

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 955
98TH GENERAL ASSEMBLY

0909H.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 644.026, RSMo, and to enact in lieu thereof eight new sections relating to natural resources.

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

Section A. Section 644.026, RSMo, is repealed and eight new sections enacted in lieu thereof, to be known as sections 60.700, 60.702, 60.704, 60.706, 60.708, 537.298, 644.026, and 644.039, to read as follows:

60.700. 1. For purposes of sections 60.700 to 60.710, the following terms shall mean:

(1) “Accretion”, the slow and imperceptible building up of land to the shore of a watercourse;

(2) “Avulsion”, the sudden changing of the bed of a watercourse;

(3) “Low water mark”, the water’s edge, that being the only line continuously touched by the water and being the only way the riparian owner will have continuous access to the water;

(4) “Natural watercourse”, a stream or body of water flowing in a definite channel with beds, sides, and banks that normally discharges into a larger stream or body of water. A natural watercourse provides more than mere surface drainage. The term does not include hollows, ravines, or sloughs. The existence of a channel is not, of itself, sufficient to establish the existence of a natural watercourse. The term shall not include surface water;

(5) “Navigable watercourse of the state”, a natural watercourse that has been deemed navigable by a Missouri court;

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.

17 (6) “Public navigable watercourse”, a natural watercourse that is or may be used
18 for interstate commerce;

19 (7) “Nonnavigable watercourse”, a natural watercourse that has not been deemed
20 navigable by a Missouri court;

21 (8) “Reliction”, the receding of water;

22 (9) “Riparian owner”, the owner of land adjacent to a natural watercourse or
23 through which a natural watercourse runs;

24 (10) “Thalweg”, the line of a watercourse that constitutes the lowest or deepest part
25 of the channel;

26 (11) “Thread”, the midpoint of a watercourse between the low water marks.

27 2. Nothing in sections 60.700 to 60.710 shall be construed to limit or expand any
28 public easement for navigational or recreational purposes as described in *Elder v. Delcour*,
29 269 S.W.2d 17 (Mo. 1954), if such a right exists on a watercourse.

 60.702. 1. A riparian owner has the right to the natural flow of the natural
2 watercourse including its volume and purity, except as affected by the reasonable use by
3 other riparian owners. The factors for determining the reasonableness of a particular use
4 are:

5 (1) The purpose of the use;

6 (2) The suitability of the use to the natural watercourse;

7 (3) The economic value of the use;

8 (4) The social value of the use;

9 (5) The extent and amount of the harm the use causes;

10 (6) The practicality of avoiding the harm by adjusting the use or method of use of
11 one riparian owner or the other;

12 (7) The practicality of adjusting the quantity of water used by each riparian owner;

13 (8) The protection of existing values or water uses, lands, investments, and
14 enterprises; and

15 (9) The justice of requiring the user causing the harm to bear the loss.

16 2. A riparian owner has title in fee to the low water mark of a navigable
17 watercourse of the state or a public navigable watercourse and to the thread of a
18 nonnavigable watercourse.

19 3. A riparian owner has the right of access to the water from the riparian owner’s
20 frontage including the right to wharf out, provided the riparian owner does not interfere
21 with the public’s right of navigation and floatage.

22 4. Riparian rights or regulations shall not attach to artificial watercourses such as
23 farm ponds or dug drains. Riparian rights shall attach to artificially enlarged
24 watercourses such as reservoirs in streams or rivers.

 60.704. 1. If a watercourse is navigable, the bed of the watercourse below the low
2 water mark belongs to the state. A riparian owner along a navigable watercourse of the
3 state or a public navigable watercourse shall not own to the middle thereof, but only to the
4 water's edge at its low water mark.

 2. If a watercourse is nonnavigable, the bed of the watercourse belongs to the
6 riparian owner of the land if the watercourse is bounded on both sides by the same
7 riparian owner's land. Absent a showing of contrary intent, if a watercourse is
8 nonnavigable and is the dividing line between land owners, the owner of each side owns
9 to the thread of the watercourse. A contrary intent may be found if the deed makes a
10 specific reference other than to the nonnavigable watercourse.

