

SECOND REGULAR SESSION

# HOUSE BILL NO. 1797

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES HILGEMANN, SCHEVE,  
BRAY AND VAN ZANDT (Co-sponsors).

Read 1<sup>st</sup> time February 5, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4498L.01I

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### AN ACT

To repeal sections 30.260, 30.270, 142.824, 143.811, 144.190, 147.120, 630.460, and 644.051, RSMo, and to enact in lieu thereof nine new sections relating to investment policy of the state treasurer.

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

Section A. Sections 30.260, 30.270, 142.824, 143.811, 144.190, 147.120, 630.460, and  
2 644.051, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as  
3 sections 30.260, 30.270, 32.066, 142.824, 143.811, 144.190, 147.120, 630.460, and 644.051, to  
4 read as follows:

30.260. 1. The state treasurer shall prepare, maintain and adhere to a written investment  
2 policy which shall include an asset allocation plan which limits the total amount of state moneys  
3 which may be invested in any particular investment authorized by section 15, article IV of the  
4 Missouri Constitution. The state treasurer shall present a copy of such policy to the governor,  
5 commissioner of administration, state auditor and general assembly at the commencement of  
6 each regular session of the general assembly or at any time the written investment policy is  
7 amended.

8 2. The state treasurer shall determine by the exercise of the treasurer's best judgment the  
9 amount of state moneys that are not needed for current operating expenses of the state  
10 government and shall keep on demand deposit in banking institutions in this state selected by the  
11 treasurer and approved by the governor and state auditor the amount of state moneys which the  
12 treasurer has so determined are needed for current operating expenses of the state government  
13 and disburse the same as authorized by law.

**EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

14           3. Within the parameters of the state treasurer's written investment policy, the state  
15 treasurer shall place the state moneys which the treasurer has determined are not needed for  
16 current operations of the state government on time deposit drawing interest in banking  
17 institutions in this state selected by the treasurer and approved by the governor and the state  
18 auditor, or place them outright or, if applicable, by repurchase agreement in obligations described  
19 in section 15, article IV, Constitution of Missouri, as the treasurer in the exercise of the  
20 treasurer's best judgment determines to be in the best overall interest of the people of the state  
21 of Missouri, giving due consideration to:

22           (1) The preservation of such state moneys;

23           (2) The liquidity needs of the state;

24           (3) The comparative yield to be derived therefrom;

25           (4) The effect upon the economy and welfare of the people of Missouri of the removal  
26 or withholding from banking institutions in the state of all or some such state moneys and  
27 investing same in obligations authorized in section 15, article IV of the Missouri Constitution;  
28 and

29           (5) All other factors which to the treasurer as a prudent state treasurer seem to be  
30 relevant to the general public welfare in the light of the circumstances at the time prevailing. The  
31 state treasurer may also place state moneys which are determined not needed for current  
32 operations of the state government in linked deposits as provided in sections 30.750 to 30.767.

33           4. Except for state moneys deposited in linked deposits as provided in sections 30.750  
34 to 30.767, the rate of interest payable by all banking institutions on time deposits of state moneys  
35 shall be **at least** the same as the average rate paid during the week next preceding the week in  
36 which the deposit was made for United States of America treasury securities maturing and  
37 becoming payable closest to the time of termination of the deposit, as determined by the state  
38 treasurer, adjusted to the nearest one-tenth of a percent; except that the rate shall never exceed  
39 the maximum rate of interest which by federal law or regulation a bank which is a member of  
40 the Federal Reserve System may from time to time pay on a time deposit of the same size and  
41 maturity.

42           5. Within the parameters of the state treasurer's written investment policy, the state  
43 treasurer may subscribe for or purchase outright, or [by] **through** repurchase agreement, **or**  
44 **money market mutual fund, as defined and regulated in Rule 2a-7 of the Securities and**  
45 **Exchange Commission, make** investments of the character described in subsection 3 of this  
46 section which the treasurer, in the exercise of the treasurer's best judgment, believes to be the  
47 best for investment of state moneys at the time and in payment therefor may withdraw moneys  
48 from any bank account, demand or time, maintained by the treasurer without having any  
49 supporting warrant of the commissioner of administration. The state treasurer may bid on

