enforce sections 640.100 to 640.140 shall become effective only if the agency has fully complied with all of the requirements of chapter 536, RSMo, including but not limited to, section 536.028, RSMo, if applicable, after June 9, 1998. All rulemaking authority delegated prior to June 9, 1998, is of no force and effect and repealed as

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

of June 9, 1998, however, nothing in this section shall be interpreted to repeal or affect the validity of any rule adopted or promulgated prior to June 9, 1998. If the provisions of section 536.028, RSMo, apply, the provisions of this section are nonseverable and if any of the powers vested with the general assembly pursuant to section 536.028, RSMo, to review, to delay the effective date, or to disapprove and annul a rule or portion of a rule are held unconstitutional or invalid, the purported grant of rulemaking authority and any rule so proposed and contained in the order of rulemaking shall be invalid and void, except that nothing in this chapter or chapter 644, RSMo, shall affect the validity of any rule adopted and promulgated prior to June 9, 1998.

3. The commission shall promulgate rules and regulations for the certification of public water system operators, backflow prevention assembly testers and laboratories conducting tests pursuant to sections 640.100 to 640.140. Any person seeking to be a certified backflow prevention assembly tester shall satisfactorily complete standard, nationally recognized written and performance examinations designed to ensure that the person is competent to determine if the assembly is functioning within its design specifications. Any such state certification shall satisfy any need for local certification as a backflow prevention assembly tester. However, political subdivisions may set additional testing standards for individuals who are seeking to be certified as backflow prevention assembly testers. Notwithstanding any other provision of law to the contrary, agencies of the state or its political subdivisions shall only require carbonated beverage dispensers to conform to the backflow protection requirements established in the National Sanitation Foundation standard eighteen, and the dispensers shall be so listed by an independent testing laboratory. The commission shall promulgate rules and regulations for collection of samples and analysis of water furnished by municipalities, corporations, companies, state establishments, federal establishments or individuals to the public. The department of natural resources or the department of health and senior services shall, at the request of any supplier, make any analyses or tests required pursuant to the terms of section 192.320, RSMo, and sections 640.100 to 640.140. The department shall collect fees to cover the reasonable cost of laboratory services, both within the department of natural resources and the department of health and senior services, laboratory certification and program administration as required by sections 640.100 to 640.140. The laboratory services and program administration fees pursuant to this subsection shall not exceed two hundred dollars for a supplier supplying less than four thousand one hundred service connections, three hundred dollars for supplying less than seven thousand six hundred service connections, five hundred dollars for supplying seven thousand six hundred or more service connections, and five hundred dollars for testing surface water. Such fees shall be deposited in the safe drinking water fund as specified in section 640.110. The analysis of all drinking water required by section 192.320, RSMo, and sections 640.100 to 640.140 shall be made by the department of natural resources laboratories, department of health

and senior services laboratories or laboratories certified by the department of natural resources.

4. The department of natural resources shall establish and maintain an inventory of public water supplies and conduct sanitary surveys of public water systems. **The department shall maintain such inventory which shall be classified as follows:**

- (1) Class I - Population under one thousand;**
- (2) Class II - Population under five thousand;**
- (3) Class III - Population under ten thousand;**
- (4) Class IV - Population under twenty thousand; and**
- (5) Class V - Population over twenty thousand.**

Such records shall be available for public inspection during regular business hours.

5. (1) For the purpose of complying with federal requirements for maintaining the primacy of state enforcement of the federal Safe Drinking Water Act, the department is hereby directed to request appropriations from the general revenue fund and all other appropriate sources to fund the activities of the public drinking water program and in addition to the fees authorized pursuant to subsection 3 of this section, an annual fee for each customer service connection with a public water system is hereby authorized to be imposed upon all customers of public water systems in this state. The fees collected shall not exceed the amounts specified in this subsection and the commission may set the fees, by rule, in a lower amount by proportionally reducing all fees charged pursuant to this subsection from the specified maximum amounts. Each customer of a public water system shall pay an annual fee for each customer service connection.

(2) The annual fee per customer service connection for unmetered customers and customers with meters not greater than one inch in size shall be based upon the number of service connections in the water system serving that customer, and shall not exceed:

1 to 1,000 connections	\$2.00
1,001 to 4,000 connections	1.84
4,001 to 7,000 connections	1.67
7,001 to 10,000 connections	1.50
10,001 to 20,000 connections	1.34
20,001 to 35,000 connections	1.17
35,001 to 50,000 connections	1.00
50,001 to 100,000 connections84
More than 100,000 connections66.

(3) The annual user fee for customers having meters greater than one inch but less than or equal to two inches in size shall not exceed five dollars; for customers with meters greater than two inches but less than or equal to four inches in size shall not exceed twenty-five dollars; and for customers with meters greater than four inches in size shall not exceed fifty dollars.

(4) Customers served by multiple connections shall pay an annual user fee based on the above rates for each connection, except that no single facility served by multiple connections shall pay a total of more than five hundred dollars per year.