 3. No adjoining parts of a watercourse shall be considered navigable unless they are
12 deemed navigable by a Missouri court.

 60.706. 1. Accretions along a watercourse belong to the riparian owner against
2 whose property the accretions were deposited. The riparian owner becomes the owner of
3 the property formed at the time of the accretion.

 2. Accretion caused by dikes, by filling or dumping along the shore, or by other
5 artificial means shall be subject to the same ownership rights as if caused naturally.
6 However, no riparian owner shall claim title to any land added by accretion caused by an
7 artificial condition he or she created.

 3. If all or a part of the bank or island is washed away by a navigable watercourse
9 of the state or a public navigable watercourse, the riparian owner's title to the part
10 washing away ceases and vests in the state as successor. If the space washed away
11 afterward becomes dry land and only part was washed away, the riparian owner may
12 reacquire title by accretion. If all was washed away, the riparian owner cannot acquire
13 title by accretion. Washing away obliterates lines in a watercourse, and new accretion shall
14 be measured as though the old lines never existed.

 4. Accretion shall be measured by dividing the new bank in the same proportion
16 as the old bank was divided even though former lines now washed away shall be
17 disregarded. Accretions to an island belong to the owner of the island. The provisions of
18 this subsection shall not apply to nonnavigable watercourses.

 60.708. 1. The line between counties divided by a navigable watercourse of the state
2 or a public navigable watercourse shall be the thread of the watercourse. A slow,

3 imperceptible, and gradual change of the watercourse due to accretion or reliction shall
4 change the county line, but a sudden change by avulsion shall not.

5 2. If a watercourse forms the boundary between adjoining property owners, a slow,
6 imperceptible, and gradual change of the watercourse due to accretion or reliction shall
7 change the boundary, but a sudden change by avulsion shall not.

537.298. If a defendant in a private nuisance action demonstrates compliance with
2 orders or permits issued by the department of natural resources, the United States
3 Environmental Protection Agency, the United States Army Corps of Engineers, or the
4 office of the attorney general related to the activity or use of property alleged to be a
5 nuisance, the activity or use of property shall not be deemed a nuisance. The provisions
6 of this section shall not apply to any subsurface smoldering event in a county with a
7 charter form of government and with more than nine hundred fifty thousand inhabitants.

644.026. 1. The commission shall:

- 2 (1) Exercise general supervision of the administration and enforcement of sections
3 644.006 to 644.141 and all rules and regulations and orders promulgated thereunder;
- 4 (2) Develop comprehensive plans and programs for the prevention, control and
5 abatement of new or existing pollution of the waters of the state;
- 6 (3) Advise, consult, and cooperate with other agencies of the state, the federal
7 government, other states and interstate agencies, and with affected groups, political subdivisions
8 and industries in furtherance of the purposes of sections 644.006 to 644.141;
- 9 (4) Accept gifts, contributions, donations, loans and grants from the federal government
10 and from other sources, public or private, for carrying out any of its functions, which funds shall
11 not be expended for other than the purposes for which provided;
- 12 (5) Encourage, participate in, or conduct studies, investigations, and research and
13 demonstrations relating to water pollution and causes, prevention, control and abatement thereof
14 as it may deem advisable and necessary for the discharge of its duties pursuant to sections
15 644.006 to 644.141;
- 16 (6) Collect and disseminate information relating to water pollution and the prevention,
17 control and abatement thereof;
- 18 (7) After holding public hearings, identify waters of the state and prescribe water quality
19 standards for them, giving due recognition to variations, if any, and the characteristics of
20 different waters of the state which may be deemed by the commission to be relevant insofar as
21 possible pursuant to any federal water pollution control act. These shall be reevaluated and
22 modified as required by any federal water pollution control act;
- 23 (8) Adopt, amend, promulgate, or repeal after due notice and hearing rules and
24 regulations to enforce, implement, and effectuate the powers and duties of sections 644.006 to