50 subscriptions for such obligations in accordance with the treasurer's best judgment. The state  
51 treasurer shall provide for the safekeeping of all such obligations so acquired in the same manner  
52 that securities pledged to secure the repayment of state moneys deposited in banking institutions  
53 are kept by the treasurer pursuant to law. The state treasurer may hold any such obligation so  
54 acquired by the treasurer until its maturity or prior thereto may sell the same outright or by  
55 reverse repurchase agreement provided the state's security interest in the underlying security is  
56 perfected or temporarily exchange such obligation for **cash or** other authorized securities of at  
57 least equal market value with no maturity more than one year beyond the maturity of any of the  
58 traded obligations, for a negotiated fee as the treasurer, in the exercise of the treasurer's best  
59 judgment, deems necessary or advisable for the best interest of the people of the state of Missouri  
60 in the light of the circumstances at the time prevailing. The state treasurer may pay all costs and  
61 expenses reasonably incurred by the treasurer in connection with the subscription, purchase, sale,  
62 collection, safekeeping or delivery of all such obligations at any time acquired by the treasurer.

63 6. As used in this chapter, except as more particularly specified in section 30.270,  
64 obligations of the United States shall include securities of the United States Treasury, and United  
65 States agencies or instrumentalities as described in section 15, article IV, Constitution of  
66 Missouri. The word "temporarily" as used in this section shall mean no more than six months.

30.270. 1. For the security of the moneys deposited by the state treasurer pursuant to the  
2 provisions of this chapter, the state treasurer shall, from time to time, submit a list of acceptable  
3 securities to be approved by the governor and state auditor if satisfactory to them, and the state  
4 treasurer shall require of the selected and approved banks or financial institutions as security for  
5 the safekeeping and payment of deposits, securities from the list provided for in this section,  
6 which list may include only securities of the following kind and character:

- 7 (1) Bonds or other obligations of the United States;
- 8 (2) Bonds or other obligations of the state of Missouri including revenue bonds issued  
9 by state agencies or by state authorities created by legislative enactment;
- 10 (3) Bonds of any city in this state having a population of not less than two thousand;
- 11 (4) Bonds of any county in this state;
- 12 (5) Approved registered bonds of any school district situated in this state;
- 13 (6) Approved registered bonds of any special road district in this state;
- 14 (7) State bonds of any state;
- 15 (8) Notes, bonds, debentures or other similar obligations issued by the federal land  
16 banks, federal intermediate credit banks, or banks for cooperatives or any other obligations  
17 issued pursuant to the provisions of an act of the Congress of the United States known as the  
18 Farm Credit Act of 1971, and acts amendatory thereto;
- 19 (9) Bonds of the federal home loan banks;

20 (10) Any bonds or other obligations guaranteed as to payment of principal and interest  
21 by the government of the United States or any agency or instrumentality thereof;

22 (11) Bonds of any political subdivision established pursuant to the provisions of section  
23 30, article VI, of the Constitution of Missouri;

24 (12) Tax anticipation notes issued by any county of the first classification;

25 (13) A surety bond issued by an insurance company licensed pursuant to the laws of the  
26 state of Missouri whose claims-paying ability is rated in the highest category by at least one  
27 nationally recognized statistical rating agency. The face amount of such surety bond shall be at  
28 least equal to the portion of the deposit to be secured by the surety bond;

29 (14) An irrevocable standby letter of credit issued by a Federal Home Loan Bank  
30 possessing the highest rating issued by at least one nationally recognized statistical rating agency;

31 **(15) General obligation bonds of any political subdivision in the United States of**  
32 **America rated in the highest category by at least one nationally recognized statistical rating**  
33 **agency.**

34 2. Securities deposited shall be in an amount valued at market equal at least to one  
35 hundred percent of the aggregate amount on time deposit as well as on demand deposit with the  
36 particular financial institution less the amount, if any, which is insured either by the Federal  
37 Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation or by  
38 the National Credit Unions Share Insurance Fund.

39 3. The securities or book entry receipts shall be delivered to the state treasurer and  
40 receipted for by the state treasurer and retained by the treasurer or by financial institutions that  
41 the governor, state auditor and treasurer agree upon. The state treasurer shall from time to time  
42 inspect the securities and book entry receipts and see that they are actually held by the state  
43 treasury or by the financial institutions selected as the state depositories. The governor and the  
44 state auditor may inspect or request an accounting of the securities or book entry receipts, and  
45 if in any case, or at any time, the securities are not satisfactory security for deposits made as  
46 provided by law, they may require additional security to be given that is satisfactory to them.