6. Fees imposed pursuant to subsection 5 of this section shall become effective on August 28, 1992, and shall be collected by the public water system serving the customer. The commission shall promulgate rules and regulations on the procedures for billing, collection and delinquent payment. Fees collected by a public water system pursuant to subsection 5 of this section are state fees. The annual fee shall be enumerated separately from all other charges, and shall be collected in monthly, quarterly or annual increments. Such fees shall be transferred to the director of the department of revenue at frequencies not less than quarterly. Two percent of the revenue arising from the fees shall be retained by the public water system for the purpose of reimbursing its expenses for billing and collection of such fees.

7. Imposition and collection of the fees authorized in subsection 5 of this section shall be suspended on the first day of a calendar quarter if, during the preceding calendar quarter, the federally delegated authority granted to the safe drinking water program within the department of natural resources to administer the Safe Drinking Water Act, 42 U.S.C. 300g-2, is withdrawn. The fee shall not be reinstated until the first day of the calendar quarter following the quarter during which such delegated authority is reinstated.

8. Any project which receives state or federal funds pursuant to section 640.107 or 640.600 shall use the formula set forth pursuant to section 640.620 for payment of costs incurred in the planning and design of such projects.

[8.] 9. Fees imposed pursuant to subsection 5 of this section shall expire on September 1, 2007.

640.115. 1. Every municipal corporation, private corporation, company, partnership, federal establishment, state establishment or individual supplying or authorized to supply drinking water to the public within the state shall file with the department of natural resources a certified copy of the plans and surveys of the waterworks with a description of the methods of purification, treatment technology and source from which the supply of water is derived, and no source of supply shall be used without a written permit of approval issued to the continuing operating authority by the department of natural resources, or water dispensed to the public without first obtaining such written permit of approval. **If such permit is requested and such design plan and method of operation is submitted by a licensed engineer authorized to perform such work in this state and such engineer presents a performance bond for such project then the department shall issue such permit within sixty days of the submission of such request.** Prior to a change of permittee, the current permittee shall notify the department of the proposed change and the department shall perform a permit review.

2. Construction, extension or alteration of a public water system shall be, **pursuant to**

subsection 1 of section 640.115 and section 640.620, in accordance with the rules and regulations of the safe drinking water commission.

3. Permit applicants shall show, as part of their application, that a permanent organization exists which will serve as the continuing operating authority for the management, operation, replacement, maintenance and modernization of the facility. Such continuing operating authority for all community water systems and nontransient, noncommunity water systems commencing operation after October 1, 1999, shall be required to have and maintain the managerial, technical and financial capacity, as determined by the department **or pursuant to subsection 1 of this section**, to comply with sections 640.100 to 640.140.

4. Any community water system or nontransient, noncommunity water system against which an administrative order has been issued for significant noncompliance with the federal Safe Drinking Water Act, as amended, sections 640.100 to 640.140 or any rule or regulation promulgated thereunder shall be required to show that a permanent organization exists that serves as the continuing operating authority for the facility and that such continuing operating authority has the managerial, technical and financial capacity to comply with sections 640.100 to 640.140 and regulations promulgated thereunder. If the water system cannot show to the department's satisfaction that such continuing operating authority exists, or if the water system is not making substantial progress toward compliance, the water system's permit may be revoked. The continuing operating authority may reapply for a permit in accordance with rules promulgated by the commission.

640.131. 1. In addition to any other remedy provided by law, upon a determination by the director that a provision of sections 640.100 to 640.140 or a standard, limitation, order, rule or regulation promulgated thereunder, or a term or condition of any permit has been violated, the director may issue an order assessing an administrative penalty upon the violator under this section **or the performance bond of such engineer as provided in subsection 1 of section 640.115**. An administrative penalty shall not be imposed until the director has sought to resolve the violations through conference, conciliation and persuasion. If the violation is resolved through conference, conciliation and persuasion, no administrative penalty shall be assessed unless the violation has caused a risk to human health or to the environment, or has caused or has potential to cause pollution or was knowingly committed.

2. The maximum amount of administrative penalties assessed pursuant to this section for public water systems serving ten thousand or more persons shall be no more than one thousand dollars per day, or part thereof, for each violation, up to a maximum of twenty-five thousand dollars for each violation. The maximum amount of administrative penalties assessed pursuant to this section for public water systems serving at least five hundred persons but less than ten thousand persons shall be no more than two hundred fifty dollars per day, or part thereof, for each violation, up to a maximum of five thousand dollars for each violation. The

maximum amount of administrative penalties assessed pursuant to this section for public water systems serving less than five hundred persons shall be no more than one hundred dollars per day, or part thereof, for each violation, up to a maximum of one thousand dollars for each violation. In determining the amount of the administrative penalty, the department shall take into consideration all relevant circumstances, including, but not limited to, the harm which the violation causes or may cause, the violator's previous compliance record, the nature and persistence of the violation, any corrective actions taken, the number of connections served by the system and any other factors which the department may reasonably deem relevant.

