

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 661

95TH GENERAL ASSEMBLY

1620S.04T

2009

AN ACT

To repeal sections 260.273, 260.275, 260.276, 640.107, 640.150, 644.036, 644.054, and 644.101, RSMo, and to enact in lieu thereof ten new sections relating to programs administered by the department of natural resources, with an emergency clause for certain sections.

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

Section A. Sections 260.273, 260.275, 260.276, 640.107, 640.150, 644.036, 644.054, and 644.101, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 204.659, 260.273, 260.275, 260.276, 640.107, 640.150, 640.160, 644.036, 644.054, and 644.101, to read as follows:

204.659. No person who owns real property that is used for residential purposes within the boundaries of any district created under section 30 of article VI of the Missouri Constitution shall be assessed any fee, charge, or tax for storm water management services if the district does not directly provide sanitary sewer services to such property and if the storm water runoff from such person's property does not flow, or is not otherwise conveyed, to a sewer maintained by such district.

260.273. 1. Any person purchasing a new tire may present to the seller the used tire or remains of such used tire for which the new tire purchased is to replace.

2. A fee for each new tire sold at retail shall be imposed on any person engaging in the business of making retail sales of new tires within this state. The fee shall be charged by the retailer to the person who purchases a tire for use and not for resale. Such fee shall be imposed at the rate of fifty cents for each new tire sold. Such fee shall be added to the total cost to the

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

7 purchaser at retail after all applicable sales taxes on the tires have been computed. The fee
8 imposed, less six percent of fees collected, which shall be retained by the tire retailer as
9 collection costs, shall be paid to the department of revenue in the form and manner required by
10 the department of revenue and shall include the total number of new tires sold during the
11 preceding month. The department of revenue shall promulgate rules and regulations necessary
12 to administer the fee collection and enforcement. The terms "sold at retail" and "retail sales" do
13 not include the sale of new tires to a person solely for the purpose of resale, if the subsequent
14 retail sale in this state is to the ultimate consumer and is subject to the fee.

15 3. The department of revenue shall administer, collect and enforce the fee authorized
16 pursuant to this section pursuant to the same procedures used in the administration, collection
17 and enforcement of the general state sales and use tax imposed pursuant to chapter 144, RSMo,
18 except as provided in this section. The proceeds of the new tire fee, less four percent of the
19 proceeds, which shall be retained by the department of revenue as collection costs, shall be
20 transferred by the department of revenue into an appropriate subaccount of the solid waste
21 management fund, created pursuant to section 260.330.

22 4. Up to five percent of the revenue available may be allocated, upon appropriation, to
23 the department of natural resources to be used cooperatively with the department of elementary
24 and secondary education for the purposes of developing **environmental educational materials,**
25 programs, and curriculum [pursuant to section 260.342] **that assist in the department's**
26 **implementation of sections 260.200 to 260.345.**

27 5. Up to [twenty-five] **fifty** percent of the moneys received pursuant to this section may,
28 upon appropriation, be used to administer the programs imposed by this section. Up to [five]
29 **forty-five** percent of the moneys received under this section may, upon appropriation, be used
30 for the grants authorized in subdivision (2) of subsection 6 of this section [and authorized in
31 section 260.274]. All remaining moneys shall be allocated, upon appropriation, for the projects
32 authorized in section 260.276, except that any unencumbered moneys may be used for public
33 health, environmental, and safety projects in response to environmental **or public health**
34 emergencies **and threats** as determined by the director.

35 6. The department shall promulgate, by rule, a statewide plan for the use of moneys
36 received pursuant to this section to accomplish the following:

- 37 (1) Removal of waste tires from illegal tire dumps;
38 (2) Providing grants to persons that will use products derived from waste tires, or used
39 waste tires as a fuel or fuel supplement; and
40 (3) Resource recovery activities conducted by the department pursuant to section
41 260.276.