47 4. Any securities deposited pursuant to this section may from time to time be withdrawn  
48 and other securities described in the list provided for in subsection 1 of this section may be  
49 substituted in lieu of the withdrawn securities with the consent of the treasurer; but a sufficient  
50 amount of securities to secure the deposits shall always be held by the treasury or in the selected  
51 depositories.

52 5. If a financial institution of deposit fails to pay a deposit, or any part thereof, pursuant  
53 to the terms of its contract with the state treasurer, the state treasurer shall forthwith convert the  
54 securities into money and disburse the same according to law.

55 6. Any financial institution making deposits of bonds with the state treasurer pursuant

56 to the provisions of this chapter may cause the bonds to be endorsed or stamped as it deems  
57 proper, so as to show that they are deposited as collateral and are not transferable except upon  
58 the conditions of this chapter or upon the release by the state treasurer.

**32.066. 1. The state treasurer shall calculate an annual rate of interest pursuant  
2 to this section and provide the calculated rate of interest to the director of revenue as  
3 determined by subsection 2 of this section.**

**4 2. Each calendar quarter the state treasurer shall calculate the annual rate of  
5 interest. The rate of interest shall be equal to the previous twelve-month annualized  
6 average rate of return on all funds invested by the state treasurer, rounded to the nearest  
7 one-tenth of one percent. The state treasurer shall provide such calculated rate to the  
8 director of revenue not later than thirty days prior to the end of each calendar quarter.  
9 The director of revenue shall apply the calculated rate of interest to all applicable  
10 situations during the next calendar quarter after the release of the calculated rate of  
11 interest.**

**12 3. Beginning January 1, 2003, the director of revenue shall apply the calculated rate  
13 of interest as determined by this section to all applicable situations.**

142.824. 1. To claim a refund in accordance with section 142.815, a person shall present  
2 to the director a statement containing a written verification that the claim is made under penalties  
3 of perjury and lists the total amount of motor fuel purchased and used for exempt purposes. The  
4 claim shall not be transferred or assigned and shall be filed not more than three years after the  
5 date the motor fuel was imported, removed or sold if the claimant is a supplier, importer,  
6 exporter or distributor. If the claim is filed by the ultimate consumer, a consumer must file the  
7 claim within one year of the date of purchase or April fifteenth following the year of purchase,  
8 whichever is later. The claim statement shall be supported by the original sales slip, invoice or  
9 other documentation as approved by the director and shall include the following information:

- 10 (1) Date of sale;  
11 (2) Name and address of purchaser;  
12 (3) Name and address of seller;  
13 (4) Number of gallons purchased and base price per gallon;  
14 (5) Number of gallons purchased and charged Missouri fuel tax, as a separate item;  
15 (6) Number of gallons purchased and charged sales tax, if applicable, as a separate item;  
16 (7) Marked paid by the seller.

17 2. If the original sales slip or invoice is lost or destroyed, a statement to that effect shall  
18 accompany the claim for refund, and the claim statement shall also set forth the serial number  
19 of the invoice. If the director finds the claim is otherwise regular, the director may allow such  
20 claim for refund.

21           3. The director may make any investigation necessary before refunding the motor fuel  
22 tax to a person and may investigate a refund after the refund has been issued and within the time  
23 frame for making adjustments to the tax pursuant to this chapter.

24           4. In any case where a refund would be payable to a supplier pursuant to this chapter, the  
25 supplier may claim a credit in lieu of such refund for a period not to exceed three years.

26           5. Every person shall maintain and keep for a period of three years records to substantiate  
27 all claims for refund of the motor fuel tax, together with invoices, bills of lading, and other  
28 pertinent records and paper as may be required by the director for reasonable administration of  
29 this chapter.

30           6. Motor fuel tax that has been paid more than once with respect to the same gallon of  
31 motor fuel shall be refunded by the director to the person who last paid the tax after the  
32 subsequent taxable event upon submitting proof satisfactory to the director.

33           7. Motor fuel tax that has otherwise been erroneously paid by a person shall be refunded  
34 by the director upon proof shown satisfactory to the director.

35           8. If a refund is not issued within ninety days of an accurate and complete filing, as  
36 required by this chapter, the director shall pay interest at the rate set out in section [32.065]  
37 **32.066**, RSMo, accruing after the expiration of the ninety-day period until the date the refund is  
38 issued. After December 31, 2000, if a refund is not issued within thirty days of an accurate and  
39 complete filing, as required by this chapter, the director shall pay interest at the rate provided in  
40 section [32.065] **32.066**, RSMo, accruing after the expiration of the thirty-day period until the  
41 date the refund is issued.