25 644.141 and any required of this state by any federal water pollution control act, and as the
26 commission may deem necessary to prevent, control and abate existing or potential pollution.
27 In addition to opportunities to submit written statements or provide testimony at public hearings
28 in support of or in opposition to proposed rulemakings as required by section 536.021, any
29 person who submits written comments or oral testimony on a proposed rule shall, at any public
30 meeting to vote on an order of rulemaking or other commission policy, have the opportunity to
31 respond to the proposed order of rulemaking or department of natural resources' response to
32 comments to the extent that such response is limited to issues raised in oral or written comments
33 made during the public notice comment period or public hearing on the proposed rule;

34 (9) Issue, modify or revoke orders prohibiting or abating discharges of water
35 contaminants into the waters of the state or adopting other remedial measures to prevent, control
36 or abate pollution;

37 (10) Administer state and federal grants and loans to municipalities and political
38 subdivisions for the planning and construction of sewage treatment works;

39 (11) Hold such hearings, issue such notices of hearings and subpoenas requiring the
40 attendance of such witnesses and the production of such evidence, administer such oaths, and
41 take such testimony as the commission deems necessary or as required by any federal water
42 pollution control act. Any of these powers may be exercised on behalf of the commission by any
43 members thereof or a hearing officer designated by it;

44 (12) Require the prior submission of plans and specifications, or other data including the
45 quantity and types of water contaminants, and inspect the construction of treatment facilities and
46 sewer systems or any part thereof in connection with the issuance of such permits or approval
47 as are required by sections 644.006 to 644.141, except that manholes and polyvinyl chloride
48 (PVC) pipe used for gravity sewers and with a diameter no greater than twenty-seven inches shall
49 not be required to be tested for leakage;

50 (13) Issue, continue in effect, revoke, modify or deny, under such conditions as it may
51 prescribe, to prevent, control or abate pollution or any violations of sections 644.006 to 644.141
52 or any federal water pollution control act, permits for the discharge of water contaminants into
53 the waters of this state, and for the installation, modification or operation of treatment facilities,
54 sewer systems or any parts thereof. Such permit conditions, in addition to all other requirements
55 of this subdivision, shall ensure compliance with all effluent regulations or limitations, water
56 quality related effluent limitations, national standards of performance and toxic and pretreatment
57 effluent standards, and all requirements and time schedules thereunder as established by sections
58 644.006 to 644.141 and any federal water pollution control act; however, no permit shall be
59 required of any person for any emission into publicly owned treatment facilities or into publicly
60 owned sewer systems tributary to publicly owned treatment works;

61 (14) Establish permits by rule. Such permits shall only be available for those facilities
62 or classes of facilities that control potential water contaminants that pose a reduced threat to
63 public health or the environment and that are in compliance with commission water quality
64 standards rules, effluent rules or rules establishing permits by rule. Such permits by rule shall
65 have the same legal standing as other permits issued pursuant to this chapter. Nothing in this
66 section shall prohibit the commission from requiring a site-specific permit or a general permit
67 for individual facilities;

68 (15) Require proper maintenance and operation of treatment facilities and sewer systems
69 and proper disposal of residual waste from all such facilities and systems;

70 (16) Exercise all incidental powers necessary to carry out the purposes of sections
71 644.006 to 644.141, assure that the state of Missouri complies with any federal water pollution
72 control act, retains maximum control thereunder and receives all desired federal grants, aid and
73 benefits;

74 (17) Establish effluent and pretreatment and toxic material control regulations to further
75 the purposes of sections 644.006 to 644.141 and as required to ensure compliance with all
76 effluent limitations, water quality-related effluent limitations, national standards of performance
77 and toxic and pretreatment effluent standards, and all requirements and any time schedules
78 thereunder, as established by any federal water pollution control act for point sources in this
79 state, and where necessary to prevent violation of water quality standards of this state;

80 (18) Prohibit all discharges of radiological, chemical, or biological warfare agent or
81 high-level radioactive waste into waters of this state;