42 7. The fee imposed in subsection 2 of this section shall begin the first day of the month
43 which falls at least thirty days but no more than sixty days immediately following August 28,
44 2005, and shall terminate January 1, [2010] **2015**.

45 [8. By January 1, 2009, the department shall report to the general assembly a complete
46 accounting of the tire cleanups completed or in progress, the cost of the cleanups, the number
47 of tires remaining, the balance of the fund, and enforcement actions completed or initiated to
48 address waste tires.]

 260.275. 1. Each operator of a scrap tire site shall ensure that the area is properly closed
2 upon cessation of operations. The department of natural resources may require that a closure
3 plan be submitted with the application for a permit. The closure plan, as approved by the
4 department, shall include at least the following:

5 (1) A description of how and when the area will be closed;

6 (2) The method of final disposition of any scrap tires remaining on the site at the time
7 notice of closure is given to the department.

8 2. The operator shall notify the department at least ninety days prior to the date he
9 expects closure to begin. No scrap tires may be received by the scrap tire site after the date
10 closure is to begin.

11 3. The permittee shall provide a financial assurance instrument in such an amount and
12 form as prescribed by the department to ensure that, upon abandonment, cessation or interruption
13 of the operation of the site, an approved closure plan is completed. The amount of the financial
14 assurance instrument shall be based upon the current costs of similar cleanups using data from
15 actual scrap tire cleanup project bids received by the department to remediate scrap tire sites of
16 similar size. If scrap tires are accumulated at a solid [scrap management] **waste disposal** area,
17 the existing **closure** financial assurance instrument filed for the solid [scrap] **waste disposal** area
18 may be applied to the requirements of this section. Any interest that accrues to any financial
19 assurance instrument established pursuant to this section shall remain with that instrument and
20 shall be applied against the operator's obligation under this section until the instrument is
21 released by the department. The director shall authorize the release of the financial assurance
22 instrument after the department has been notified by the operator that the site has been closed,
23 and after inspection, the department approves closure of the scrap tire site.

24 4. If the operator of a scrap tire site fails to properly implement the closure plan, the
25 director shall order the operator to implement such plan, and take other steps necessary to assure
26 the proper closure of the site pursuant to section 260.228 and this section.

27 **5. A coal-fired electric generating facility that burns tire-derived fuel shall not be**
28 **considered a scrap tire site or solid waste disposal area.**

 260.276. 1. The department of natural resources shall, subject to appropriation, conduct
2 resource recovery or nuisance abatement activities designed to reduce the volume of scrap tires

3 or alleviate any nuisance condition at any site if the owner or operator of such a site fails to
4 comply with the rules and regulations authorized under section 260.270, or if the site is in
5 continued violation of such rules and regulations. The department shall give first priority to
6 cleanup of sites owned by persons who present satisfactory evidence that such persons were not
7 responsible for the creation of the nuisance conditions or any violations of section 260.270 at the
8 site.

9 2. The department may ask the attorney general to initiate a civil action to recover from
10 any persons responsible the reasonable and necessary costs incurred by the department for its
11 nuisance abatement activities and its legal expenses related to the abatement; except that in no
12 case shall the attorney general seek to recover cleanup costs from the owner of the property if
13 such person presents satisfactory evidence that such person was not responsible for the creation
14 of the nuisance condition or any violation of section 260.270 at the site.

15 3. The department shall allow any person, firm, corporation, state agency, charitable,
16 fraternal, or other nonprofit organization to bid on a contract for each resource recovery or
17 nuisance abatement activity authorized under this section. The contract shall specify the cost per
18 tire for delivery to a registered scrap tire processing or end-user facility, and the cost per tire for
19 processing. The recipient or recipients of any contract shall not be compensated by the
20 department for the cost of delivery and the cost of processing for each tire until such tire is
21 delivered to a registered scrap tire processing or end-user facility and the contract recipient has
22 provided proof of delivery to the department. [Any charitable, fraternal, or other nonprofit
23 organization which voluntarily cleans up land or water resources may turn in scrap tires collected
24 in the course of such cleanup under the rules and regulations of the department.]

