

SENATE SUBSTITUTE  
FOR  
SENATE COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 82  
AN ACT

To amend chapter 640, RSMo, by adding thereto one new section relating to water preservation in the state of Missouri.

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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  
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) "Applicant", any person applying for a water  
4 exportation permit;

5 (2) "Beneficial uses", water uses, which include but  
6 are not limited to domestic, agricultural, industrial,  
7 recreational, and other legitimate beneficial uses;

8 (3) "Commission", the state soil and water districts  
9 commission under section 278.080;

10 (4) "Department", the Missouri department of natural  
11 resources;

12 (5) "Director", the director of the department of  
13 natural resources;

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

17 (7) "Person", any individual, partnership,  
18 copartnership, firm, company, public or private corporation,  
19 association, joint stock company, trust, estate, political

20 subdivision, water district, or any agency, board,  
21 department, or bureau of the federal or any state  
22 government, or any other legal entity which is recognized by  
23 law as the subject of rights and duties;

24 (8) "Pipeline facility", all parts of a facility  
25 through which water moves in transportation including, but  
26 not limited to, pipe, valves, and other appurtenances  
27 connected to pipe, pumping units, fabricated assemblies  
28 associated with pumping units, metering, and delivery  
29 stations and fabricated assemblies therein, and breakout  
30 tanks;

31 (9) "Water exportation permit", a permit issued by the  
32 department, approved by the commission, granting the  
33 exportation of water outside the state of Missouri subject  
34 to the provisions of this section;

35 (10) "Water resources", any Missouri water source  
36 occurring on the surface, in natural or artificial channels,  
37 lakes, reservoirs, or impoundments, and in subsurface  
38 aquifers which are available or which may be made available.

39 2. In order to protect the access, use, and enjoyment  
40 of Missouri's water resources, it shall be unlawful for any  
41 person to export water resources outside the state of  
42 Missouri unless such person holds a water exportation permit  
43 issued by the department, subject to the following  
44 exemptions:

45 (1) If the withdrawal and end use of water resources  
46 are within thirty miles of the border of the state, any  
47 person exempt under the provision of this section shall  
48 report to the director annually the person's water use  
49 volumes and withdrawal rates in a format and timeline  
50 determined by the director. Such report shall also be  
51 provided to the commission; and

52           (2) Exportation of bottled water, or water packaged in  
53 containers intended for single use.

54           3. It shall be unlawful for any person to withdraw  
55 water from any water resource for exportation outside the  
56 state of Missouri by use of a pipeline facility, unless the  
57 withdrawal and ultimate end use of the water by the pipeline  
58 facility is within thirty miles of the state border. Any  
59 person who withdraws water for exportation under this  
60 subsection shall annually report the water use volumes and  
61 withdrawal rates to the department in a manner and on  
62 timelines determined by the department.

63           4. The director shall review each water exportation  
64 permit application and all supporting materials to ensure  
65 all the following conditions have been met prior to  
66 accepting a water exportation permit application for public  
67 comment and review by the commission:

68           (1) There are water resources available in the volumes  
69 and withdrawal rates requested by the applicant for export;

70           (2) The applicant has demonstrated both a present need  
71 and beneficial use for the water resources. In making the  
72 determination of need and beneficial use, the director shall  
73 consider the availability of all water sources, whether in  
74 state or out of state, along with other relevant factors as  
75 the director and the commission deem appropriate;

76           (3) The volume and withdrawal rates requested by the  
77 applicant shall not interfere with existing and projected in-  
78 state beneficial uses;

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

82           (5) The applicant has provided relevant information  
83 and the director and the commission confirmed that issuance  
84 of a water exportation permit is necessary for the

85 beneficial use of the applicant or the applicant's  
86 customers, and the beneficial use at the end use location is  
87 not reasonably attainable through a method other than  
88 granting a water exportation permit under this section;

89 (6) In the event of a conflict between the beneficial  
90 use outside the state and the beneficial use needs in the  
91 state, the director and the commission shall prioritize the  
92 beneficial use needs of the state and its citizens over the  
93 applicant or other state; and

94 (7) Whenever a person applies for a water exportation  
95 permit or water exportation permit renewal, the department  
96 shall send a written notice within thirty business days  
97 after receiving the permit application to the county  
98 commission of the county where the water for exportation is  
99 located.

100 5. Within one hundred twenty days after the receipt of  
101 a complete application, the director shall determine whether  
102 the applicant complied with provisions of subsection 3 of  
103 this section. The director shall, after making such  
104 determination, hold a thirty-day public comment period  
105 regarding the director's determination. Within sixty days  
106 after the comment period, the director shall recommend  
107 approval or denial of the permit. Such recommendation,  
108 along with all public comments, shall be submitted to the  
109 commission. The commission shall have a public hearing  
110 within thirty days after receipt of the director's  
111 recommendation. This public hearing may be scheduled during  
112 one of the commission's regular scheduled meetings. The  
113 commission shall make a final decision to approve or deny  
114 the water exportation permit within thirty days after the  
115 public hearing. A three-fourths majority of the commission  
116 members present shall be required to approve the issuance or  
117 renewal of a water exportation permit.

