

SECOND REGULAR SESSION

# HOUSE BILL NO. 1748

## 95TH GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVES LAMPE (Sponsor), KUESSNER, BIERMANN, STILL,  
KIRKTON, SCHUPP, TALBOY, ROORDA, SCAVUZZO, JONES (63) AND HOLSMAN (Co-sponsors).

4634L.011

D. ADAM CRUMBLISS, Chief Clerk

---

### AN ACT

To repeal sections 644.026, 644.036, 701.033, and 701.038, RSMo, and to enact in lieu thereof  
four new sections relating to distressed water bodies.

---

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

Section A. Sections 644.026, 644.036, 701.033, and 701.038, RSMo, are repealed and  
2 four new sections enacted in lieu thereof, to be known as sections 644.026, 644.036, 644.043,  
3 and 701.033, to read as follows:

644.026. 1. The commission shall:

2 (1) Exercise general supervision of the administration and enforcement of sections  
3 644.006 to 644.141 and all rules and regulations and orders promulgated thereunder;

4 (2) Develop comprehensive plans and programs for the prevention, control and  
5 abatement of new or existing pollution of the waters of the state;

6 (3) Advise, consult, and cooperate with other agencies of the state, the federal  
7 government, other states and interstate agencies, and with affected groups, political subdivisions  
8 and industries in furtherance of the purposes of sections 644.006 to 644.141;

9 (4) Accept gifts, contributions, donations, loans and grants from the federal government  
10 and from other sources, public or private, for carrying out any of its functions, which funds shall  
11 not be expended for other than the purposes for which provided;

12 (5) Encourage, participate in, or conduct studies, investigations, and research and  
13 demonstrations relating to water pollution and causes, prevention, control and abatement thereof  
14 as it may deem advisable and necessary for the discharge of its duties pursuant to sections  
15 644.006 to 644.141;

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

16           (6) Collect and disseminate information relating to water pollution and the prevention,  
17 control and abatement thereof;

18           (7) After holding public hearings, identify waters of the state and prescribe water quality  
19 standards for them, giving due recognition to variations, if any, and the characteristics of  
20 different waters of the state which may be deemed by the commission to be relevant insofar as  
21 possible pursuant to any federal water pollution control act. These shall be reevaluated and  
22 modified as required by any federal water pollution control act;

23           (8) Adopt, amend, promulgate, or repeal after due notice and hearing, rules and  
24 regulations to enforce, implement, and effectuate the powers and duties of sections 644.006 to  
25 644.141 and any required of this state by any federal water pollution control act, and as the  
26 commission may deem necessary to prevent, control and abate existing or potential pollution;

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

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

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

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

43           (13) Issue, continue in effect, revoke, modify or deny, under such conditions as it may  
44 prescribe, to prevent, control or abate pollution or any violations of sections 644.006 to 644.141  
45 or any federal water pollution control act, permits for the discharge of water contaminants into  
46 the waters of this state, and for the installation, modification or operation of treatment facilities,  
47 sewer systems or any parts thereof. Such permit conditions, in addition to all other requirements  
48 of this subdivision, shall ensure compliance with all effluent regulations or limitations, water  
49 quality related effluent limitations, national standards of performance and toxic and pretreatment  
50 effluent standards, and all requirements and time schedules thereunder as established by sections  
51 644.006 to 644.141 and any federal water pollution control act; however, no permit shall be

52 required of any person for any emission into publicly owned treatment facilities or into publicly  
53 owned sewer systems tributary to publicly owned treatment works;

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

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

63 (16) Exercise all incidental powers necessary to carry out the purposes of sections  
64 644.006 to 644.141, assure that the state of Missouri complies with any federal water pollution  
65 control act, retains maximum control thereunder and receives all desired federal grants, aid and  
66 benefits;

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

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

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

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

82 (21) Develop such facts and make such investigations as are consistent with the purposes  
83 of sections 644.006 to 644.141, and, in connection therewith, to enter or authorize any  
84 representative of the commission to enter at all reasonable times and upon reasonable notice in  
85 or upon any private or public property for any purpose required by any federal water pollution  
86 control act or sections 644.006 to 644.141 for the purpose of developing rules, regulations,  
87 limitations, standards, or permit conditions, or inspecting or investigating any records required