25 **4. Subject to the availability of funds, any charitable, fraternal, or other nonprofit**
26 **organization which voluntarily cleans up land or water resources may be eligible for**
27 **reimbursement for the disposal costs of scrap tires collected in the course of such cleanup**
28 **under the rules and regulations of the department. Also, subject to the availability of**
29 **funds, any municipal or county government which voluntarily cleans up scrap tires from**
30 **illegal dumps, not incidental to normal governmental activities or resulting from tire**
31 **collection events, may also be eligible for reimbursement for the disposal costs of scrap**
32 **tires collected in the course of such cleanup under the rules and regulations of the**
33 **department.**

640.107. 1. There is hereby established, as a subfund of the water and wastewater fund
2 established in section 644.122, RSMo, the "Drinking Water Revolving Fund", which shall be
3 maintained and accounted for separately, and which shall consist of moneys from all lawful
4 public and private sources including legislative appropriations, federal capitalization grants,
5 interest on investments and principal and interest payments with respect to loans made from the
6 drinking water revolving fund. Money in the drinking water revolving fund may be used only

7 for purposes as are authorized in the federal Safe Drinking Water Act, as amended **and the**
 8 **American Recovery and Reinvestment Act of 2009 as enacted by the 111th United States**
 9 **Congress.**

10 2. The commission shall, consistent with the requirements of the federal Safe Drinking
 11 Water Act **and the American Recovery and Reinvestment Act of 2009** for the drinking water
 12 revolving fund to become eligible for capitalization grants from the United States Environmental
 13 Protection Agency, establish criteria and procedures for the selection of projects and the making
 14 of loans or the grant of loan subsidies for disadvantaged communities.

15 3. After providing for review and public comment, and in accordance with the
 16 requirements for such plans set forth in the federal Safe Drinking Water Act, the commission
 17 shall annually prepare an intended use plan for the funds available in the drinking water
 18 revolving fund.

19 4. Consistent with the requirements of the federal Safe Drinking Water Act, and only to
 20 the extent funds are available to be obligated for eligible projects of public water systems, in
 21 developing its annual intended use plan, the commission shall make available no less than
 22 thirty-five percent, but may make available greater than thirty-five percent, of the moneys
 23 credited to the drinking water revolving fund solely for project loans and loan subsidies for
 24 projects of systems serving fewer than ten thousand people in accordance with the following:

25 Systems Serving:	Percentage:
26 0 - 3,300 people	20%
27 3,301 - 9,999 people	15%

28 provided that, in any fiscal year, loan subsidies may not exceed the maximum percentage as
 29 specified in the federal Safe Drinking Water Act. In any fiscal year in which there are
 30 insufficient applicants and projects in the population categories listed in this subsection to
 31 allocate the percentages of funds specified pursuant to this subsection, any balance of funds
 32 otherwise reserved for systems serving fewer than ten thousand people shall be available for
 33 obligation to eligible projects from any eligible applicant. Such uncommitted balances shall be
 34 redistributed in accordance with the intended use plan.

35 5. The department shall make available two percent of the moneys from the federal
 36 capitalization grants received pursuant to this section for training and technical assistance to
 37 public water systems serving fewer than ten thousand people. Training and technical assistance
 38 provided pursuant to this subsection shall be consistent with rules of the commission.

