

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 2153

AN ACT

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

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

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

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

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

(2) The applicant has a present need for the water and intends to put the water into beneficial use. In making the determinations of need and beneficial use, the director shall consider the availability of all water sources and

other relevant matters as the director deems appropriate, and may consider the availability of groundwater as an alternative source;

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

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

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

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

districts commission shall send its decision back to the department for the issuance of the permit. If the clean water commission or Missouri soil and water districts commission disagrees with the department's decision for the issuance of the permit, the clean water commission and Missouri soil and water districts commission shall send its decision back to the department and the department shall deny the application. Any permit issued pursuant to this section shall state the time within which the water shall be applied to beneficial use. Permits issued pursuant to this section shall be issued for a period not to exceed three years after the date of issuance.

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

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

6. The department shall promulgate rules regarding the process of sending the department's findings to the Missouri soil and water districts commission and the clean water commission for review under this section. Any rule or portion of a rule, as that term is defined in section 536.010, 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 and,

if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 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, 2024, shall be invalid and void.

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

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

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

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

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

11. In the event of a conflict between the conditions of use required in Missouri and conditions required in

another state, the water permit holder shall consent to conditions imposed by the director.

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

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

14. The time-limited, active life of the permit, not to exceed three years, requires the director to determine whether there has been a substantial or material change relating to any matters set forth in subsections 3 to 5 of this section in response to renewal applications requesting a permit for authorization of the continued export of water outside the state. The director may impose additional

conditions to address any such substantial or material change or may deny the permit renewal application as necessary to comply with this section based on any such substantial or material changes. The director's decision to renew the permit shall be subject to the requirements of subsection 5 of this section.

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

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

17. Whenever the United States Drought Monitor (USDM) indicates a D2 level drought for any county for which an export permit has been issued, the department of natural resources shall reevaluate such export permit. If the USDM indicates a D3 or worse drought condition in any county, the department shall reevaluate all existing permits within the state. Whenever a state of emergency is declared by the governor under section 44.100 for all, or any part of the state, based on drought conditions, the department may reevaluate any existing water exportation permit. Any reevaluation completed under this section shall use the criteria under subsections 3 to 5 of this section. After reevaluation of the permit is complete, the department shall have the authority to impose additional conditions or revoke

the permit if necessary for the continued exportation of water outside the state if the director determines that the existing permit negatively impacts beneficial use of water resources. The director's decision to modify, revoke, or make no changes to the permit shall be subject to the clean water commission's and Missouri soil and water districts commission's review and approval or denial pursuant to subsection 5 of this section.