

HOUSE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1433

AN ACT

To repeal sections 644.076, 701.031, 701.033,
701.037, and 701.038, RSMo, and to enact in
lieu thereof ten 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 644.076, 701.031, 701.033, 701.037, and
701.038, RSMo, are repealed and ten new sections enacted in lieu
thereof, to be known as sections 249.1150, 249.1152, 249.1154,
249.1155, 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

1 with more than thirteen thousand seventy-five but less than
2 thirteen thousand one hundred seventy-five inhabitants, any
3 county of the first classification with more than two hundred
4 forty thousand three hundred but less than two hundred forty
5 thousand four hundred inhabitants, any county of the third
6 classification without a township form of government and with
7 more than nine thousand four hundred fifty but less than nine
8 thousand five hundred fifty inhabitants, any county of the third
9 classification without a township form of government and with
10 more than twenty-eight thousand six hundred but less than
11 twenty-eight thousand seven hundred inhabitants, any county of
12 the first classification with more than thirty-nine thousand
13 seven hundred but less than thirty-nine thousand eight hundred
14 inhabitants, any county of the third classification without a
15 township form of government and with more than thirty-one
16 thousand but less than thirty-one thousand one hundred
17 inhabitants, and any county of the third classification without a
18 township form of government and with more than seventeen thousand
19 nine hundred but less than eighteen thousand inhabitants, the
20 Upper White River Basin Watershed Improvement District. The
21 watershed improvement district is authorized to own, install,
22 operate, and maintain decentralized or individual on-site
23 wastewater treatment plants. The watershed improvement district
24 created under this section shall be a body corporate and a

1 political subdivision of the state of Missouri, shall be capable
2 of suing and being sued in contract in its corporate name, and
3 shall be capable of holding such real and personal property
4 necessary for corporate purposes. The district shall implement
5 procedures to regulate the area within the district and to
6 educate property owners within the district about the
7 requirements imposed by the district.

8 2. The watershed improvement district created under this
9 section shall have the power to borrow money and incur
10 indebtedness and evidence the same by certificates, notes, or
11 debentures, to issue bonds and use any one or more lawful funding
12 methods the district may obtain for its purposes at such rates of
13 interest as the district may determine. Any bonds, notes, and
14 other obligations issued or delivered by the district may be
15 secured by mortgage, pledge, or deed of trust of any or all of
16 the property within the district. Every issue of such bonds,
17 notes, or other obligations shall be payable out of property and
18 revenues of the district and may be further secured by other
19 property within the district, which may be pledged, assigned,
20 mortgaged, or a security interest granted for such payment,
21 without preference or priority of the first bonds issued, subject
22 to any agreement with the holders of any other bonds pledging any
23 specified property or revenues. Such bonds, notes, or other
24 obligations shall be authorized by resolution of the district

1 board, and shall bear such date or dates, and shall mature at
2 such time or times, but not in excess of thirty years, as the
3 resolution shall specify. Such bonds, notes, or other
4 obligations shall be in such denomination, bear interest at such
5 rate or rates, be in such form, either coupon or registered, be
6 issued as current interest bonds, compound interest bonds,
7 variable rate bonds, convertible bonds, or zero coupon bonds, be
8 issued in such manner, be payable in such place or places, and be
9 subject to redemption as such resolution may provide,
10 notwithstanding section 108.170, RSMo. The bonds, notes, or
11 other obligations may be sold at either public or private sale,
12 at such interest rates, and at such price or prices as the
13 district shall determine.

14 3. The county commission of any county located within the
15 watershed improvement district may authorize individual
16 properties to be served by the district by adoption of a
17 resolution or upon the filing of a petition signed by at least
18 twenty percent of the property owners of the proposed area. The
19 resolution or petition shall describe generally the size and
20 location of the proposed area.

21 4. In the event that any property within the watershed
22 improvement district proposed under this section lies within or
23 is serviced by any existing sewer district formed under this
24 chapter, chapter 204, or chapter 250, RSMo, the property shall

1 not become part of the watershed improvement district formed
2 under this section unless the existing sewer district agrees to
3 refrain from providing service or to discontinue service to the
4 property. No property shall become part of the watershed
5 district until the owner of that property has paid in full all
6 outstanding costs owed to an existing sewer district formed under
7 this chapter, chapter 204, or chapter 250, RSMo.

