

SECOND REGULAR SESSION
[PERFECTED]
HOUSE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1433
92ND GENERAL ASSEMBLY

Taken up for Perfection April 20, 2004. House Substitute for House Committee Substitute for House Bill No. 1433 ordered Perfected and printed, as amended.

STEPHEN S. DAVIS, Chief Clerk

3112L.05P

AN ACT

To repeal sections 278.258, 644.076, 701.031, 701.033, 701.037, and 701.038, RSMo, and to enact in lieu thereof eleven new sections relating to regulation of water and sewer systems.

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

Section A. Sections 278.258, 644.076, 701.031, 701.033, 701.037, and 701.038, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 249.1150, 249.1152, 249.1154, 249.1155, 278.258, 640.635, 644.076, 701.031, 701.033, 701.037, and 701.038, to read as follows:

249.1150. 1. There is hereby created within any county of the third classification without a township form of government and with more than thirty-four thousand but less than thirty-four thousand one hundred inhabitants, any county of the second classification without a township form of government and with more than fifty-four thousand two hundred but less than fifty-four thousand three hundred inhabitants, any county of the third classification without a township form of government and with more than thirteen thousand seventy-five but less than thirteen thousand one hundred seventy-five inhabitants, any county of the first classification with more than two hundred forty thousand three hundred but less than two hundred forty thousand four hundred inhabitants, any county of the third classification without a township form of government

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

11 and with more than nine thousand four hundred fifty but less than nine thousand five
12 hundred fifty inhabitants, any county of the third classification without a township form
13 of government and with more than twenty-eight thousand six hundred but less than
14 twenty-eight thousand seven hundred inhabitants, any county of the first classification with
15 more than thirty-nine thousand seven hundred but less than thirty-nine thousand eight
16 hundred inhabitants, any county of the third classification without a township form of
17 government and with more than thirty-one thousand but less than thirty-one thousand one
18 hundred inhabitants, and any county of the third classification without a township form
19 of government and with more than seventeen thousand nine hundred but less than eighteen
20 thousand inhabitants, the Upper White River Basin Watershed Improvement District. The
21 watershed improvement district is authorized to own, install, operate, and maintain
22 decentralized or individual on-site wastewater treatment plants. The watershed
23 improvement district created under this section shall be a body corporate and a political
24 subdivision of the state of Missouri, shall be capable of suing and being sued in contract
25 in its corporate name, and shall be capable of holding such real and personal property
26 necessary for corporate purposes. The district shall implement procedures to regulate the
27 area within the district and to educate property owners within the district about the
28 requirements imposed by the district.

29 2. The watershed improvement district created under this section shall have the
30 power to borrow money and incur indebtedness and evidence the same by certificates,
31 notes, or debentures, to issue bonds and use any one or more lawful funding methods the
32 district may obtain for its purposes at such rates of interest as the district may determine.
33 Any bonds, notes, and other obligations issued or delivered by the district may be secured
34 by mortgage, pledge, or deed of trust of any or all of the property within the district. Every
35 issue of such bonds, notes, or other obligations shall be payable out of property and
36 revenues of the district and may be further secured by other property within the district,
37 which may be pledged, assigned, mortgaged, or a security interest granted for such
38 payment, without preference or priority of the first bonds issued, subject to any agreement
39 with the holders of any other bonds pledging any specified property or revenues. Such
40 bonds, notes, or other obligations shall be authorized by resolution of the district board,
41 and shall bear such date or dates, and shall mature at such time or times, but not in excess
42 of thirty years, as the resolution shall specify. Such bonds, notes, or other obligations shall
43 be in such denomination, bear interest at such rate or rates, be in such form, either coupon
44 or registered, be issued as current interest bonds, compound interest bonds, variable rate
45 bonds, convertible bonds, or zero coupon bonds, be issued in such manner, be payable in
46 such place or places, and be subject to redemption as such resolution may provide,

47 **notwithstanding section 108.170, RSMo. The bonds, notes, or other obligations may be**
48 **sold at either public or private sale, at such interest rates, and at such price or prices as the**
49 **district shall determine.**

50 **3. The county commission of any county located within the watershed improvement**
51 **district may authorize individual properties to be served by the district by adoption of a**
52 **resolution or upon the filing of a petition signed by at least twenty percent of the property**
53 **owners of the proposed area. The resolution or petition shall describe generally the size**
54 **and location of the proposed area.**