39 **6. The state may provide assistance, as funds are available, pursuant to this**
 40 **chapter, to any eligible public water system pursuant to the federal Safe Drinking Water**
 41 **Act, as amended, to assist in the construction of public drinking water facilities as**
 42 **authorized by the commission. Further, the state may provide additional assistance or**
 43 **subsidies to any eligible entity as described in this subsection in the form of principal**

44 **forgiveness, negative interest loans, grants, or any combination thereof, to the extent**
45 **allowed by the federal Safe Drinking Water Act or American Recovery and Reinvestment**
46 **Act of 2009, as enacted by the 111th United States Congress, and within the process**
47 **provided by the Missouri Constitution and revised statutes of the state of Missouri.**

640.150. 1. The department of natural resources shall be vested with the powers and
2 duties prescribed by law and shall have the power to carry out the following activities:

3 (1) Assessing the impact of national energy policies on this state's supply and use of
4 energy and this state's public health, safety and welfare;

5 (2) Consulting and cooperating with all state and federal governmental agencies,
6 departments, boards and commissions and all other interested agencies and institutions,
7 governmental and nongovernmental, public and private, on matters of energy research and
8 development, management, conservation and distribution;

9 (3) The monitoring and analyzing of all federal, state, local and voluntarily disclosed
10 private sector energy research projects and voluntarily disclosed private sector energy related
11 data and information concerning supply and consumption, in order to plan for the future energy
12 needs of this state. All information gathered shall be maintained, revised and updated as an aid
13 to any interested person, foundation or other organization, public or private;

14 (4) Analyzing the potential for increased utilization of coal, nuclear, solar, resource
15 recovery and reuse, **landfill gas, projects to reduce and capture methane and other**
16 **greenhouse gas emissions from landfills**, energy efficient technologies and other energy
17 alternatives, and making recommendations for the expanded use of alternate energy sources and
18 technologies;

19 (5) **Entering into cooperative agreements with other states, political subdivisions,**
20 **private entities, or educational institutions for the purpose of seeking and securing federal**
21 **grants for the department and its partners in the grants;**

22 (6) The development and promotion of state energy conservation programs, including:

23 (a) Public education and information in energy related areas;

24 (b) Developing energy efficiency standards for agricultural and industrial energy use and
25 for new and existing buildings, to be promoted through technical assistance efforts by
26 cooperative arrangements with interested public, business and civic groups and by cooperating
27 with political subdivisions of this state;

28 (c) Preparing plans for reducing energy use in the event of an energy or other resource
29 supply emergency.

30 2. No funds shall be expended to implement the provisions of this section until funds are
31 specifically appropriated for that purpose. **In order to carry out its responsibilities under this**
32 **section, the department may expend any such appropriated funds by entering into**
33 **agreements, contracts, grants, subgrants, or cooperative arrangements under various terms**

34 **and conditions in the best interest of the state with other state, federal, or interstate**
35 **agencies, political subdivisions, not-for-profit entities or organizations, educational**
36 **institutions, or other entities, both public and private, to carry out its responsibilities.**

640.160. 1. There is hereby created in the state treasury the "Energy Futures
2 **Fund", which shall consist of money appropriated by the general assembly or received**
3 **from gifts, bequests, donations, or from the federal government. The state treasurer shall**
4 **be custodian of the fund and may approve disbursements from the fund in accordance with**
5 **sections 30.170 and 30.180, RSMo. Notwithstanding the provisions of section 33.080,**
6 **RSMo, to the contrary, any moneys remaining in the fund at the end of the biennium shall**
7 **not revert to the credit of the general revenue fund. The state treasurer shall invest**
8 **moneys in the fund in the same manner as other funds are invested. Any interest and**
9 **moneys earned on such investments shall be credited to the fund.**

10 **2. Upon appropriation, the department of natural resources may use moneys in the**
11 **fund created under this section for the purposes of carrying out the provisions of sections**
12 **640.150 to 640.160 including, but not limited to, energy efficiency programs, energy studies,**
13 **energy resource analyses, or energy projects. After appropriation, the department may**
14 **also expend funds for the administration and management of energy responsibilities and**
15 **activities associated with projects and studies funded from the energy futures fund.**

644.036. 1. No standard, rule or regulation or any amendment or repeal thereof shall be
2 adopted except after a public hearing to be held after thirty days' prior notice by advertisement
3 of the date, time and place of the hearing and opportunity given to the public to be heard. Notice
4 of the hearings and copies of the proposed standard, rule or regulation or any amendment or
5 repeal thereof shall also be given by regular mail, at least thirty days prior to the scheduled date
6 of the hearing, to any person who has registered with the director for the purpose of receiving
7 notice of such public hearings in accordance with the procedures prescribed by the commission
8 at least forty-five days prior to the scheduled date of the hearing. However, this provision shall
9 not preclude necessary changes during this thirty-day period.