8 5. Upon the creation of the watershed improvement district
9 as authorized by this section, a board of trustees for the
10 district consisting of nine members shall be appointed. The
11 governing body of each county shall appoint one member to serve
12 on the board. No trustee shall reside in the same county as
13 another trustee. Of the initial trustees appointed, five shall
14 serve terms of one year, and four shall serve terms of two years,
15 as determined by lot. After the initial appointments of the
16 trustees, the successor trustees shall reside in the same county
17 as the prior trustee and be elected by the resident property
18 owners of their county within the district. Each trustee may be
19 elected to no more than five consecutive two-year terms.
20 Vacancies shall be filled by the board. Each trustee shall serve
21 until a successor is elected and sworn. The trustees shall not
22 receive compensation for their services, but may be reimbursed
23 for their actual and necessary expenses. The board shall elect a
24 chair and other officers necessary for its membership. The board

1 shall enter into contracts with any person or entity for the
2 maintenance, administrative, or support work required to
3 administer the district. The board may charge reasonable fees
4 and submit proposals to levy and impose property taxes to fund
5 the operation of the district to the qualified voters in the
6 district, but such proposals shall not become effective unless a
7 majority of the qualified voters in the district voting on the
8 proposals approve the proposed levy and rate of tax. The board
9 may adopt resolutions necessary to the operation of the district.

10 6. No service shall be initiated to any property lying
11 within the watershed improvement district created under this
12 section unless the property owner elects to have the service
13 provided by the district.

14 7. Any on-site wastewater treatment system installed on any
15 property that participates in the watershed improvement district
16 formed under this section shall meet all applicable standards for
17 such on-site wastewater treatment systems under sections 701.025
18 to 701.059, RSMo, and as required by rules or regulations
19 promulgated by the board of trustees and the appropriate state
20 agencies.

21 8. Property owners participating in the watershed
22 improvement district formed under this section shall be required
23 as a condition of continued participation to have a maintenance
24 plan approved by the watershed improvement district for the on-

1 site wastewater treatment systems on their properties. Such
2 property owners shall also execute a utilities easement to allow
3 the district access to the system for maintenance purposes and
4 inspections. The property owner shall provide satisfactory proof
5 that periodic maintenance is performed on the sewage system. At
6 a minimum the system shall be installed and maintained according
7 to the manufacturer's recommendations. The level of satisfactory
8 proof required and the frequency of periodic proof shall be
9 determined by the board of trustees.

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

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

20 [] YES

[] NO

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

1 If a majority of the votes cast in each county that is part of
2 the district favor the proposal, then the real property tax shall
3 become effective in the district on the first day of the year
4 following the year of the election. If a majority of the votes
5 cast in each county that is a part of the district oppose the
6 proposal, then that county shall not impose the real property tax
7 authorized in this section until after the county governing body
8 has submitted another such real property tax proposal and the
9 proposal is approved by a majority of the qualified voters voting
10 thereon. However, if a real property tax proposal is not
11 approved, the governing body of the county shall not resubmit a
12 proposal to the voters under this section sooner than twelve
13 months from the date of the last proposal submitted under this
14 section.

15 10. The real property tax authorized by this section is in
16 addition to all other real property taxes allowed by law.

17 11. Once the real property tax authorized by this section
18 is abolished or terminated by any means, all funds remaining in
19 the trust fund shall be used solely for the purposes approved in
20 the ballot question authorizing the tax. The tax shall not be
21 abolished or terminated while the district has any financing or
22 other obligations outstanding. Any funds in the trust fund which
23 are not needed for current expenditures may be invested by the
24 district in the securities described in subdivisions (1) to (12)

1 of subsection 1 of section 30.270, RSMo, or repurchase agreements
2 secured by such securities.

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

10 (1) The specific description of the watershed, which shall
11 be identical to any United States geological survey designated
12 watershed, and the proposed district within the county including
13 a map illustrating the boundaries of both the watershed and the
14 proposed district;

15 (2) The name of the proposed district;

16 (3) If the creation of the district is proposed by petition
17 filed by property owners, the name and residence of each
18 petitioner; and

19 (4) The purpose of the district.