55 **4. In the event that any property within the watershed improvement district**
56 **proposed under this section lies within or is serviced by any existing sewer district formed**
57 **under this chapter, chapter 204, or chapter 250, RSMo, the property shall not become part**
58 **of the watershed improvement district formed under this section unless the existing sewer**
59 **district agrees to refrain from providing service or to discontinue service to the property.**
60 **No property shall become part of the watershed district until the owner of that property**
61 **has paid in full all outstanding costs owed to an existing sewer district formed under this**
62 **chapter, chapter 204, or chapter 250, RSMo.**

63 **5. Upon the creation of the watershed improvement district as authorized by this**
64 **section, a board of trustees for the district consisting of nine members shall be appointed.**
65 **The governing body of each county shall appoint one member to serve on the board. No**
66 **trustee shall reside in the same county as another trustee. Of the initial trustees appointed,**
67 **five shall serve terms of one year, and four shall serve terms of two years, as determined**
68 **by lot. After the initial appointments of the trustees, the successor trustees shall reside in**
69 **the same county as the prior trustee and be elected by the resident property owners of their**
70 **county within the district. Each trustee may be elected to no more than five consecutive**
71 **two-year terms. Vacancies shall be filled by the board. Each trustee shall serve until a**
72 **successor is elected and sworn. The trustees shall not receive compensation for their**
73 **services, but may be reimbursed for their actual and necessary expenses. The board shall**
74 **elect a chair and other officers necessary for its membership. The board shall enter into**
75 **contracts with any person or entity for the maintenance, administrative, or support work**
76 **required to administer the district. The board may charge reasonable fees and submit**
77 **proposals to levy and impose property taxes to fund the operation of the district to the**
78 **qualified voters in the district, but such proposals shall not become effective unless a**
79 **majority of the qualified voters in the district voting on the proposals approve the proposed**
80 **levy and rate of tax. The board may adopt resolutions necessary to the operation of the**
81 **district.**

118 voters voting thereon. However, if a real property tax proposal is not approved, the
119 governing body of the county shall not resubmit a proposal to the voters under this section
120 sooner than twelve months from the date of the last proposal submitted under this section.

121 **10. The real property tax authorized by this section is in addition to all other real**
122 **property taxes allowed by law.**

123 **11. Once the real property tax authorized by this section is abolished or terminated**
124 **by any means, all funds remaining in the trust fund shall be used solely for the purposes**
125 **approved in the ballot question authorizing the tax. The tax shall not be abolished or**
126 **terminated while the district has any financing or other obligations outstanding. Any**
127 **funds in the trust fund which are not needed for current expenditures may be invested by**
128 **the district in the securities described in subdivisions (1) to (12) of subsection 1 of section**
129 **30.270, RSMo, or repurchase agreements secured by such securities.**

249.1152. 1. Upon the adoption of a resolution by the governing body of any county
2 **located within any watershed in this state, or upon the filing of a petition by the property**
3 **owners residing within the portion of the watershed that is located within the county's**
4 **boundaries, a watershed improvement district may be proposed as authorized in this**
5 **section. The resolution or the petition shall contain the following information:**

6 **(1) The specific description of the watershed, which shall be identical to any United**
7 **States geological survey designated watershed, and the proposed district within the county**
8 **including a map illustrating the boundaries of both the watershed and the proposed**
9 **district;**

10 **(2) The name of the proposed district;**

11 **(3) If the creation of the district is proposed by petition filed by property owners,**
12 **the name and residence of each petitioner; and**

13 **(4) The purpose of the district.**

14 **2. Upon the adoption of a resolution proposing the creation of the district under**
15 **this section, the governing body of the county shall, by order or ordinance, provide a**
16 **hearing on the creation of the district. The order or ordinance providing a hearing on the**
17 **creation of such a district shall contain the following information:**

18 **(1) A description of the boundaries of the proposed district; and**

19 **(2) The time and place of a hearing to be held to consider establishment of the**
20 **proposed district.**

21 **3. Whenever a hearing is held as provided by this section, the governing body of**
22 **the county approving the proposed district shall:**

23 **(1) Publish notice of the hearing on two separate occasions in at least one**
24 **newspaper of general circulation in each county located within the proposed district, with**

25 the first publication to occur not more than thirty days before the hearing, and the second
26 publication to occur not more than fifteen days or less than ten days before the hearing.
27 The purpose of the district shall be published in the hearing notice;

28 (2) Hear all protests and receive evidence for or against the establishment of the
29 proposed district; and

30 (3) Rule upon all protests, which determinations shall be final.

