

SECOND REGULAR SESSION

HOUSE BILL NO. 1711

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES COLONA (Sponsor), NICHOLS,
BURNS AND HUMMEL (Co-sponsors).

5231H.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 249, RSMo, by adding thereto one new section relating to sewer districts in certain counties.

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

Section A. Chapter 249, RSMo, is amended by adding thereto one new section, to be known as section 249.1175, to read as follows:

249.1175. 1. As used in this section, the following terms shall mean:

(1) "Sewer district", any public sewer district organized and established pursuant to the provisions of this chapter and any metropolitan sewer district established under section 30(a) of article VI of the Constitution of Missouri;

(2) "Sewer facilities", storm and sanitary sewers, pipes, channels, conduits, pump stations, treatment plants, and appurtenances for the collection, transportation, pumping, treatment, and disposal of wastewater and stormwater.

2. No action for damages alleging obstruction, disrepair, defect, inadequacy, nuisance, or taking related to the condition and operation of sewer facilities owned and operated by any sewer district may be maintained against such sewer district except in compliance with the following conditions and limitations:

(1) Any person claiming such damages shall provide notice in writing to the board of trustees within ninety days of the occurrence for which such damage is claimed, stating the place where and the time when such damages were sustained, and the character and circumstances of the damages, and that the person so damaged will claim damages from such sewer district;

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

17 (2) No action may be brought against such sewer district more than three years
18 after the occurrence giving rise to such damages. In no event shall any claim alleging
19 negligent, defective, or dangerous design or construction of a sewer facility, whether in tort
20 or inverse condemnation, be brought more than ten years after the design and construction
21 of such sewer facility;

22 (3) No claim in tort or inverse condemnation shall be upheld against such sewer
23 district for the alleged negligent, defective, or dangerous design or construction of a sewer
24 facility unless the plaintiff proves by a preponderance of the evidence that such facility did
25 not substantially comply with sewer facility design standards generally accepted at the time
26 the facility was designed and constructed;

27 (4) No claim in tort or inverse condemnation shall be upheld against such sewer
28 district for the alleged failure to maintain, repair, or operate sewer facilities unless the
29 plaintiff pleads and proves by a preponderance of the evidence that an affirmative act by
30 such sewer district caused the damages.

31 3. In any action for inverse condemnation against a sewer district, it shall be a
32 complete defense to such action if, prior to the occurrence giving rise to such damages, the
33 sewer district has offered the plaintiff, or plaintiff's predecessor in interest, the means or
34 mechanism necessary to enable the plaintiff, or the plaintiff's predecessor in interest, to
35 correct the alleged defect and the plaintiff, or the plaintiff's predecessor, has refused such
36 offer.

37 4. In any action for inverse condemnation against a sewer district, the plaintiff shall
38 prove damages suffered as a result of the taking by the sewer district in the following
39 manner:

40 (1) Where the plaintiff claims a permanent taking, the plaintiff shall prove damages
41 by proof of the fair market value of the real property taken at the time of the occurrence,
42 by a preponderance of the evidence, which fair market value is to be determined by what
43 a reasonable buyer would give who was willing but did not have to purchase, and what a
44 seller would take who was willing but did not have to sell at the time of the taking. Expert
45 testimony by a real estate appraiser licensed by the Missouri real estate appraisers
46 commission shall be required to prove such damages. Damages for loss of use shall not be
47 recovered. Upon payment of any judgment for such permanent taking, the plaintiff shall
48 deliver to the sewer district a general warranty deed granting fee simple title to the real
49 property to the sewer district;

50 (2) Where the plaintiff claims a temporary taking, the plaintiff shall prove damages
51 by proof of the rental value of the real property taken at the time of the occurrence by a
52 preponderance of the evidence. Expert testimony by a real estate appraiser licensed by the

53 Missouri real estate appraisers commission shall be required to prove such damages. In
54 addition, if the property has been damaged as a result of the taking, the plaintiff shall
55 prove the expenditures necessary to restore the property to its pre-taking condition. It
56 shall be a complete defense to any claim for inverse condemnation if the aggregate of all
57 damages paid for temporary takings with respect to the same real property meets or
58 exceeds the real market value of the real property at the time of the taking alleged in the
59 claim;

60 (3) Where the plaintiff claims damages to personal property, such person shall
61 prove damages by evidence of the reasonable market value of such personal property.

62 5. In any action under this section where a plaintiff alleges that he or she was
63 damaged by the failure to repair, replace, maintain, or operate a sewer facility, such sewer
64 district shall be immune from liability, in tort or inverse condemnation, if the sewer district
65 is required under the terms of a consent decree with the United States Department of
66 Justice to repair or replace such sewer facility unless, at the time of the occurrence
67 complained of, there was a final finding by the United States Environmental Protection
68 Agency or a court of competent jurisdiction that the sewer district violated the consent
69 decree with respect to such sewer facility.

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