143.811. 1. Under regulations prescribed by the director of revenue, interest shall be  
2 allowed and paid at the rate determined by section [32.065] **32.066**, RSMo, on any overpayment  
3 in respect of the tax imposed by sections 143.011 to 143.996; except that, where the overpayment  
4 resulted from the filing of an amendment of the tax by the taxpayer after the last day prescribed  
5 for the filing of the return, interest shall be allowed and paid at the rate of six percent per annum.  
6 With respect to the part of an overpayment attributable to a deposit made pursuant to subsection  
7 2 of section 143.631, interest shall be paid thereon at the rate in section [32.065] **32.066**, RSMo,  
8 from the date of the deposit to the date of refund. No interest shall be allowed or paid if the  
9 amount thereof is less than one dollar.

10           2. For purposes of this section:

11           (1) Any return filed before the last day prescribed for the filing thereof shall be  
12 considered as filed on such last day determined without regard to any extension of time granted  
13 the taxpayer;

14           (2) Any tax paid by the taxpayer before the last day prescribed for its payment, any  
15 income tax withheld from the taxpayer during any calendar year, and any amount paid by the

16 taxpayer as estimated income tax for a taxable year shall be deemed to have been paid by him  
17 on the fifteenth day of the fourth month following the close of his taxable year to which such  
18 amount constitutes a credit or payment.

19 3. For purposes of this section with respect to any withholding tax:

20 (1) If a return for any period ending with or within a calendar year is filed before April  
21 fifteenth of the succeeding calendar year, such return shall be considered filed April fifteenth of  
22 such succeeding calendar year; and

23 (2) If a tax with respect to remuneration paid during any period ending with or within  
24 a calendar year is paid before April fifteenth of the succeeding calendar year, such tax shall be  
25 considered paid on April fifteenth of such succeeding calendar year.

26 4. If any overpayment of tax imposed by sections 143.011 to 143.996 is refunded within  
27 four months after the last date prescribed (or permitted by extension of time) for filing the return  
28 of such tax or within four months after the return was filed, whichever is later, no interest shall  
29 be allowed under this section on overpayment.

30 5. Any overpayment resulting from a carryback, including a net operating loss and a  
31 corporate capital loss, shall be deemed not to have been made prior to the close of the taxable  
32 year in which the loss arises.

144.190. 1. If a tax has been incorrectly computed by reason of a clerical error or  
2 mistake on the part of the director of revenue, such fact shall be set forth in the records of the  
3 director of revenue, and the amount of the overpayment shall be credited on any taxes then due  
4 from the person legally obligated to remit the tax pursuant to sections 144.010 to 144.525, and  
5 the balance shall be refunded to the person legally obligated to remit the tax, such person's  
6 administrators or executors, as provided for in section 144.200.

7 2. If any tax, penalty or interest has been paid more than once, or has been erroneously  
8 or illegally collected, or has been erroneously or illegally computed, such sum shall be credited  
9 on any taxes then due from the person legally obligated to remit the tax pursuant to sections  
10 144.010 to 144.510, and the balance, with interest as determined by section [32.065] **32.066**,  
11 RSMo, shall be refunded to the person legally obligated to remit the tax, but no such credit or  
12 refund shall be allowed unless duplicate copies of a claim for refund are filed within three years  
13 from date of overpayment.

14 3. Every claim for refund must be in writing and signed by the applicant, and must state  
15 the specific grounds upon which the claim is founded. Any refund or any portion thereof which  
16 is erroneously made, and any credit or any portion thereof which is erroneously allowed, may be  
17 recovered in any action brought by the director of revenue against the person legally obligated  
18 to remit the tax. In the event that a tax has been illegally imposed against a person legally  
19 obligated to remit the tax, the director of revenue shall authorize the cancellation of the tax upon

20 the director's record.

21 4. Notwithstanding the provisions of this section, the director of revenue shall authorize  
22 direct-pay agreements to purchasers which have annual purchases in excess of seven hundred  
23 fifty thousand dollars pursuant to rules and regulations adopted by the director of revenue. For  
24 the purposes of such direct-pay agreements, the taxes authorized pursuant to chapters 66, 67, 92  
25 and 94, RSMo, shall be remitted based upon the location of the place of business of the  
26 purchaser.