20 2. Upon the adoption of a resolution proposing the creation
21 of the district under this section, the governing body of the
22 county shall, by order or ordinance, provide a hearing on the
23 creation of the district. The order or ordinance providing a
24 hearing on the creation of such a district shall contain the

1 following information:

2 (1) A description of the boundaries of the proposed
3 district; and

4 (2) The time and place of a hearing to be held to consider
5 establishment of the proposed district.

6 3. Whenever a hearing is held as provided by this section,
7 the governing body of the county approving the proposed district
8 shall:

9 (1) Publish notice of the hearing on two separate occasions
10 in at least one newspaper of general circulation in each county
11 located within the proposed district, with the first publication
12 to occur not more than thirty days before the hearing, and the
13 second publication to occur not more than fifteen days or less
14 than ten days before the hearing. The purpose of the district
15 shall be published in the hearing notice;

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

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

20 4. Following the hearing, if the governing body of any
21 county located within the proposed district decides to establish
22 the proposed district, the county shall adopt an order to that
23 effect. If the governing body of any county located within the
24 proposed district receives a petition signed by at least twenty

1 percent of the property owners in the proposed district
2 requesting establishment of the proposed district then the county
3 shall adopt an order to that effect. An order adopted under this
4 subsection shall contain the following:

5 (1) The description of the boundaries of the watershed,
6 which shall be identical to any United States geological survey
7 designated watershed, and the boundaries of the district within
8 the county;

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

11 (3) The name of the district;

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

14 (5) The purpose of the district.

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

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

1 [] YES

[] NO

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

5 If a majority of the votes cast in each county that is part of
6 the district favor the proposal, then the real property tax shall
7 become effective in the district on the first day of the year
8 following the year of the election. If a majority of the votes
9 cast in each county that is a part of the district oppose the
10 proposal, then that county shall not impose the real property tax
11 authorized in this section until after the county governing body
12 has submitted another such real property tax proposal and the
13 proposal is approved by a majority of the qualified voters voting
14 thereon. However, if a real property tax proposal is not
15 approved, the governing body of the county shall not resubmit a
16 proposal to the voters under this section sooner than twelve
17 months from the date of the last proposal submitted under this
18 section.

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

21 7. Once the real property tax authorized by this section is
22 abolished or terminated by any means, all funds remaining in the

1 trust fund shall be used solely for the purposes approved in the
2 ballot question authorizing the tax. The tax shall not be
3 abolished or terminated while the district has any financing or
4 other obligations outstanding. Any funds in the trust fund which
5 are not needed for current expenditures may be invested by the
6 district in the securities described in subdivisions (1) to (12)
7 of subsection 1 of section 30.270, RSMo, or repurchase agreements
8 secured by such securities.

9 8. There is hereby created a board of trustees to
10 administer any district created and the expenditure of revenue
11 generated under this section. The board shall consist of at
12 least three but not more than ten individuals from the district.
13 The board shall be appointed by the governing body of each county
14 in the district. The membership of the board shall to the extent
15 practicable be in proportion to the number of people living in
16 the watershed in each county. Each county located within the
17 district shall be represented on the board by at least one
18 trustee. Of the initial trustees appointed from each county, a
19 majority shall serve terms of one year, and the remainder shall
20 serve terms of two years, as determined by lot. After the
21 initial appointments of the trustees, the trustees shall be
22 elected by the property owners within the district. Each trustee
23 may be elected to no more than five consecutive two-year terms.
24 Vacancies shall be filled by the board. Each trustee shall serve

1 until a successor is elected and sworn. The trustees shall not
2 receive compensation for their services, but may be reimbursed
3 for their actual and necessary expenses. The board shall elect a
4 chair and other officers necessary for its membership.

5 9. A watershed improvement district created under this
6 section is authorized to own, install, operate, and maintain
7 decentralized or individual on-site wastewater treatment plants.
8 A watershed improvement district created under this section shall
9 be a body corporate and a political subdivision of the state of
10 Missouri, shall be capable of suing and being sued in contract in
11 its corporate name, and shall be capable of holding such real and
12 personal property necessary for corporate purposes. The district
13 shall implement procedures to regulate the area within and
14 consistent with the purpose of the district and to educate
15 property owners about the requirements imposed by the district.

