

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 82

AN ACT

To amend chapter 640, RSMo, by adding thereto two new sections relating to water resources.

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

Section A. Chapter 640, RSMo, is amended by adding thereto two new sections, to be known as sections 640.406 and 640.408, to read as follows:

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

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

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

(3) "Commission", the Missouri water resources commission as established in section 640.408;

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

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

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

(7) "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;

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

(9) "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 export water resources outside the state of Missouri unless such person holds a water exportation permit issued by the department, subject to the following exemptions:

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

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

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

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

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

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

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

(5) The applicant has provided relevant information and the director and the commission confirmed that issuance of a water exportation permit is necessary for the beneficial use of the applicant or the applicant's customers, and the beneficial use at the end use location is not reasonably attainable through a method other than granting a water exportation permit under this section;

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

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

4. Within one hundred twenty days after the receipt of a complete application, the director shall determine whether the applicant complied with provisions of subsection 3 of

this section. The director shall, after making such determination, hold a thirty-day public comment period regarding the director's determination. Within sixty days after the comment period, the director shall recommend approval or denial of the permit. Such recommendation, along with all public comments, shall be submitted to the commission. The commission shall have a public hearing within thirty days after receipt of the director's recommendation. This public hearing may be scheduled during one of the commission's regular quarterly meetings. The commission shall make a final decision to approve or deny the water exportation permit within thirty days after the public hearing. A three-fourths majority of the commission members present shall be required to approve the issuance or renewal of a water exportation permit.

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

permit until a final decision is made by the commission on the renewal of such permit.

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

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

6. The water exportation permit application shall include all water exportation requested by the applicant. The water exportation permit may be approved in whole or in part by the director or the commission. This section shall be interpreted to allow one applicant to include multiple water withdrawals for export from various locations within one water exportation permit application.

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

8. A major water user, as defined in section 256.400, may request the department to reevaluate any existing water exportation permit using the criteria under subsection 3 of this section. The department shall create a mechanism for a major water user to submit a request for reevaluation and shall provide the major water user with the director's findings within one-hundred and twenty 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 approval by the Missouri water resources commission.

9. Nothing in this section shall preclude a person from bringing any constitutional, statutory, or common law claim to vindicate or otherwise defend the person'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.

10. 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 shall 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 Cole County, or 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.

11. 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 shall reevaluate any existing water exportation permit. Any reevaluation completed under this section shall use the criteria under subsection 3 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 approval or denial of the Missouri water resources commission.

640.408. 1. There is hereby established the "Missouri Water Resources Commission". The commission shall consist of nine members:

(1) The director of the department of natural resources or the director's designee;

(2) Two members of the house of representatives appointed by the speaker of the house of representatives, with one of the appointees having substantial agricultural knowledge;

(3) Two members of the senate appointed by the president pro tempore of the senate, with one of the appointees having substantial agricultural knowledge;

(4) Chief of administration of the southeast Missouri water district established under section 256.643 or the chief's designee;

(5) The director of the department of agriculture or the director's designee;

(6) The chair of the Missouri clean water commission or the chair's designee;

(7) The chair of the Missouri soil and water districts commission or the chair's designee.

2. Each member of the Missouri water resources commission shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

3. Each legislative member of the Missouri water resources commission is entitled to receive the same per diem, mileage, and travel allowances paid to members of the general assembly serving on interim committees. The allowances specified in this subsection shall be paid from the amounts appropriated for that purpose.

4. The Missouri water resources commission shall meet at least quarterly to receive general updates by the

director of the department of natural resources regarding Missouri water resource availability. They shall, as required by section 640.406, meet in an expeditious manner to fulfill the duties set forth in section 640.406. The commission shall elect a chairman bi-annually and shall have a quorum when at least five members are present.

5. No member appointed under subdivisions (2) or (3) of subsection 1 of this section shall serve for more than six years total in his or her capacity as a member of the general assembly.