88 to be kept by sections 644.006 to 644.141 or any permit issued pursuant to sections 644.006 to  
89 644.141, any condition which the commission or director has probable cause to believe to be a  
90 water contaminant source or the site of any suspected violation of sections 644.006 to 644.141,  
91 regulations, standards, or limitations, or permits issued pursuant to sections 644.006 to 644.141.  
92 The results of any such investigation shall be reduced to writing, and shall be furnished to the  
93 owner or operator of the property. No person shall refuse entry or access, requested for the  
94 purposes of inspection pursuant to this subdivision, to an authorized representative in carrying  
95 out the inspection. A suitably restricted search warrant, upon a showing of probable cause in  
96 writing and upon oath, shall be issued by any judge or associate circuit judge having jurisdiction  
97 to any representative for the purpose of enabling him or her to make such inspection.  
98 Information obtained pursuant to this section shall be available to the public unless it constitutes  
99 trade secrets or confidential information, other than effluent data, of the person from whom it  
100 is obtained, except when disclosure is required pursuant to any federal water pollution control  
101 act;

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

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

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

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

**(26) Designate publicly accessible bodies of water as distressed based on the best available scientific information, including but not limited to information on the level of contaminants present, type and frequency of use by the public, use in industrial processes, flow data, hydrology and topography, level of existing and planned development in a watershed, any special circumstances requiring an exceptional level of water quality in the particular water body, downstream effects on other water bodies, and the cumulative effect of any of such factors. The commission shall have broad discretion in making such determination;**

**(27) Issue cease and desist orders for activities affecting a distressed water body.**

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

644.036. 1. No standard, rule or regulation or any amendment or repeal thereof shall be adopted except after a public hearing to be held after thirty days' prior notice by advertisement of the date, time and place of the hearing and opportunity given to the public to be heard. Notice of the hearings and copies of the proposed standard, rule or regulation or any amendment or repeal thereof shall also be given by regular mail, at least thirty days prior to the scheduled date of the hearing, to any person who has registered with the director for the purpose of receiving notice of such public hearings in accordance with the procedures prescribed by the commission at least forty-five days prior to the scheduled date of the hearing. However, this provision shall not preclude necessary changes during this thirty-day period.

2. At the hearing, opportunity to be heard by the commission with respect to the subject thereof shall be afforded any interested person upon written request to the commission, addressed to the director, not later than seven days prior to the hearing, and may be afforded to other persons if convenient. In addition, any interested persons, whether or not heard, may submit, within seven days subsequent to the hearings, a written statement of their views. The commission may solicit the views, in writing, of persons who may be affected by, or interested in, proposed rules and regulations, or standards. Any person heard or represented at the hearing or making written request for notice shall be given written notice of the action of the commission with respect to the subject thereof.

3. Any standard, rule or regulation or amendment or repeal thereof shall not be deemed adopted or in force and effect until it has been approved in writing by at least four members of the commission. A standard, rule or regulation or an amendment or repeal thereof shall not

22 become effective until a certified copy thereof has been filed with the secretary of state as  
23 provided in chapter 536, RSMo.

24 4. Unless prohibited by any federal water pollution control act, any standard, rule or  
25 regulation or any amendment or repeal thereof which is adopted by the commission may differ  
26 in its terms and provisions as between particular types and conditions of water quality standards  
27 or of water contaminants, as between particular classes of water contaminant sources, and as  
28 between particular waters of the state.

29 5. **A determination that a water body is distressed or that a water body determined**  
30 **to be distressed is no longer distressed shall be made by the commission only after a public**  
31 **hearing, or series of hearings, held in accordance with subsections 1 and 2 of this section.**  
32 **Such determination shall be approved in writing by at least four members of the**  
33 **commission and the director of the department of natural resources.**