147.120. 1. If any corporation fails or refuses to pay the taxes (including interest and  
2 penalties) assessed against it after such assessment becomes final, the director of revenue shall  
3 certify a list of the corporations so delinquent to the attorney general who shall proceed forthwith  
4 to collect the taxes. Suits for the collection of the taxes may be brought in the name of the state  
5 in any court of competent jurisdiction and any judgment rendered in such court in favor of the  
6 state shall be a first lien on all properties and assets of the corporation within this state.

7 2. The director of revenue shall notify the secretary of state of any corporation that fails  
8 or refuses to pay the taxes, including interest and penalties, assessed against it after such  
9 assessment becomes final and the secretary of state shall then administratively dissolve any  
10 domestic corporation that is delinquent pursuant to section 351.486, RSMo, and shall revoke the  
11 certificate of authority of any foreign corporation that is delinquent pursuant to section 351.602,  
12 RSMo.

13 3. Any tax provided for pursuant to sections 147.010 to 147.120 not paid on or before  
14 the last day prescribed for payment pursuant to sections 147.010 to 147.120 (determined with  
15 regard to any extension of time for payment) shall be collected with a penalty of five percent per  
16 month or fractional part thereof until paid, not exceeding twenty-five percent in the aggregate.  
17 Interest at the rate determined by section 32.065, RSMo, shall be added to any tax not paid on  
18 or before the date due pursuant to sections 147.010 to 147.120 (determined without regard to any  
19 extension of time for payment). Nothing in sections 147.010 to 147.120 shall be construed so  
20 as to permit any officer of this state to remit or abate such interest.

21 4. If any corporation fails to pay any tax due within the time prescribed pursuant to  
22 sections 147.010 to 147.120 or if any corporation makes errors and omissions in reports or  
23 payments, and the director of revenue determines that such action is the result of mistake or is  
24 due to circumstances beyond reasonable control and that such delinquency or inaccuracy was  
25 unavoidable or devoid of any intent to evade the tax, the director of revenue may, at the director's  
26 discretion, waive any penalty that would otherwise be imposed.

27 5. The director of revenue shall set the interest rate as determined in section [32.065]  
28 **32.066**, RSMo. Such interest rate shall be paid on all overpayments for the ensuing calendar  
29 year. The interest shall accrue from the due date or the date of overpayment, whichever is later.



30 No interest shall be allowed or paid if overpayment is refunded within four months after the  
31 franchise tax report is filed.

32 6. Any notice of assessment of franchise tax due shall be mailed to the corporation  
33 within three years after the report was filed. The provisions of this subsection shall apply to all  
34 reports filed after December 31, 1981.

35 7. If no report is filed or if a false and fraudulent report is filed, a notice of assessment  
36 of franchise tax due may be mailed to the corporation at any time.

37 8. If fraud or evasion on the part of a corporation or anyone on behalf of a corporation  
38 is discovered, the director of revenue shall determine the amount of which the state has been  
39 defrauded, shall add to the amount so determined a penalty equal to fifty percent thereof, and  
40 shall assess the same against the corporation. The amount so assessed shall be immediately due  
41 and payable; except that, the director of revenue shall promptly thereafter give to such  
42 corporation written notice of such assessment and penalty, which notice shall be served by  
43 registered mail. Such corporation shall have the right to petition for hearing of such assessment,  
44 as is provided in sections 147.010 to 147.120.

45 9. Any person who willfully makes a false corporation franchise tax report, or who  
46 willfully makes a false statement in any report under oath or otherwise filed with or transmitted  
47 to the director of revenue relating to the amount of any franchise tax due pursuant to sections  
48 147.010 to 147.120 shall, in addition to other penalties provided by law and upon conviction  
49 thereof, be fined not more than ten thousand dollars, or be imprisoned in the county jail for not  
50 more than one year or by not less than two nor more than five years in the state penitentiary or  
51 by both fine and imprisonment together with the cost of prosecution.

52 10. The director of revenue shall administer and enforce the tax imposed by sections  
53 147.010 to 147.120, and the director is authorized to make such rules and regulations and to  
54 require such facts and information to be reported as the director may deem necessary to enforce  
55 the provisions of sections 147.010 to 147.120.

56 11. No rule or portion of a rule promulgated pursuant to the authority of sections 147.010  
57 to 147.120 shall become effective unless it has been promulgated pursuant to the provisions of  
58 chapter 536, RSMo.