10 2. At the hearing, opportunity to be heard by the commission with respect to the subject
11 thereof shall be afforded any interested person upon written request to the commission, addressed
12 to the director, not later than seven days prior to the hearing, and may be afforded to other
13 persons if convenient. In addition, any interested persons, whether or not heard, may submit,
14 within seven days subsequent to the hearings, a written statement of their views. The
15 commission may solicit the views, in writing, of persons who may be affected by, or interested
16 in, proposed rules and regulations, or standards. Any person heard or represented at the hearing
17 or making written request for notice shall be given written notice of the action of the commission
18 with respect to the subject thereof.

19 3. Any standard, rule or regulation or amendment or repeal thereof shall not be deemed
20 adopted or in force and effect until it has been approved in writing by at least four members of
21 the commission. A standard, rule or regulation or an amendment or repeal thereof shall not
22 become effective until a certified copy thereof has been filed with the secretary of state as
23 provided in chapter 536, RSMo.

24 4. Unless prohibited by any federal water pollution control act, any standard, rule or
25 regulation or any amendment or repeal thereof which is adopted by the commission may differ
26 in its terms and provisions as between particular types and conditions of water quality standards
27 or of water contaminants, as between particular classes of water contaminant sources, and as
28 between particular waters of the state.

29 5. Any listing required by Section 303(d) of the federal Clean Water Act, as amended,
30 33 U.S.C. 1251, et seq., to be sent to the U.S. Environmental Protection Agency for its approval
31 that will result in any waters of the state being classified as impaired shall be adopted by the
32 commission after a public hearing, or series of hearings, held in accordance with the following
33 procedures. The department of natural resources shall publish in at least six regional
34 newspapers, in advance, a notice by advertisement the availability of a proposed list of impaired
35 waters of the state and such notice shall include at least ninety days' advance notice of the date,
36 time, and place of the public hearing and opportunity given to the public to be heard. Notice of
37 the hearings and copies of the proposed list of impaired waters also shall be posted on the
38 department of natural resources' web site and given by regular mail, at least ninety days prior to
39 the scheduled date of the hearing, to any person who has registered with the director for the
40 purpose of receiving notice of such public hearings. The proposed list of impaired waters shall
41 identify the water segment, the uses to be made of such waters, the uses impaired, identify the
42 pollutants causing or expected to cause violations of the applicable water quality standards, and
43 provide a summary of the data relied upon to make the preliminary determination.
44 Contemporaneous with the publication of the notice of public hearing, the department shall make
45 available on its web site all data and information it relied upon to prepare the proposed list of
46 impaired waters, including a narrative explanation of how the department determined the water
47 segment was impaired. At any time after the public notice and until seven days after the public
48 hearing, the department shall accept written comments on the proposed list of impaired waters.
49 After the public hearing and after all written comments have been submitted, the department
50 shall prepare a written response to all comments and a revised list of impaired waters. The
51 commission shall adopt a list of impaired waters in a public meeting during which the public
52 shall be afforded an opportunity to respond to the department's written response to comments and
53 revised list of impaired waters. Notice of the meeting shall include the date, time, and place of
54 the public meeting and shall provide notice that the commission will give interested persons the
55 opportunity to respond to the department's revised list of impaired waters and written responses

56 to comments. At its discretion, the commission may extend public comment periods or hold
57 additional public hearings on the proposed and revised lists of impaired waters. The commission
58 shall not vote to add to the list of impaired waters any waters not recommended by the
59 department in the proposed or revised lists of impaired waters without granting the public at least
60 thirty additional days to comment on the proposed addition. The list of impaired waters adopted
61 by the commission shall not be deemed to be a rule as defined by section 536.010, RSMo. The
62 listing of any water segment on the list of impaired waters adopted by the commission shall be
63 subject to judicial review by any adversely affected party under section 536.150, RSMo. The
64 provisions in this subsection shall expire on August 28, [2009] **2010**.