34 6. Any listing required by Section 303(d) of the federal Clean Water Act, as amended,  
35 33 U.S.C. 1251, et seq., to be sent to the U.S. Environmental Protection Agency for its approval  
36 that will result in any waters of the state being classified as impaired shall be adopted by the  
37 commission after a public hearing, or series of hearings, held in accordance with the following  
38 procedures. The department of natural resources shall publish in at least six regional  
39 newspapers, in advance, a notice by advertisement the availability of a proposed list of impaired  
40 waters of the state and such notice shall include at least ninety days' advance notice of the date,  
41 time, and place of the public hearing and opportunity given to the public to be heard. Notice of  
42 the hearings and copies of the proposed list of impaired waters also shall be posted on the  
43 department of natural resources' website and given by regular mail, at least ninety days prior to  
44 the scheduled date of the hearing, to any person who has registered with the director for the  
45 purpose of receiving notice of such public hearings. The proposed list of impaired waters shall  
46 identify the water segment, the uses to be made of such waters, the uses impaired, identify the  
47 pollutants causing or expected to cause violations of the applicable water quality standards, and  
48 provide a summary of the data relied upon to make the preliminary determination.  
49 Contemporaneous with the publication of the notice of public hearing, the department shall make  
50 available on its website all data and information it relied upon to prepare the proposed list of  
51 impaired waters, including a narrative explanation of how the department determined the water  
52 segment was impaired. At any time after the public notice and until seven days after the public  
53 hearing, the department shall accept written comments on the proposed list of impaired waters.  
54 After the public hearing and after all written comments have been submitted, the department  
55 shall prepare a written response to all comments and a revised list of impaired waters. The  
56 commission shall adopt a list of impaired waters in a public meeting during which the public  
57 shall be afforded an opportunity to respond to the department's written response to comments and

58 revised list of impaired waters. Notice of the meeting shall include the date, time, and place of  
59 the public meeting and shall provide notice that the commission will give interested persons the  
60 opportunity to respond to the department's revised list of impaired waters and written responses  
61 to comments. At its discretion, the commission may extend public comment periods or hold  
62 additional public hearings on the proposed and revised lists of impaired waters. The commission  
63 shall not vote to add to the list of impaired waters any waters not recommended by the  
64 department in the proposed or revised lists of impaired waters without granting the public at least  
65 thirty additional days to comment on the proposed addition. The list of impaired waters adopted  
66 by the commission shall not be deemed to be a rule as defined by section 536.010, RSMo. The  
67 listing of any water segment on the list of impaired waters adopted by the commission shall be  
68 subject to judicial review by any adversely affected party under section 536.150, RSMo. The  
69 provisions in this subsection shall expire on August 28, 2010.

**644.043. 1. The following shall apply to seeking a determination by the clean water  
2 commission that a water body is distressed:**

3 **(1) Designating a water body as distressed may be initiated by a citizen or the**  
4 **department;**

5 **(2) The department may gather scientific information concerning the water body,**  
6 **including but not limited to water quality monitoring, geologic reviews, and facility**  
7 **inspections for presentation to the commission with a request to declare the water body**  
8 **distressed. The information submitted may include complaints submitted by the public**  
9 **and any reliable data or information provided by citizens;**

10 **(3) The commission will be required to provide an opportunity for public input**  
11 **under subsection 5 of section 644.036 prior to making its finding;**

12 **(4) Failure by the commission to find that a water body is distressed shall not**  
13 **preclude subsequent requests by the department, on its own initiative or at the request of**  
14 **a citizen, to the commission for a determination as a distressed water body; however, the**  
15 **department shall present credible and significant additional information that either was**  
16 **not present in the record as reviewed by the commission or that has changed in a manner**  
17 **that warrants reconsideration; and**

18 **(5) Failure by the commission to find that a water body is distressed shall not affect**  
19 **any other determination related to the water body made by the commission in accordance**  
20 **with state or federal law.**

21 **2. (1) Upon a determination by the clean water commission that a publicly**  
22 **accessible body of water is distressed under subdivision (26) of subsection 1 of section**  
23 **644.036, activities affecting the water body shall be subject to heightened scrutiny. For**  
24 **purposes of this section and subdivisions (26) and (27) of subsection 1 of section 644.036,**

25 **"heightened scrutiny" means that applications for permits affecting the distressed water**  
26 **body shall be presumptively denied and "affecting" means activities that reasonably have**  
27 **the potential to significantly impact a distressed water body, irrespective of whether those**  
28 **activities are being carried out in compliance with law.**

29 **(2) The commission shall establish performance standards by rule to measure the**  
30 **effectiveness of the heightened scrutiny.**