59 12. Except as otherwise specifically provided in sections 147.010 to 147.120 the  
60 franchise tax shall be administered as prescribed in the following provisions of chapter 143,  
61 RSMo: subsections 1 and 4 of section 143.551, RSMo, sections 143.561, 143.571, 143.621,  
62 143.631, 143.641, 143.651, 143.661, 143.681, 143.691, 143.721 and 143.731, RSMo, subsection  
63 1 of section 143.741, RSMo, subsections 1, 2 and 5 of section 143.751, RSMo, sections 143.771  
64 and 143.791, RSMo, subsections 1, 2 and 4 of section 143.811, RSMo, sections 143.831,  
65 143.841 and 143.851, RSMo, subsections 2 and 3 of section 143.861, RSMo, and sections

66 143.901, 143.902, 143.971 and 143.986, RSMo.

630.460. 1. For the purposes of this section, the term "overpayment" means any payment  
2 by the department to a vendor providing care, treatment, habilitation or rehabilitation services  
3 to clients under contract with the department, which is:

4 (1) In excess of the contracted rate less payments by the client or on his behalf as  
5 required to be made by the standard means test contained in department rules;

6 (2) In payment of services not provided;

7 (3) In payment for any service not authorized in the contract with the department; or

8 (4) In payment for services provided contrary to the provisions of the contract with the  
9 department.

10 2. The department shall notify the vendor in writing by certified mail, return receipt  
11 requested, of the amount of the overpayment, the basis for such overpayment and request  
12 reimbursement. Within thirty days of receipt of the notice of overpayment, a provider may  
13 request a review of the overpayment and reimbursement request by the department director or  
14 his designee. Such review shall be conducted in person if requested by the provider. The  
15 department director or his designee shall review the overpayment within fifteen days of the  
16 request for review.

17 3. If any overpayment is not fully repaid within forty-five days of the date of notice of  
18 overpayment, the department shall assess interest on the unpaid balance. Interest shall be  
19 charged on any unpaid balance beginning from the date of notice of overpayment and shall  
20 accrue at a rate not to exceed the annual rate established pursuant to the provisions of section  
21 [32.065] **32.066**, RSMo, plus three percentage points.

22 4. The department and the vendor shall have forty-five days from receipt of the notice  
23 of the overpayment to negotiate a repayment plan to recover the amount of the overpayment as  
24 finally determined plus accrued interest at the rate established in subsection 3 of this section over  
25 a period determined by the department, but not to exceed twelve months from the date of final  
26 disposition of any overpayment review authorized by this section. The department shall  
27 determine the method of repayment which may include direct payment by the vendor, deduction  
28 from future amounts due to the vendor from the department, or both.

29 5. If any overpayment plus accrued interest not subject to a repayment plan pursuant to  
30 subsection 4 of this section is not fully repaid within six months of the date of notice of  
31 overpayment, the department may certify the amount due to the office of the attorney general,  
32 or take other appropriate collection actions. If any portion of an overpayment plus accrued  
33 interest which is subject to a repayment plan pursuant to subsection 4 of this section, but which  
34 is not repaid pursuant to the terms of the plan, the department may certify all or a portion of the  
35 overpayment plus accrued interest due to the office of the attorney general, or take other

36 appropriate collection actions.

644.051. 1. It is unlawful for any person:

2 (1) To cause pollution of any waters of the state or to place or cause or permit to be  
3 placed any water contaminant in a location where it is reasonably certain to cause pollution of  
4 any waters of the state;

5 (2) To discharge any water contaminants into any waters of the state which reduce the  
6 quality of such waters below the water quality standards established by the commission;

7 (3) To violate any pretreatment and toxic material control regulations, or to discharge  
8 any water contaminants into any waters of the state which exceed effluent regulations or permit  
9 provisions as established by the commission or required by any federal water pollution control  
10 act;

11 (4) To discharge any radiological, chemical, or biological warfare agent or high-level  
12 radioactive waste into the waters of the state.

13 2. It shall be unlawful for any person to build, erect, alter, replace, operate, use or  
14 maintain any water contaminant or point source in this state that is subject to standards, rules or  
15 regulations promulgated pursuant to the provisions of sections 644.006 to 644.141 unless such  
16 person holds a permit from the commission, subject to such exceptions as the commission may  
17 prescribe by rule or regulation. However, no permit shall be required of any person for any  
18 emission into publicly owned treatment facilities or into publicly owned sewer systems tributary  
19 to publicly owned treatment works.