16 10. A watershed improvement district created under this
17 section shall have the power to borrow money and incur
18 indebtedness and evidence the same by certificates, notes, or
19 debentures, to issue bonds and use any one or more lawful funding
20 methods the district may obtain for its purposes at such rates of
21 interest as the district may determine. Any bonds, notes, and
22 other obligations issued or delivered by the district may be
23 secured by mortgage, pledge, or deed of trust of any or all of
24 the property within the district. Every issue of such bonds,

1 notes, or other obligations shall be payable out of property and
2 revenues of the district and may be further secured by other
3 property within the district, which may be pledged, assigned,
4 mortgaged, or a security interest granted for such payment,
5 without preference or priority of the first bonds issued, subject
6 to any agreement with the holders of any other bonds pledging any
7 specified property or revenues. Such bonds, notes, or other
8 obligations shall be authorized by resolution of the district
9 board, and shall bear such date or dates, and shall mature at
10 such time or times, but not in excess of thirty years, as the
11 resolution shall specify. Such bonds, notes, or other
12 obligations shall be in such denomination, bear interest at such
13 rate or rates, be in such form, either coupon or registered, be
14 issued as current interest bonds, compound interest bonds,
15 variable rate bonds, convertible bonds, or zero coupon bonds, be
16 issued in such manner, be payable in such place or places, and be
17 subject to redemption as such resolution may provide,
18 notwithstanding section 108.170, RSMo. The bonds, notes, or
19 other obligations may be sold at either public or private sale,
20 at such interest rates, and at such price or prices as the
21 district shall determine.

22 11. The county commission of any county located within a
23 watershed improvement district may authorize individual
24 properties to be served by the district by adoption of a

1 resolution or upon the filing of a petition signed by at least
2 twenty percent of the property owners of the proposed area. The
3 resolution or petition shall describe generally the size and
4 location of the proposed area.

5 12. In the event that any property within a watershed
6 improvement district proposed under this section lies within or
7 is serviced by any existing sewer district formed under this
8 chapter, chapter 204, or chapter 250, RSMo, the property shall
9 not become part of the watershed improvement district formed
10 under this section unless the existing sewer district agrees to
11 refrain from providing service or to discontinue service to the
12 property. No property shall become part of the watershed
13 district until the owner of that property has paid in full all
14 outstanding costs owed to an existing sewer district formed under
15 this chapter, chapter 204, or chapter 250, RSMo.

16 13. No service shall be initiated to any property lying
17 within the watershed improvement district created under this
18 section unless the property owner elects to have the service
19 provided by the district.

20 14. Any on-site wastewater treatment systems installed on
21 any property that participates in the watershed improvement
22 district formed under this section shall meet all applicable
23 standards for such on-site wastewater treatment systems under
24 sections 701.025 to 701.059, RSMo, and as required by rules or

1 regulations promulgated by the appropriate state agencies.

2 15. Property owners participating in the watershed
3 improvement district formed under this section shall be required
4 as a condition of continued participation to have a maintenance
5 plan approved by the watershed improvement district for the on-
6 site wastewater treatment systems on their properties. Such
7 property owners shall also execute a utilities easement to allow
8 the district access to the system for maintenance purposes and
9 inspections. The property owner shall provide satisfactory proof
10 that periodic maintenance is performed on the sewage system. The
11 level of satisfactory proof required and the frequency of
12 periodic proof shall be determined by the board of trustees.

13 16. In the event that the district is dissolved or
14 terminated by any means, the governing bodies of the counties in
15 the district shall appoint a person to act as trustee for the
16 district so dissolved or terminated. Before beginning the
17 discharge of duties, the trustee shall take and subscribe an oath
18 to faithfully discharge the duties of the office, and shall give
19 bond with sufficient security, approved by the governing bodies
20 of the counties, to the use of the dissolved or terminated
21 district, for the faithful discharge of duties. The trustee
22 shall have and exercise all powers necessary to liquidate the
23 district, and upon satisfaction of all remaining obligations of
24 the district, shall pay over to the county treasurer of each

1 county in the district and take receipt for all remaining moneys
2 in amounts based on the ratio the levy of each county bears to
3 the total levy for the district in the previous three years or
4 since the establishment of the district, whichever time period is
5 shorter. Upon payment to the county treasurers, the trustee
6 shall deliver to the clerk of the governing body of any county in
7 the district all books, papers, records, and deeds belonging to
8 the dissolved district.