3. Any order assessing an administrative penalty shall state that an administrative penalty is being assessed under this section and that the person subject to the penalty may appeal as provided by this section. Any such order which fails to state the law or regulation under which the penalty is being sought, the manner of collection or rights of appeal shall result in the state's waiving any right to collection of the penalty. An administrative penalty shall be paid within sixty days from the date of issuance of the order assessing the penalty. Any person subject to an administrative penalty may appeal to the commission. Any appeal shall stay the due date of such administrative penalty until the appeal is resolved. Any person who fails to pay an administrative penalty by the final due date shall be liable to the state for a surcharge of fifteen percent of the penalty plus ten percent per annum on any amounts owed. Any administrative penalty paid pursuant to this section shall be handled in accordance with section 7 of article IX of the Missouri Constitution. An action may be brought in the appropriate circuit court to collect any unpaid administrative penalty, and for attorney's fees and costs incurred directly in the collection thereof.

4. An administrative penalty shall not be increased in those instances where department action, or failure to act, has caused a continuation of the violation that was a basis for the penalty. Any administrative penalty shall be assessed within two years following the department's initial discovery of such alleged violation, or from the date the department in the exercise of ordinary diligence should have discovered such alleged violation.

5. Any final order imposing an administrative penalty is subject to judicial review upon the filing of a petition pursuant to section 536.100, RSMo, by any person subject to the administrative penalty. No judicial review shall be available, however, until all administrative remedies are exhausted.

6. The state may elect to assess an administrative penalty, or, in lieu thereof, to request that the attorney general or prosecutor file an appropriate legal action seeking a civil penalty in the appropriate circuit court.

640.605. The grants may be made to districts or communities to assist in financing, including engineering and legal service costs, specific projects for construction, original or enlargement of supply, source water protection treatment, purification, storage and distribution

facilities for water systems and collection, treatment, forced mains, lift stations and disposal facilities for sewage systems, or any other item necessary for the physical operation of the water or sewage systems where grant funds are necessary to reduce the project cost per user to a reasonable level. **Any engineering or design costs shall follow the formula set forth pursuant to section 640.620.** The grants may be made to supplement funds from loan proceeds or other private or public sources when such grants are not available through any other state or federal agency.

640.615. 1. The applicant must first apply with the agency or other financial source which is to furnish the primary financial assistance, and after the amount of that assistance has been determined, an application for a grant hereunder may be made to and processed by the department of natural resources. The department of natural resources shall make the necessary rules and regulations for the consideration and processing of all grant requests, which shall generally conform to those used by federal grant and loan agencies, which rules shall be filed in the office of the secretary of state. The rules shall contain, but shall not be limited to, the following criteria:

(1) Preliminary engineer cost study, **pursuant to the formula as set forth in section 640.620;**

(2) Bonded indebtedness of the district or community;

(3) The financial condition of the district or community;

(4) The cost per connection;

(5) The economic level in the district or community;

(6) The ratio of contracted users to potential users, which shall not be less than seventy-five percent;

(7) The number of acres being protected for any source water protection project.

2. No grant shall be finally approved until the applicant furnishes evidence of a commitment from the primary financial source.

640.620. In any case, the grant shall not be in excess of one thousand four hundred dollars per connection, or, in the case of a source water protection project, for more than twenty percent of the cost per acre for conservation reserve, **except when any entity provides a certified design and operation plan which is less than the average per capita cost for installations within the same population classification established pursuant to subsection 4 of section 640.100, then the certified licensed engineer or company providing such engineering or design service shall receive payment in an amount equal to the usual and customary fee for such project plus additional compensation equal to two times the percentage by which the cost of construction of such facility is less than the average per capita cost of facilities within the same population classification as set forth in subsection 4 of section 640.100, and, except as otherwise**

provided in this section, no district or system may receive more than one grant for any purpose in any two-year period. **Such entity shall also pay to such engineer or company providing such engineering service compensation equal to twenty-five percent of the amount of any annual operational costs which are lower than the average per capita operational costs for facilities within the population classifications set forth pursuant to subsection 4 of section 640.100 for a period of time equal to one-fourth the design lifetime of such facility or five years whichever is less.** Grantees who received or who are receiving funds under the 1993-1994 special allocation for flood-impacted communities are not subject to the prohibition against receiving more than one grant during any two-year period for a period ending two years after the final grant allocation for flood-impacted communities is received by that grantee.

644.145. 1. The commission shall develop criteria to determine "per capita average cost" for construction and operation of a wastewater or drinking water facility by an assessment of the records and financial cost for similar projects or facilities in this state within the previous three years.

2. After the commission has developed a criteria for a "per capita average cost", the commission shall develop criteria to compensate the engineer or engineer firm for design and construction of wastewater or drinking water facilities which are lower than such per capita cost average as set forth pursuant to section 640.620, RSMo.

3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.