31 **3. If a water body is determined to be distressed, the department:**

32 **(1) Shall have concurrent authority with the department of health and senior**  
33 **services under section 701.033;**

34 **(2) May require permits for construction of on-site waste water treatment facilities,**  
35 **such as septic systems, package plants and lagoons, in accordance with heightened**  
36 **scrutiny;**

37 **(3) May order operators of facilities that are contributing to the contamination of**  
38 **distressed water bodies to properly operate and maintain their systems and connect with**  
39 **existing sewer systems;**

40 **(4) May conduct such investigations, including water quality monitoring, geologic**  
41 **reviews, and facility inspections, as necessary to determine how to improve water quality**  
42 **of a distressed water body; and**

43 **(5) May take all appropriate actions to improve water quality.**

44 **4. If a water body is distressed:**

45 **(1) No new permits affecting the distressed water body shall be issued unless an**  
46 **applicant can demonstrate either that the activity will have no detrimental impact to the**  
47 **water body or that the applicant has employed additional measures that, in the**  
48 **department's discretion, are sufficient to prevent further deterioration of the water body;**

49 **(2) Variances may be granted by the commission on such terms and conditions as**  
50 **the commission deems proper in accordance with section 644.061, so long as the director**  
51 **of the department of natural resources concurs with the variance and the applicable permit**  
52 **terms and conditions. Variances shall be on a case-by-case basis; and**

53 **(3) If the department finds a violation of this chapter and accompanying**  
54 **regulations by an existing facility, the department may impose an accelerated compliance**  
55 **schedule or order the facility to cease and desist from operating. This applies to facilities**  
56 **currently regulated under this chapter and any and all on-site waste water treatment**  
57 **facilities, including package plants, lagoons, and septic tanks serving single-family**  
58 **residences.**



59           **5. The department shall conduct such investigations, including water quality**  
60 **monitoring, geologic reviews, and facility inspections, as necessary to determine if and**  
61 **when a water body is no longer distressed.**

62           **6. Subject to appropriation, the department may hire full-time equivalent**  
63 **employees and receive additional funds necessary to adequately implement this section.**

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] **suspected by the department or when necessary as part of a**  
7 **communicable disease investigation;**

8           (3) Enter at reasonable times and determining probable cause that a violation exists,  
9 upon private or public property for the purpose of inspecting and investigating conditions  
10 relating to the administration and enforcement of sections 701.025 to 701.059 and the on-site  
11 sewage disposal rules promulgated under sections 701.025 to 701.059. **The department of**  
12 **health and senior services or any of its agents may enter any adjoining property if**  
13 **necessary when they are making an inspection under this subsection. The necessity for**  
14 **entering such adjoining property shall be stated in writing and the owner of such property**  
15 **shall be notified before the department or any of its agents may enter; except that, if an**  
16 **immediate health hazard exists, such notification shall be attempted but is not required;**

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

20           **2. If the department or its agents make an investigation as described in subsection**  
21 **1 of this section and find that a nuisance does exist, the property owner shall comply with**  
22 **state and local standards when repairing or replacing the on-site sewage disposal system.**

23           **3. No rule or portion of a rule promulgated under the authority of sections 701.025 to**  
24 **701.059 shall become effective unless it has been promulgated pursuant to the provisions of**  
25 **section 536.024, RSMo.**

                  [701.038. 1. The department of health and senior services or any of its  
2 agents may not investigate a sewage complaint except when necessary as part of  
3 a communicable disease investigation unless the complaint is received from an  
4 aggrieved party or an adjacent landowner. The department of health and senior  
5 services or any of its agents may enter any adjoining property if necessary when  
6 they are making an inspection pursuant to this section. The necessity for entering  
7 such adjoining property shall be stated in writing and the owner of such property

8        shall be notified before the department or any of its agents may enter, except that,  
9        if an imminent health hazard exists, such notification shall be attempted but is not  
10       required.  
11       2. If the department or its agents make an investigation pursuant to a complaint as  
12       described in subsection 1 of this section and find that a nuisance does exist, the property  
13       owner shall comply with state and local standards when repairing or replacing the on-site  
14       sewage disposal system.]

✓