20 3. Every proposed water contaminant or point source which, when constructed or  
21 installed or established, will be subject to any federal water pollution control act or sections  
22 644.006 to 644.141 or regulations promulgated pursuant to the provisions of such act shall make  
23 application to the director for a permit at least thirty days prior to the initiation of construction  
24 or installation or establishment. Every water contaminant or point source in existence when  
25 regulations or sections 644.006 to 644.141 become effective shall make application to the  
26 director for a permit within sixty days after the regulations or sections 644.006 to 644.141  
27 become effective, whichever shall be earlier. The director shall promptly investigate each  
28 application, which investigation shall include such hearings and notice, and consideration of such  
29 comments and recommendations as required by sections 644.006 to 644.141 and any federal  
30 water pollution control act. If the director determines that the source meets or will meet the  
31 requirements of sections 644.006 to 644.141 and the regulations promulgated pursuant thereto,  
32 the director shall issue a permit with such conditions as he or she deems necessary to ensure that  
33 the source will meet the requirements of sections 644.006 to 644.141 and any federal water  
34 pollution control act as it applies to sources in this state. If the director determines that the  
35 source does not meet or will not meet the requirements of either act and the regulations pursuant

36 thereto, the director shall deny the permit pursuant to the applicable act and issue any notices  
37 required by sections 644.006 to 644.141 and any federal water pollution control act.

38 4. Before issuing a permit to build or enlarge a water contaminant or point source or  
39 reissuing any permit, the director shall issue such notices, conduct such hearings, and consider  
40 such factors, comments and recommendations as required by sections 644.006 to 644.141 or any  
41 federal water pollution control act. The director shall determine if any state or any provisions  
42 of any federal water pollution control act the state is required to enforce, any state or federal  
43 effluent limitations or regulations, water quality-related effluent limitations, national standards  
44 of performance, toxic and pretreatment standards, or water quality standards which apply to the  
45 source, or any such standards in the vicinity of the source, are being exceeded, and shall  
46 determine the impact on such water quality standards from the source. The director, in order to  
47 effectuate the purposes of sections 644.006 to 644.141, shall deny a permit if the source will  
48 violate any such acts, regulations, limitations or standards or will appreciably affect the water  
49 quality standards or the water quality standards are being substantially exceeded, unless the  
50 permit is issued with such conditions as to make the source comply with such requirements  
51 within an acceptable time schedule.

52 5. The director shall grant or deny the permit within sixty days after all requirements of  
53 the Federal Water Pollution Control Act concerning issuance of permits have been satisfied  
54 unless the application does not require any permit pursuant to any federal water pollution control  
55 act. The director or the commission may require the applicant to provide and maintain such  
56 facilities or to conduct such tests and monitor effluents as necessary to determine the nature,  
57 extent, quantity or degree of water contaminant discharged or released from the source, establish  
58 and maintain records and make reports regarding such determination.

59 6. The director shall promptly notify the applicant in writing of his or her action and if  
60 the permit is denied state the reasons therefor. The applicant may appeal to the commission from  
61 the denial of a permit or from any condition in any permit by filing notice of appeal with the  
62 commission within thirty days of the notice of denial or issuance of the permit. The commission  
63 shall set the matter for hearing not less than thirty days after the notice of appeal is filed. In no  
64 event shall a permit constitute permission to violate the law or any standard, rule or regulation  
65 promulgated pursuant thereto.

66 7. In any hearing held pursuant to this section the burden of proof is on the applicant for  
67 a permit. Any decision of the commission made pursuant to a hearing held pursuant to this  
68 section is subject to judicial review as provided in section 644.071.

69 8. In any event, no permit issued pursuant to this section shall be issued if properly  
70 objected to by the federal government or any agency authorized to object pursuant to any federal  
71 water pollution control act unless the application does not require any permit pursuant to any

72 federal water pollution control act.

73         9. No manufacturing or processing plant or operating location shall be required to pay  
74 more than one operating fee. Operating permits shall be issued for a period not to exceed five  
75 years after date of issuance, except that general permits shall be issued for a five-year period, and  
76 also except that neither a construction nor an annual permit shall be required for a single  
77 residence's waste treatment facilities. Applications for renewal of an operating permit shall be  
78 filed at least one hundred eighty days prior to the expiration of the existing permit.