31 4. Following the hearing, if the governing body of any county located within the
32 proposed district decides to establish the proposed district, the county shall adopt an order
33 to that effect. If the governing body of any county located within the proposed district
34 receives a petition signed by at least thirty-five percent of the property owners in the
35 proposed district requesting establishment of the proposed district then the county shall
36 adopt an order to that effect. An order adopted under this subsection shall contain the
37 following:

38 (1) The description of the boundaries of the watershed, which shall be identical to
39 any United States geological survey designated watershed, and the boundaries of the
40 district within the county;

41 (2) A statement that a watershed improvement district has been established;

42 (3) The name of the district;

43 (4) A declaration that the district is a political subdivision of the state; and

44 (5) The purpose of the district.

45 5. A district established under this section may, at a general or primary election,
46 submit to the qualified voters within the district boundaries a real property tax that shall
47 not exceed five cents per one hundred dollars assessed valuation to fund the operation of
48 the district. The ballot of submission shall be in substantially the following form:

49 Shall the (name of district) impose a real property tax within the district at
50 a rate of not more than (insert amount) dollars per hundred dollars of assessed
51 valuation to fund the operation of the district?

52 YES NO

53

54 If you are in favor of the question, place an "X" in the box opposite "YES". If you are
55 opposed to the question, place an "X" in the box opposite "NO".

56

57 If a majority of the votes cast in each county that is part of the district favor the proposal,
58 then the real property tax shall become effective in the district on the first day of the year
59 following the year of the election. If a majority of the votes cast in each county that is a
60 part of the district oppose the proposal, then that county shall not impose the real property

61 tax authorized in this section until after the county governing body has submitted another
62 such real property tax proposal and the proposal is approved by a majority of the qualified
63 voters voting thereon. However, if a real property tax proposal is not approved, the
64 governing body of the county shall not resubmit a proposal to the voters under this section
65 sooner than twelve months from the date of the last proposal submitted under this section.

66 6. The real property tax authorized by this section is in addition to all other real
67 property taxes allowed by law.

68 7. Once the real property tax authorized by this section is abolished or terminated
69 by any means, all funds remaining in the trust fund shall be used solely for the purposes
70 approved in the ballot question authorizing the tax. The tax shall not be abolished or
71 terminated while the district has any financing or other obligations outstanding. Any
72 funds in the trust fund which are not needed for current expenditures may be invested by
73 the district in the securities described in subdivisions (1) to (12) of subsection 1 of section
74 30.270, RSMo, or repurchase agreements secured by such securities.

75 8. There is hereby created a board of trustees to administer any district created and
76 the expenditure of revenue generated under this section. The board shall consist of at least
77 three but not more than ten individuals from the district. The board shall be appointed
78 by the governing body of each county in the district. The membership of the board shall
79 to the extent practicable be in proportion to the number of people living in the watershed
80 in each county. Each county located within the district shall be represented on the board
81 by at least one trustee. Of the initial trustees appointed from each county, a majority shall
82 serve terms of one year, and the remainder shall serve terms of two years, as determined
83 by lot. After the initial appointments of the trustees, the trustees shall be elected by the
84 property owners within the district. Each trustee may be elected to no more than five
85 consecutive two-year terms. Vacancies shall be filled by the board. Each trustee shall
86 serve until a successor is elected and sworn. The trustees shall not receive compensation
87 for their services, but may be reimbursed for their actual and necessary expenses. The
88 board shall elect a chair and other officers necessary for its membership.

89 9. A watershed improvement district created under this section is authorized to
90 own, install, operate, and maintain decentralized or individual on-site wastewater
91 treatment plants. A watershed improvement district created under this section shall be a
92 body corporate and a political subdivision of the state of Missouri, shall be capable of suing
93 and being sued in contract in its corporate name, and shall be capable of holding such real
94 and personal property necessary for corporate purposes. The district shall implement
95 procedures to regulate the area within and consistent with the purpose of the district and
96 to educate property owners about the requirements imposed by the district.

