

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1058

98TH GENERAL ASSEMBLY

1815H.02P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 644.145, RSMo, and to enact in lieu thereof one new section relating to the Missouri clean water law.

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

Section A. Sections 644.145, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 644.145, to read as follows:

644.145. 1. When issuing permits under this chapter that incorporate a new requirement for discharges from publicly owned combined or separate sanitary or storm sewer systems or **water or sewer** treatment works, or when enforcing provisions of this chapter or the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq., pertaining to any portion of a publicly owned combined or separate sanitary or storm sewer system or **water or sewer** treatment works, the department of natural resources shall make a finding of affordability on the costs to be incurred and the impact of any rate changes on ratepayers upon which to base such permits and decisions, to the extent allowable under this chapter and the Federal Water Pollution Control Act.

2. (1) The department of natural resources shall not be required under this section to make a finding of affordability when:

(a) Issuing collection system extension permits;

(b) Issuing National Pollution Discharge Elimination System operating permit renewals which include no new environmental requirements; or

(c) The permit applicant certifies that the applicable requirements are affordable to implement or otherwise waives the requirement for an affordability finding; however, at no time

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 shall the department require that any applicant certify, as a condition to approving any permit,
18 administrative or civil action, that a requirement, condition, or penalty is affordable.

19 (2) The exceptions provided under paragraph (c) of subdivision (1) of this subsection do
20 not apply when the community being served has less than three thousand three hundred residents.

21 3. When used in this chapter and in standards, rules and regulations promulgated
22 pursuant to this chapter, the following words and phrases mean:

23 (1) "Affordability", with respect to payment of a utility bill, a measure of whether an
24 individual customer or household with an income equal to [the] **or** lower [of] **than** the median
25 household income for their community [or the state of Missouri] can pay the bill without undue
26 hardship or unreasonable sacrifice in the essential lifestyle or spending patterns of the individual
27 or household, taking into consideration the criteria described in subsection 4 of this section;

28 (2) "Financial capability", the financial capability of a community to make investments
29 necessary to make water quality-related improvements;

30 (3) "Finding of affordability", a department statement as to whether an individual or a
31 household receiving as income an amount equal to [the] **or** lower [of] **than** the median
32 household income for the applicant community [or the state of Missouri] would be required to
33 make unreasonable sacrifices in [their] **the individual's or the household's** essential lifestyle
34 or spending patterns or undergo hardships in order to make the projected monthly payments for
35 sewer services. The department shall make a statement that the proposed changes meet the
36 definition of affordable, or fail to meet the definition of affordable, or are implemented as a
37 federal mandate regardless of affordability.

38 4. The department of natural resources shall adopt procedures by which it will make
39 affordability findings that evaluate the affordability of permit requirements and enforcement
40 actions described in subsection 1 of this section, and may begin implementing such procedures
41 prior to promulgating implementing regulations. The commission shall have the authority to
42 promulgate rules to implement this section pursuant to chapters 536 and 644, and shall
43 promulgate such rules as soon as practicable. Affordability findings shall be based upon
44 reasonably verifiable data and shall include an assessment of affordability with respect to persons
45 or entities affected. The department shall offer the permittee an opportunity to review a draft
46 affordability finding, and the permittee may suggest changes and provide additional supporting
47 information, subject to subsection 6 of this section. The finding shall be based upon the
48 following criteria:

49 (1) A community's financial capability and ability to raise or secure necessary funding;

50 (2) Affordability of pollution control options for the individuals or households at or
51 below the median household income level of the community;

52 (3) An evaluation of the overall costs and environmental benefits of the control
53 technologies;

54 (4) Inclusion of ongoing costs of operating and maintaining the existing wastewater
55 collection and treatment system, including payments on outstanding debts for wastewater
56 collection and treatment systems when calculating projected rates;

57 (5) An inclusion of ways to reduce economic impacts on distressed populations in the
58 community, including but not limited to low- and fixed-income populations. This requirement
59 includes but is not limited to:

60 (a) Allowing adequate time in implementation schedules to mitigate potential adverse
61 impacts on distressed populations resulting from the costs of the improvements and taking into
62 consideration local community economic considerations; and

63 (b) Allowing for reasonable accommodations for regulated entities when inflexible
64 standards and fines would impose a disproportionate financial hardship in light of the
65 environmental benefits to be gained;

66 (6) An assessment of other community investments and operating costs relating to
67 environmental improvements and public health protection;

68 (7) An assessment of factors set forth in the United States Environmental Protection
69 Agency's guidance, including but not limited to the "Combined Sewer Overflow Guidance for
70 Financial Capability Assessment and Schedule Development" that may ease the cost burdens of
71 implementing wet weather control plans, including but not limited to small system
72 considerations, the attainability of water quality standards, and the development of wet weather
73 standards; and

74 (8) An assessment of any other relevant local community economic condition.

75 5. Prescriptive formulas and measures used in determining financial capability,
76 affordability, and thresholds for expenditure, such as median household income, should not be
77 considered to be the only indicator of a community's ability to implement control technology and
78 shall be viewed in the context of other economic conditions rather than as a threshold to be
79 achieved.

80 6. Reasonable time spent preparing draft affordability findings, allowing permittees to
81 review draft affordability findings or draft permits, or revising draft affordability findings, shall
82 be allowed in addition to the department's deadlines for making permitting decisions pursuant
83 to section 644.051.

84 7. If the department of natural resources fails to make a finding of affordability where
85 required by this section, then the resulting permit or decision shall be null, void and
86 unenforceable.

87 8. The department of natural resources' findings under this section may be appealed to
88 the commission pursuant to subsection 6 of section 644.051.

89 9. The department shall file an annual report by the beginning of the fiscal year with the
90 governor, the speaker of the house of representatives, the president pro tempore of the senate,
91 and the chairs of the committees in both houses having primary jurisdiction over natural resource
92 issues showing at least the following information on the findings of affordability completed in
93 the previous calendar year:

94 (1) The total number of findings of affordability issued by the department, those
95 categorized as affordable, those categorized as not meeting the definition of affordable, and those
96 implemented as a federal mandate regardless of affordability;

97 (2) The average increase in sewer rates both in dollars and percentage for all findings
98 found to be affordable;

99 (3) The average increase in sewer rates as a percentage of median house income in the
100 communities for those findings determined to be affordable and a separate calculation of average
101 increases in sewer rates for those found not to meet the definition of affordable;

102 (4) A list of all the permit holders receiving findings, and for each permittee the
103 following data taken from the finding of affordability shall be listed:

104 (a) Current and projected monthly residential sewer rates in dollars;

105 (b) Projected monthly residential sewer rates as a percentage of median [house]
106 **household** income;

107 (c) Percentage of households at or below the state poverty rate.

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