9 249.1154. The governing body of any county, by order or
10 ordinance or upon the filing of a petition signed by at least
11 twenty percent of the property owners in an area proposed for
12 designation under this section, may designate groundwater
13 depletion areas within a watershed improvement district created
14 under section 249.1150 or 249.1152 and may require well volume
15 monitoring.

16 249.1155. After August 28, 2004, any county within a
17 watershed improvement district may require that all septic
18 systems be maintained or pumped every five years by a licensed
19 provider. In the event a county requires that all septic systems
20 be so maintained or pumped the owner of any septic system shall
21 submit proof of maintenance or pumping to the county department
22 of health or the state department of health and senior services
23 if appropriate which shall determine what shall constitute proof
24 of compliance with the requirement. In addition, the county

1 department of health or the state department of health and senior
2 services if appropriate may charge septic tank owners a
3 reasonable fee for monitoring compliance with the requirement.

4 640.635. Any person or laboratory performing an analysis of
5 wastewater shall be licensed to perform the analysis by the
6 department of natural resources. The department shall determine
7 by rule or regulation the licensing criteria. Any rule or
8 portion of a rule, as that term is defined in section 536.010,
9 RSMo, that is created under the authority delegated in this
10 section shall become effective only if it complies with and is
11 subject to all of the provisions of chapter 536, RSMo, and, if
12 applicable, section 536.028, RSMo. This section and chapter 536,
13 RSMo, are nonseverable and if any of the powers vested with the
14 general assembly under chapter 536, RSMo, to review, to delay the
15 effective date, or to disapprove and annul a rule are
16 subsequently held unconstitutional, then the grant of rulemaking
17 authority and any rule proposed or adopted after August 28, 2004,
18 shall be invalid and void. The department may require the person
19 or laboratory obtaining a license under this section to pay a fee
20 to the department for licensure. The fee shall be set at a level
21 not to exceed the cost and expense of administrating this
22 section.

23 644.076. 1. It is unlawful for any person to cause or
24 permit any discharge of water contaminants from any water

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

1 name of the people of the state of Missouri. Suit may be brought
2 in any county where the defendant's principal place of business
3 is located or where the water contaminant or point source is
4 located or was located at the time the violation occurred. Any
5 offer of settlement to resolve a civil penalty pursuant to this
6 section shall be in writing, shall state that an action for
7 imposition of a civil penalty may be initiated by the attorney
8 general or a prosecuting attorney representing the department
9 pursuant to this section, and shall identify any dollar amount as
10 an offer of settlement which shall be negotiated in good faith
11 through conference, conciliation and persuasion.

12 2. Any person who knowingly makes any false statement,
13 representation or certification in any application, record,
14 report, plan, or other document filed or required to be
15 maintained pursuant to sections 644.006 to 644.141 or who
16 falsifies, tampers with, or knowingly renders inaccurate any
17 monitoring device or method required to be maintained pursuant to
18 sections 644.006 to 644.141 shall, upon conviction, be punished
19 by a fine of not more than ten thousand dollars, or by
20 imprisonment for not more than six months, or by both.

21 3. Any person who willfully or negligently commits any
22 violation set forth pursuant to subsection 1 of this section
23 shall, upon conviction, be punished by a fine of not less than
24 two thousand five hundred dollars nor more than twenty-five

1 thousand dollars per day of violation, or by imprisonment for not
2 more than one year, or both. Second and successive convictions
3 for violation of the same provision of this section by any person
4 shall be punished by a fine of not more than fifty thousand
5 dollars per day of violation, or by imprisonment for not more
6 than two years, or both.

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

13 701.031. Property owners of all buildings where people
14 live, work or assemble shall provide for the sanitary disposal of
15 all domestic sewage. Except as provided in this section, sewage
16 and waste from such buildings shall be disposed of by discharging
17 into a sewer system regulated pursuant to chapter 644, RSMo, or
18 shall be disposed of by discharging into an on-site sewage
19 disposal system operated as defined by rules promulgated pursuant
20 to sections 701.025 to 701.059. Any person installing on-site
21 sewage disposal systems shall be registered to do so by the
22 department of health and senior services. The owner of a
23 single-family residence lot consisting of three acres or more, or
24 the owner of a residential lot consisting of ten acres or more