97 **10. A watershed improvement district created under this section shall have the**
98 **power to borrow money and incur indebtedness and evidence the same by certificates,**
99 **notes, or debentures, to issue bonds and use any one or more lawful funding methods the**
100 **district may obtain for its purposes at such rates of interest as the district may determine.**
101 **Any bonds, notes, and other obligations issued or delivered by the district may be secured**
102 **by mortgage, pledge, or deed of trust of any or all of the property within the district where**
103 **improvements have been made. Every issue of such bonds, notes, or other obligations shall**
104 **be payable out of property and revenues of the district and may be further secured by**
105 **other property within the district, which may be pledged, assigned, mortgaged, or a**
106 **security interest granted for such payment, without preference or priority of the first**
107 **bonds issued, subject to any agreement with the holders of any other bonds pledging any**
108 **specified property or revenues. Such bonds, notes, or other obligations shall be authorized**
109 **by resolution of the district board, and shall bear such date or dates, and shall mature at**
110 **such time or times, but not in excess of thirty years, as the resolution shall specify. Such**
111 **bonds, notes, or other obligations shall be in such denomination, bear interest at such rate**
112 **or rates, be in such form, either coupon or registered, be issued as current interest bonds,**
113 **compound interest bonds, variable rate bonds, convertible bonds, or zero coupon bonds,**
114 **be issued in such manner, be payable in such place or places, and be subject to redemption**
115 **as such resolution may provide, notwithstanding section 108.170, RSMo. The bonds, notes,**
116 **or other obligations may be sold at either public or private sale, at such interest rates, and**
117 **at such price or prices as the district shall determine.**

118 **11. The county commission of any county located within a watershed improvement**
119 **district may authorize individual properties to be served by the district by adoption of a**
120 **resolution or upon the filing of a petition signed by at least twenty percent of the property**
121 **owners of the proposed area. The resolution or petition shall describe generally the size**
122 **and location of the proposed area.**

123 **12. In the event that any property within a watershed improvement district**
124 **proposed under this section lies within or is serviced by any existing sewer district formed**
125 **under this chapter, chapter 204, or chapter 250, RSMo, the property shall not become part**
126 **of the watershed improvement district formed under this section unless the existing sewer**
127 **district agrees to refrain from providing service or to discontinue service to the property.**
128 **No property shall become part of the watershed district until the owner of that property**
129 **has paid in full all outstanding costs owed to an existing sewer district formed under this**
130 **chapter, chapter 204, or chapter 250, RSMo.**

131 **13. No service shall be initiated to any property lying within the watershed**
132 **improvement district created under this section unless the property owner elects to have**
133 **the service provided by the district.**

134 **14. Any on-site wastewater treatment systems installed on any property that**
135 **participates in the watershed improvement district formed under this section shall meet**
136 **all applicable standards for such on-site wastewater treatment systems under sections**
137 **701.025 to 701.059, RSMo, and as required by rules or regulations promulgated by the**
138 **appropriate state agencies.**

139 **15. Property owners participating in the watershed improvement district formed**
140 **under this section shall be required as a condition of continued participation to have a**
141 **maintenance plan approved by the watershed improvement district for the on-site**
142 **wastewater treatment systems on their properties. Such property owners shall also execute**
143 **a utilities easement to allow the district access to the system for maintenance purposes and**
144 **inspections. The property owner shall provide satisfactory proof that periodic**
145 **maintenance is performed on the sewage system. The level of satisfactory proof required**
146 **and the frequency of periodic proof shall be determined by the board of trustees.**

147 **16. In the event that the district is dissolved or terminated by any means, the**
148 **governing bodies of the counties in the district shall appoint a person to act as trustee for**
149 **the district so dissolved or terminated. Before beginning the discharge of duties, the**
150 **trustee shall take and subscribe an oath to faithfully discharge the duties of the office, and**
151 **shall give bond with sufficient security, approved by the governing bodies of the counties,**
152 **to the use of the dissolved or terminated district, for the faithful discharge of duties. The**
153 **trustee shall have and exercise all powers necessary to liquidate the district, and upon**
154 **satisfaction of all remaining obligations of the district, shall pay over to the county**
155 **treasurer of each county in the district and take receipt for all remaining moneys in**
156 **amounts based on the ratio the levy of each county bears to the total levy for the district**
157 **in the previous three years or since the establishment of the district, whichever time period**
158 **is shorter. Upon payment to the county treasurers, the trustee shall deliver to the clerk of**
159 **the governing body of any county in the district all books, papers, records, and deeds**
160 **belonging to the dissolved district.**