118           (1) To renew a valid water exportation permit, an  
119 applicant shall file a renewal application for a water  
120 exportation permit with the department no later than two  
121 hundred seventy-one days prior to the expiration of the  
122 existing water exportation permit. The applicant, director,  
123 and the commission shall follow the same procedures and  
124 timelines as required for the issuance of a new water  
125 exportation permit under this section. The director may  
126 impose additional conditions to address any substantial or  
127 material change in factors under subsection 3 of this  
128 section or may deny a renewal application as necessary to  
129 comply with this section based on any such substantial or  
130 material changes in factors under subsection 3 of this  
131 section. If the director or the commission are in the  
132 process of reviewing the renewal application before the  
133 final decision is made and the existing applicant's water  
134 exportation permit expires, such applicant shall be able to  
135 operate under the terms of the expired water exportation  
136 permit until a final decision is made by the commission on  
137 the renewal of such permit.

138           (2) In the absence of an appeal as provided under  
139 chapter 536, the decision of the commission shall be final.

140           6. A water exportation permit shall be in effect for  
141 three years from the date of issuance. The permit holder  
142 shall annually report the water use volumes and withdrawal  
143 rates to the department in a manner and on timelines  
144 determined by the department.

145           7. The water exportation permit application shall  
146 include all water exportation requested by the applicant.  
147 The water exportation permit may be approved in whole or in  
148 part by the director or the commission. This section shall  
149 be interpreted to allow one applicant to include multiple

150 water withdrawals for exportation from various locations  
151 within one water exportation permit application.

152 8. A water exportation permit application shall  
153 include a designee or agent in the state of Missouri for  
154 service of process and to receive other notices.

155 9. A major water user, as defined in section 256.400,  
156 may request the department to reevaluate any existing water  
157 exportation permit using the criteria under subsection 3 of  
158 this section. The department shall create a mechanism for a  
159 major water user to submit a request for reevaluation and  
160 shall provide the major water user with the director's  
161 findings within one hundred and twenty days of the request  
162 for reevaluation. After reevaluating the permit, the  
163 director shall impose additional conditions necessary for  
164 the continued exportation of water outside the state if the  
165 director determines that the existing permit is negatively  
166 impacting the requesting major water user's beneficial use  
167 of his or her water resources. The director's decision to  
168 modify or to decline to modify the conditions in an existing  
169 permit pursuant to this subsection shall be subject to  
170 approval by the commission.

171 10. Nothing in this section shall preclude a person  
172 from bringing any constitutional, statutory, or common law  
173 claim to vindicate or otherwise defend the person's water  
174 rights. A permit issued under this section shall not serve  
175 as a defense to any claim brought against a water permit  
176 holder for the infringement of water rights. In addition,  
177 any person harmed by the issuance of a water exportation  
178 permit may bring an injunctive action or other appropriate  
179 action to enforce the provisions of this section. Suits may  
180 be brought in the county where the defendant's principal  
181 place of business is located or where the withdrawal of  
182 water occurred in violation of this section.

183           11. If the attorney general receives a complaint that  
184 provisions of this section have been violated, or, at the  
185 request of the department, the attorney general shall bring  
186 an injunctive action or other appropriate action in the name  
187 of the people of the state to enforce provisions of this  
188 section. Suit may be brought in Cole County, or in any  
189 county where the defendant's principal place of business is  
190 located or where the withdrawal of water occurred in  
191 violation of this section. Any member of the commission  
192 deemed to have violated any provision of this section shall  
193 forfeit their office upon such finding of a violation.

194           12. Whenever a state of emergency is declared by the  
195 governor under section 44.100 for all, or any part of the  
196 state, based on drought conditions, the department shall  
197 reevaluate any existing water exportation permit. Any  
198 reevaluation completed under this section shall use the  
199 criteria under subsection 3 of this section. After  
200 reevaluation of the permit is complete, the department shall  
201 have the authority to impose additional conditions or revoke  
202 the permit if necessary for the continued exportation of  
203 water outside the state if the director determines that the  
204 existing permit negatively impacts beneficial use of water  
205 resources. The director's decision to modify, revoke, or  
206 make no changes to the permit shall be subject to the  
207 approval or denial of the commission.

          Section B. If any provision of subsection 3 of section  
2 640.406 of this act or the application thereof to anyone or  
3 to any circumstance is held invalid, the remainder of those  
4 sections and the application of such provisions to others or  
5 other circumstances shall not be affected thereby.