82 (19) Require that all publicly owned treatment works or facilities which receive or have
83 received grants or loans from the state or the federal government for construction or
84 improvement make all charges required by sections 644.006 to 644.141 or any federal water
85 pollution control act for use and recovery of capital costs, and the operating authority for such
86 works or facility is hereby authorized to make any such charges;

87 (20) Represent the state of Missouri in all matters pertaining to interstate water pollution
88 including the negotiation of interstate compacts or agreements;

89 (21) Develop such facts and make such investigations as are consistent with the purposes
90 of sections 644.006 to 644.141, and, in connection therewith, to enter or authorize any
91 representative of the commission to enter at all reasonable times and upon reasonable notice in
92 or upon any private or public property for any purpose required by any federal water pollution
93 control act or sections 644.006 to 644.141 for the purpose of developing rules, regulations,
94 limitations, standards, or permit conditions, or inspecting or investigating any records required
95 to be kept by sections 644.006 to 644.141 or any permit issued pursuant to sections 644.006 to
96 644.141, any condition which the commission or director has probable cause to believe to be a

97 water contaminant source or the site of any suspected violation of sections 644.006 to 644.141,
98 regulations, standards, or limitations, or permits issued pursuant to sections 644.006 to 644.141.
99 The results of any such investigation shall be reduced to writing, and shall be furnished to the
100 owner or operator of the property. No person shall refuse entry or access, requested for the
101 purposes of inspection pursuant to this subdivision, to an authorized representative in carrying
102 out the inspection. A suitably restricted search warrant, upon a showing of probable cause in
103 writing and upon oath, shall be issued by any judge or associate circuit judge having jurisdiction
104 to any representative for the purpose of enabling him or her to make such inspection.
105 Information obtained pursuant to this section shall be available to the public unless it constitutes
106 trade secrets or confidential information, other than effluent data, of the person from whom it
107 is obtained, except when disclosure is required pursuant to any federal water pollution control
108 act;

109 (22) Retain, employ, provide for, and compensate, within appropriations available
110 therefor, such consultants, assistants, deputies, clerks and other employees on a full- or part-time
111 basis as may be necessary to carry out the provisions of sections 644.006 to 644.141 and
112 prescribe the times at which they shall be appointed and their powers and duties;

113 (23) Secure necessary scientific, technical, administrative and operation services,
114 including laboratory facilities, by contract or otherwise, with any educational institution,
115 experiment station, or any board, department, or other agency of any political subdivision of the
116 state or the federal government;

117 (24) Require persons owning or engaged in operations which do or could discharge water
118 contaminants, or introduce water contaminants or pollutants of a quality and quantity to be
119 established by the commission, into any publicly owned treatment works or facility, to provide
120 and maintain any facilities and conduct any tests and monitoring necessary to establish and
121 maintain records and to file reports containing information relating to measures to prevent, lessen
122 or render any discharge less harmful or relating to rate, period, composition, temperature, and
123 quality and quantity of the effluent, and any other information required by any federal water
124 pollution control act or the director, and to make them public, except as provided in subdivision
125 (21) of this section. The commission shall develop and adopt such procedures for inspection,
126 investigation, testing, sampling, monitoring and entry respecting water contaminant and point
127 sources as may be required for approval of such a program pursuant to any federal water
128 pollution control act;

129 (25) Take any action necessary to implement continuing planning processes and
130 areawide waste treatment management as established pursuant to any federal water pollution
131 control act or sections 644.006 to 644.141; **and**

132 (26) Exercise general supervision of the department as the sole designated state agency
133 with authority to administer the federal Clean Water Act in the state of Missouri[, which shall
134 include authority to approve any stream or wetland mitigation used in connection with any
135 Section 401 water quality certification].

136 2. No rule or portion of a rule promulgated pursuant to this chapter shall become
137 effective unless it has been promulgated pursuant to chapter 536.

644.039. No state agency shall create, purchase, participate in, or require the
2 **acquisition of any credit, mitigation credit, or offset credit as a condition of the issuance,**
3 **extension, or termination of a permit.**

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