249.1154. The governing body of any county, by order or ordinance or upon the
2 **filing of a petition signed by at least twenty percent of the property owners in an area**
3 **proposed for designation under this section, may designate groundwater depletion areas**
4 **within a watershed improvement district created under section 249.1150 or 249.1152 and**
5 **may require well volume monitoring.**

249.1155. After August 28, 2004, any county within a watershed improvement district may require that all septic systems be maintained or pumped every five years by a licensed provider. In the event a county requires that all septic systems be so maintained or pumped the owner of any septic system shall submit proof of maintenance or pumping to the county department of health or the state department of health and senior services if appropriate which shall determine what shall constitute proof of compliance with the requirement. In addition, the county department of health or the state department of health and senior services if appropriate may charge septic tank owners a reasonable fee for monitoring compliance with the requirement.

278.258. 1. After a watershed subdistrict has been organized and the organization tax pursuant to section 278.250 has been levied, any county in the subdistrict which has not adopted the annual tax pursuant to section 278.250 may detach from the subdistrict upon approval of such detachment of a majority of the qualified voters [residing] **voting on the proposed detachment** within such subdistrict in such county; however, before such detachment the watershed district trustees shall make arrangements for the county to pay any outstanding indebtedness for services or works of improvement rendered by the subdistrict in such county.

2. Following the entry in the official minutes of the trustees of the watershed district of the detachment of the county, the watershed district trustees shall certify this fact on a separate form, authentic copies of which shall be recorded with the recorder of deeds in each county in which any portion of the watershed subdistrict lies and with the state soil and water districts commission.

640.635. Any person or laboratory performing an analysis of wastewater shall be licensed to perform the analysis by the department of natural resources. The department shall determine by rule or regulation the licensing criteria. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly under chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void. The department may require the person or laboratory obtaining a license under this section to pay a fee to the department for licensure. The fee shall be set at a level not to exceed the cost and expense of administrating this section.

644.076. 1. It is unlawful for any person to cause or permit any discharge of water contaminants from any water contaminant or point source located in Missouri in violation of

3 sections 644.006 to 644.141, or any standard, rule or regulation promulgated by the commission.
4 In the event the commission or the director determines that any provision of sections 644.006
5 to 644.141 or standard, rules, limitations or regulations promulgated pursuant thereto, or permits
6 issued by, or any final abatement order, other order, or determination made by the commission
7 or the director, or any filing requirement pursuant to sections 644.006 to 644.141 or any other
8 provision which this state is required to enforce pursuant to any federal water pollution control
9 act, is being, was, or is in imminent danger of being violated, the commission or director may
10 cause to have instituted a civil action in any court of competent jurisdiction for the injunctive
11 relief to prevent any such violation or further violation or for the assessment of a penalty not to
12 exceed ten thousand dollars per day for each day, or part thereof, the violation occurred and
13 continues to occur, or both, as the court deems proper. A civil monetary penalty pursuant to this
14 section shall not be assessed for a violation where an administrative penalty was assessed
15 pursuant to section 644.079. The commission, **the chair of a watershed district's board of**
16 **trustees created under section 249.1150 or 249.1152**, or the director may request either the
17 attorney general or a prosecuting attorney to bring any action authorized in this section in the
18 name of the people of the state of Missouri. Suit may be brought in any county where the
19 defendant's principal place of business is located or where the water contaminant or point source
20 is located or was located at the time the violation occurred. Any offer of settlement to resolve
21 a civil penalty pursuant to this section shall be in writing, shall state that an action for imposition
22 of a civil penalty may be initiated by the attorney general or a prosecuting attorney representing
23 the department pursuant to this section, and shall identify any dollar amount as an offer of
24 settlement which shall be negotiated in good faith through conference, conciliation and
25 persuasion.

26 2. Any person who knowingly makes any false statement, representation or certification
27 in any application, record, report, plan, or other document filed or required to be maintained
28 pursuant to sections 644.006 to 644.141 or who falsifies, tampers with, or knowingly renders
29 inaccurate any monitoring device or method required to be maintained pursuant to sections
30 644.006 to 644.141 shall, upon conviction, be punished by a fine of not more than ten thousand
31 dollars, or by imprisonment for not more than six months, or by both.