79         10. Every permit issued to municipal or any publicly owned treatment works or facility  
80 shall require the permittee to provide the clean water commission with adequate notice of any  
81 substantial new introductions of water contaminants or pollutants into such works or facility  
82 from any source for which such notice is required by sections 644.006 to 644.141 or any federal  
83 water pollution control act. Such permit shall also require the permittee to notify the clean water  
84 commission of any substantial change in volume or character of water contaminants or pollutants  
85 being introduced into its treatment works or facility by a source which was introducing water  
86 contaminants or pollutants into its works at the time of issuance of the permit. Notice must  
87 describe the quality and quantity of effluent being introduced or to be introduced into such works  
88 or facility by a source which was introducing water contaminants or pollutants into its works at  
89 the time of issuance of the permit. Notice must describe the quality and quantity of effluent  
90 being introduced or to be introduced into such works or facility and the anticipated impact of  
91 such introduction on the quality or quantity of effluent to be released from such works or facility  
92 into waters of the state.

93         11. The director or the commission may require the filing or posting of a bond as a  
94 condition for the issuance of permits for construction of temporary or future water treatment  
95 facilities in an amount determined by the commission to be sufficient to ensure compliance with  
96 all provisions of sections 644.006 to 644.141, and any rules or regulations of the commission and  
97 any condition as to such construction in the permit. The bond shall be signed by the applicant  
98 as principal, and by a corporate surety licensed to do business in the state of Missouri and  
99 approved by the commission. The bond shall remain in effect until the terms and conditions of  
100 the permit are met and the provisions of sections 644.006 to 644.141 and rules and regulations  
101 promulgated pursuant thereto are complied with.

102         12. (1) The department shall issue or deny applications for construction and site-specific  
103 operating permits received after January 1, 2001, within one hundred eighty days of the  
104 department's receipt of an application. For general construction and operating permit  
105 applications received after January 1, 2001, that do not require a public participation process, the  
106 department shall issue or deny the requested permits within sixty days of the department's receipt  
107 of an application.

(2) If the department fails to issue or deny with good cause a construction or operating permit application within the time frames established in subdivision (1) of this subsection, the department shall refund the full amount of the initial application fee within forty-five days of failure to meet the established time frame. If the department fails to refund the application fee within forty-five days, the refund amount shall accrue interest at a rate established pursuant to section [32.065] **32.066**, RSMo.

(3) Permit fee disputes may be appealed to the commission within thirty days of the date established in subdivision (2) of this subsection. If the applicant prevails in a permit fee dispute appealed to the commission, the commission may order the director to refund the applicant's permit fee plus interest and reasonable attorney's fees as provided in sections 536.085 and 536.087, RSMo. A refund of the initial application or annual fee does not waive the applicant's responsibility to pay any annual fees due each year following issuance of a permit.

(4) No later than December 31, 2001, the commission shall promulgate regulations defining shorter review time periods than the time frames established in subdivision (1) of this subsection, when appropriate, for different classes of construction and operating permits. In no case shall commission regulations adopt permit review times that exceed the time frames established in subdivision (1) of this subsection. The department's failure to comply with the commission's permit review time periods shall result in a refund of said permit fees as set forth in subdivision (2) of this subsection. On a semiannual basis, the department shall submit to the commission a report which describes the different classes of permits and reports on the number of days it took the department to issue each permit from the date of receipt of the application and show averages for each different class of permits.

(5) During the department's technical review of the application, the department may request the applicant submit supplemental or additional information necessary for adequate permit review. The department's technical review letter shall contain a sufficient description of the type of additional information needed to comply with the application requirements.

(6) Nothing in this subsection shall be interpreted to mean that inaction on a permit application shall be grounds to violate any provisions of sections 644.006 to 644.141 or any rules promulgated pursuant to sections 644.006 to 644.141.

13. The department shall respond to all requests for individual certification under Section 401 of the Federal Clean Water Act within the lesser of sixty days or the allowed response period established pursuant to applicable federal regulations without request for an extension period unless such extension is determined by the commission to be necessary to evaluate significant impacts on water quality standards and the commission establishes a timetable for completion of such evaluation in a period of no more than one hundred eighty days.

14. All permit fees generated pursuant to this chapter shall not be used for the

144 development or expansion of total maximum daily loads studies on either the Missouri or  
145 Mississippi rivers.