644.054. 1. Fees imposed in sections 644.052 and 644.053 shall, except for those fees
2 imposed pursuant to subsection 4 and subsections 6 to 13 of section 644.052, become effective
3 October 1, 1990, and shall expire December 31, [2009] **2010**. Fees imposed pursuant to
4 subsection 4 and subsections 6 to 13 of section 644.052 shall become effective August 28, 2000,
5 and shall expire on December 31, [2009] **2010**. The clean water commission shall promulgate
6 rules and regulations on the procedures for billing and collection. All sums received through the
7 payment of fees shall be placed in the state treasury and credited to an appropriate subaccount
8 of the natural resources protection fund created in section 640.220, RSMo. Moneys in the
9 subaccount shall be expended, upon appropriation, solely for the administration of sections
10 644.006 to 644.141. Fees collected pursuant to subsection 10 of section 644.052 by a city, a
11 public sewer district, a public water district or other publicly owned treatment works are state
12 fees. Five percent of the fee revenue collected shall be retained by the city, public sewer district,
13 public water district or other publicly owned treatment works as reimbursement of billing and
14 collection expenses.

15 2. The commission may grant a variance pursuant to section 644.061 to reduce fees
16 collected pursuant to section 644.052 for facilities that adopt systems or technologies that reduce
17 the discharge of water contaminants substantially below the levels required by commission rules.

18 3. Fees imposed in subsections 2 to 6 of section 644.052 shall be due on the date of
19 application and on each anniversary date of permit issuance thereafter until the permit is
20 terminated.

21 4. There shall be convened a joint committee appointed by the president pro tem of the
22 senate and the speaker of the house of representatives to consider proposals for restructuring the
23 fees imposed in sections 644.052 and 644.053. The committee shall review storm water
24 programs, the state's implementation of the federal clean water program, storm water, and related
25 state clean water responsibilities, and evaluate the costs to the state for maintaining the programs.
26 The committee shall prepare and submit a report, including recommendations on funding the
27 state clean water program, and storm water programs, to the governor, the house of
28 representatives, and the senate no later than December 31, 2008.

644.101. The state may provide assistance, as funds are available, pursuant to this chapter, to any county, municipality, public water district, public sewer district, or any combination of the same, or any entity eligible pursuant to the Safe Drinking Water Act, as amended, or the Clean Water Act, as amended, to assist them in the construction of public drinking water and water pollution control projects as authorized by the clean water commission. The state may provide assistance pursuant to this chapter, including but not limited to the purchase of water and/or wastewater revenue or general obligation bonds, bonds of any county, instrumentality of the state, state entity, municipality, public sewer district, public water district, community water system, nonprofit noncommunity water system or any combination of the same, or any entity eligible pursuant to the Safe Drinking Water Act, as amended, or the Clean Water Act, as amended. **Further, the state may provide additional assistance or subsidies to any eligible entity as described in this section in the form of principal forgiveness, negative interest loans, grants, or any combination thereof, to the extent allowed by the American Recovery and Reinvestment Act of 2009, as enacted by the 111th United States Congress, and within the process provided by the Missouri Constitution and revised statutes of the state of Missouri.**

Section B. Because of the need to distribute funds from the American Recovery and Reinvestment Act of 2009 in an efficient and timely manner, sections 640.107, 640.150, and 644.101 of this act are deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and sections 640.107, 640.150, 644.054, and 644.101 of this act shall be in full force and effect upon its passage and approval.

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