32 3. Any person who willfully or negligently commits any violation set forth pursuant to
33 subsection 1 of this section shall, upon conviction, be punished by a fine of not less than two
34 thousand five hundred dollars nor more than twenty-five thousand dollars per day of violation,
35 or by imprisonment for not more than one year, or both. Second and successive convictions for
36 violation of the same provision of this section by any person shall be punished by a fine of not
37 more than fifty thousand dollars per day of violation, or by imprisonment for not more than two
38 years, or both.

39 4. The liabilities which shall be imposed pursuant to any provision of sections 644.006
40 to 644.141 upon persons violating the provisions of sections 644.006 to 644.141 or any standard,
41 rule, limitation, or regulation adopted pursuant thereto shall not be imposed due to any violation
42 caused by an act of God, war, strike, riot, or other catastrophe.

701.031. Property owners of all buildings where people live, work or assemble shall
2 provide for the sanitary disposal of all domestic sewage. Except as provided in this section,
3 sewage and waste from such buildings shall be disposed of by discharging into a sewer system
4 regulated pursuant to chapter 644, RSMo, or shall be disposed of by discharging into an on-site
5 sewage disposal system operated as defined by rules promulgated pursuant to sections 701.025
6 to 701.059. **Any person installing on-site sewage disposal systems shall be registered to do**
7 **so by the department of health and senior services.** The owner of a single-family residence
8 lot consisting of three acres or more, or the owner of a residential lot consisting of ten acres or
9 more with no single-family residence on-site sewage disposal system located within three
10 hundred sixty feet of any other on-site sewage disposal system and no more than one
11 single-family residence per each ten acres in the aggregate, except lots adjacent to lakes operated
12 by the Corps of Engineers or by a public utility, shall be excluded from the provisions of sections
13 701.025 to 701.059 and the rules promulgated pursuant to sections 701.025 to 701.059, including
14 provisions relating to the construction, operation, major modification and major repair of on-site
15 disposal systems, when all points of the system are located in excess of ten feet from any
16 adjoining property line and no effluent enters an adjoining property, contaminates surface waters
17 or groundwater or creates a nuisance as determined by a readily available scientific method.
18 Except as provided in this section, any construction, operation, major modification or major
19 repair of an on-site sewage disposal system shall be in accordance with rules promulgated
20 pursuant to sections 701.025 to 701.059, regardless of when the system was originally
21 constructed. The provisions of subdivision (2) of subsection 1 of section 701.043 shall not apply
22 to lots located in subdivisions under the jurisdiction of the department of natural resources which
23 are required by a consent decree, in effect on or before May 15, 1984, to have class 1, National
24 [Sewage] **Sanitation** Federation (NSF) aerated sewage disposal systems.

701.033. 1. The department shall have the power and duty to:

2 (1) Promulgate such rules and regulations as are necessary to carry out the provisions of
3 sections 701.025 to 701.059;

4 (2) Cause investigations to be made when a violation of any provision of sections
5 701.025 to 701.059 or the on-site sewage disposal rules promulgated under sections 701.025 to
6 701.059 is reported to the department;

7 (3) Enter at reasonable times[, after receiving a complaint and], **after** determining
8 probable cause that a violation exists, upon private or public property for the purpose of

9 inspecting and investigating conditions relating to the administration and enforcement of sections
10 701.025 to 701.059 and the on-site sewage disposal rules promulgated under sections 701.025
11 to 701.059;

12 (4) Authorize the trial or experimental use of innovative systems for on-site sewage
13 disposal, after consultation with the staff of the Missouri clean water commission, upon such
14 conditions as the department may set.

15 2. No rule or portion of a rule promulgated under the authority of sections 701.025 to
16 701.059 shall become effective unless it has been promulgated pursuant to the provisions of
17 section 536.024, RSMo.

701.037. 1. Whenever the director determines[, after receipt of a complaint,] that there
2 are reasonable grounds to believe that there has been violation of any provision of sections
3 701.025 to 701.059 or the rules promulgated under sections 701.025 to 701.059, the director
4 shall give notice of such alleged violation to the person responsible, as herein provided. The
5 notice shall:

6 (1) Be in writing;

7 (2) Include a statement of the reasons for the issuance of the notice;

8 (3) Allow reasonable time as determined by the director for the performance of any act
9 it requires;

10 (4) Be served upon the owner, operator or contractor, as the case may require, provided
11 that such notice or order shall be deemed to have been properly served upon such person when
12 a copy thereof has been sent by registered or certified mail to the person's last known address,
13 as listed in the local property tax records concerning such property, or when such person has
14 been served with such notice by any other method authorized by the laws of this state;

15 (5) Contain an outline of remedial action which is required to effect compliance with
16 sections 701.025 to 701.059 and the rules promulgated under sections 701.025 to 701.059.