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

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

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

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

9 (3) Enter at reasonable times[, after receiving a
10 complaint] and determining probable cause that a violation
11 exists, upon private or public property for the purpose of
12 inspecting and investigating conditions relating to the
13 administration and enforcement of sections 701.025 to 701.059 and
14 the on-site sewage disposal rules promulgated under sections
15 701.025 to 701.059;

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

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

24 701.037. 1. Whenever the director determines[, after

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

7 (1) Be in writing;

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

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

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

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

23 2. Existing systems, as defined in section 701.025, shall
24 not be inspected, unless the director determines[, upon receipt

1 of a complaint,] that there are reasonable grounds to believe
2 that there has been a violation of any provision of sections
3 701.025 to 701.059.

4 3. If an aggrieved person files a written request for a
5 hearing within ten days of the date of receipt of a notice, a
6 hearing shall be held within twenty days from the date of the
7 receipt of the notice, before the department director, to review
8 the appropriateness of the remedial action. The director shall
9 issue a written decision within thirty calendar days of the date
10 of the hearing. Any final decision of the director may be
11 appealed to the administrative hearing commission in the manner
12 provided in chapter 621, RSMo, or may at the option of the
13 aggrieved person be appealed to the circuit court of the county
14 wherein the offense is alleged to have occurred for a trial de
15 novo on the merits. Any decision of the administrative hearing
16 commission may be appealed as provided in sections 536.100 to
17 536.140, RSMo.

18 4. Any city or county that has adopted the state standard,
19 or the department, may require a property owner to abate a
20 nuisance or repair a malfunctioning on-site sewage disposal
21 system on the owner's property not later than the thirtieth day
22 from which the owner receives notification from the city, county
23 or department of the malfunctioning system or a final written
24 order from the director, if a hearing or hearings were held

1 pursuant to subsections 2 and 3 of this section. If weather
2 conditions prevent the abatement of the nuisance or repair of the
3 system within the thirty-day period or if the owner is unable,
4 after reasonable effort, to obtain the services of a contractor
5 or repair service within the thirty-day period, the abatement of
6 the nuisance or repair of the system shall be made, weather
7 permitting, no later than sixty days after notification. Such
8 extension for abatement or repair shall be subject to approval by
9 the city, county or department. The department may assess an
10 administrative penalty on the property owner of no more than
11 fifty dollars per day for each day that the on-site sewage
12 disposal system remains unrepaired beyond the last day permitted
13 by this section for the abatement or repair. All administrative
14 penalties collected by the department under the provisions of
15 this section shall be deposited in the state treasury to the
16 credit of the general revenue fund.

17 5. The prosecuting attorney of the county in which any
18 noncompliance or violation of sections 701.025 to 701.059 or any
19 rule promulgated under sections 701.025 to 701.059 is occurring
20 shall, at the request of the city, county or department,
21 institute appropriate proceedings for correction in cases of
22 noncompliance with or violation of the provisions of sections
23 701.025 to 701.059 and any rules promulgated under sections
24 701.025 to 701.059.

1 6. When it is determined by the department[, after receipt
2 of a complaint,] that an emergency exists which requires
3 immediate action to protect the health and welfare of the public,
4 the department is authorized to seek a temporary restraining
5 order and injunction. Such action shall be brought at the
6 request of the director of the department by the prosecuting
7 attorney of the county in which the violation occurred. When
8 such conditions are corrected and the health of the people of the
9 state of Missouri is no longer threatened, the department shall
10 request that such temporary restraining order and injunction be
11 dissolved. For the purposes of this subsection, an "emergency"
12 means any set of circumstances that constitute an imminent health
13 hazard or the threat of an imminent health hazard as defined in
14 section 701.025.

15 701.038. 1. The department of health and senior services
16 or any of its agents may not investigate a sewage complaint
17 except when necessary as part of a communicable disease
18 investigation unless the complaint is received from an aggrieved
19 party [or], an adjacent landowner, or any two residents of the
20 county. The department of health and senior services or any of
21 its agents may enter any adjoining property if necessary when
22 they are making an inspection pursuant to this section. The
23 necessity for entering such adjoining property shall be stated in
24 writing and the owner of such property shall be notified before

1 the department or any of its agents may enter, except that, if an
2 imminent health hazard exists, such notification shall be
3 attempted but is not required.

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