17 2. Existing systems, as defined in section 701.025, shall not be inspected, unless the
18 director determines[, upon receipt of a complaint,] that there are reasonable grounds to believe
19 that there has been a violation of any provision of sections 701.025 to 701.059.

20 3. If an aggrieved person files a written request for a hearing within ten days of the date
21 of receipt of a notice, a hearing shall be held within twenty days from the date of the receipt of
22 the notice, before the department director, to review the appropriateness of the remedial action.
23 The director shall issue a written decision within thirty calendar days of the date of the hearing.
24 Any final decision of the director may be appealed to the administrative hearing commission in
25 the manner provided in chapter 621, RSMo, or may at the option of the aggrieved person be
26 appealed to the circuit court of the county wherein the offense is alleged to have occurred for a

27 trial de novo on the merits. Any decision of the administrative hearing commission may be
28 appealed as provided in sections 536.100 to 536.140, RSMo.

29 4. Any city or county that has adopted the state standard, or the department, may require
30 a property owner to abate a nuisance or repair a malfunctioning on-site sewage disposal system
31 on the owner's property not later than the thirtieth day from which the owner receives notification
32 from the city, county or department of the malfunctioning system or a final written order from
33 the director, if a hearing or hearings were held pursuant to subsections 2 and 3 of this section.
34 If weather conditions prevent the abatement of the nuisance or repair of the system within the
35 thirty-day period or if the owner is unable, after reasonable effort, to obtain the services of a
36 contractor or repair service within the thirty-day period, the abatement of the nuisance or repair
37 of the system shall be made, weather permitting, no later than sixty days after notification. Such
38 extension for abatement or repair shall be subject to approval by the city, county or department.
39 The department may assess an administrative penalty on the property owner of no more than fifty
40 dollars per day for each day that the on-site sewage disposal system remains unrepaired beyond
41 the last day permitted by this section for the abatement or repair. All administrative penalties
42 collected by the department under the provisions of this section shall be deposited in the state
43 treasury to the credit of the general revenue fund.

44 5. The prosecuting attorney of the county in which any noncompliance or violation of
45 sections 701.025 to 701.059 or any rule promulgated under sections 701.025 to 701.059 is
46 occurring shall, at the request of the city, county or department, institute appropriate proceedings
47 for correction in cases of noncompliance with or violation of the provisions of sections 701.025
48 to 701.059 and any rules promulgated under sections 701.025 to 701.059.

49 6. When it is determined by the department[, after receipt of a complaint,] that an
50 emergency exists which requires immediate action to protect the health and welfare of the public,
51 the department is authorized to seek a temporary restraining order and injunction. Such action
52 shall be brought at the request of the director of the department by the prosecuting attorney of
53 the county in which the violation occurred. When such conditions are corrected and the health
54 of the people of the state of Missouri is no longer threatened, the department shall request that
55 such temporary restraining order and injunction be dissolved. For the purposes of this
56 subsection, an "emergency" means any set of circumstances that constitute an imminent health
57 hazard or the threat of an imminent health hazard as defined in section 701.025.

701.038. 1. The department of health and senior services or any of its agents may not
2 investigate a sewage complaint except when necessary as part of a communicable disease
3 investigation unless the complaint is received from an aggrieved party [or], an adjacent
4 landowner, **or any two residents of the county**. The department of health and senior services
5 or any of its agents may enter any adjoining property if necessary when they are making an

6 inspection pursuant to this section. The necessity for entering such adjoining property shall be
7 stated in writing and the owner of such property shall be notified before the department or any
8 of its agents may enter, except that, if an imminent health hazard exists, such notification shall
9 be attempted but is not required.

10 2. If the department or its agents make an investigation pursuant to a complaint as
11 described in subsection 1 of this section and find that a nuisance does exist, the property owner
12 shall comply with state and local standards when repairing or replacing the on-site sewage
13 disposal system.