

SECOND REGULAR SESSION

HOUSE BILL NO. 1383

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES TOWNLEY (Sponsor) AND BROWN (Co-sponsor).

Read 1st time February 4, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4460L.011

AN ACT

To repeal section 393.015, RSMo, and to enact in lieu thereof one new section relating to sewer companies.

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

Section A. Section 393.015, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 393.015, to read as follows:

393.015. 1. Notwithstanding any other provision of law to the contrary, any [sewer] **water** corporation, municipality [or sewer] **providing water, or any water** district established under the provisions of chapter [249 or 250, RSMo, or sections 204.250 to 204.470, RSMo, or any sewer district created and organized pursuant to constitutional authority, may contract with any water corporation, municipality, or public water supply district established under chapter 247, RSMo, to terminate water services to any customer premises for nonpayment of a sewer bill. No such termination of water service may occur until thirty days after the sewer corporation, municipality or statutory sewer district or sewer district created and organized pursuant to constitutional authority sends a written notice to the customer by certified mail, except that if the water corporation, municipality or public water supply district is performing a combined water and sewer billing service for the sewer corporation, municipality or sewer district, no additional notice or any additional waiting period shall be required other than the notice and waiting period already used by the water corporation, municipality or public water supply district to disconnect water service for nonpayment of the water bill. Acting pursuant to a contract, the water corporation, municipality or public water supply district shall discontinue water service until such time as the sewer charges and all related costs of termination and

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.

17 reestablishment of sewer and water services are paid by the customer.] **247, RSMo, herein**
18 **sometimes designated as a water provider, shall upon request of any municipality**
19 **providing sewer service or public sewer district established under the provisions of chapter**
20 **249 or 250, RSMo, or sections 204.250 to 204.470, RSMo, or any sewer district created and**
21 **organized pursuant to constitutional authority, herein sometimes designated as a sewer**
22 **provider, contract with such sewer provider to terminate water services to any water user**
23 **of such water provider for nonpayment of a delinquent sewer bill owed to such sewer**
24 **provider.**

25 2. [A water corporation, municipality, or public water supply district acting pursuant to
26 a contract with a sewer corporation, municipality or sewer district as provided in subsection 1
27 of this section shall not be liable for damages related to termination of water services unless such
28 damage is caused by the negligence of such water corporation, municipality, or public water
29 supply district, in which case the water corporation, municipality, or public water supply district
30 shall be indemnified by the sewer corporation, municipality or sewer district. Unless otherwise
31 specified in the contract, all costs related to the termination and reestablishment of services by
32 the water corporation, municipality or public water supply district shall be reimbursed by the
33 sewer corporation, municipality, sewer district or sewer district created and organized pursuant
34 to constitutional authority.] **Any water provider, or independent contractor acting for such**
35 **water provider, disconnecting water service to collect a delinquent sewer charge at the**
36 **request of a sewer provider pursuant to a water termination agreement made under this**
37 **section shall be absolutely immune from civil liability for damages or costs resulting from**
38 **disconnection.**

39 3. **In the event that any aforesaid water provider and any aforesaid sewer provider**
40 **are unable to reach an agreement as herein provided within six months of the receipt of**
41 **such request by the water provider, then the sewer provider making the written request**
42 **may file with the circuit court in which such water provider was incorporated, or if such**
43 **water provider was not incorporated by a circuit court, then with a circuit court, having**
44 **jurisdiction of the water provider, a petition requesting that three commissioners be**
45 **selected to draft such an agreement.**

46 4. **Any agreement drafted by such commissioners or entered into under the**
47 **provisions hereof shall contain the following provisions:**

48 **(1) The rules and regulations or ordinances of the sewer provider shall provide the**
49 **number of days of delinquency required before water service is discontinued for failure to**
50 **pay for sewage service shall be equal to the number of days of delinquency required before**
51 **water service is discontinued for failure to pay for water service under the rules and**
52 **regulations of the water provider;**

53 **(2) The water provider shall not be required to discontinue water service to the**
54 **sewer user for failure to pay the charges or rental due therefor unless the sewer provider**
55 **shall first give a written notice to the water provider to do so. Such instruction shall**
56 **include the due date and amount of the delinquent bill, and all penalties and interest**
57 **thereon. When payment of such amount is received by the water provider it shall restore**
58 **water service to such water and sewer user, provided the water bill of such sewer user**
59 **owed to the water provider is not delinquent;**

60 **(3) All expense and cost incurred by the water provider in performing, or carrying**
61 **out such agreement, shall be reimbursed to the water provider by the sewer provider. The**
62 **reimbursement shall be made monthly, bi-monthly, or quarterly;**

63 **(4) Such expense and cost shall include, but not be limited to, the following:**

64 **(a) All personnel expense including, but not limited to, wages and salaries,**
65 **employment taxes of all kinds, retirement benefits, employment benefits, health insurance**
66 **and workers' compensation insurance;**

67 **(b) All expense incurred by payments to independent contractors who perform or**
68 **carry out such agreement under contract with such water provider;**

69 **(c) Equipment expense;**

70 **(d) Computer and computer program expense;**

71 **(e) Office space expense;**

72 **(f) Insurance expense attributable to the agreement between the water provider and**
73 **the sewer provider, including such expense of any independent contractor who performs**
74 **or carries out such agreement under contract with such water provider;**

75 **(g) Any loss of revenue incurred by the water provider as a result of discontinuing**
76 **water service because of the failure of any sewage user to pay the charges or rental**
77 **therefor;**

78 **(h) All other expense attributable to the agreement between the water provider and**
79 **sewer provider;**

80 **(5) Said agreement shall provide that the sewer provider shall hold the water**
81 **provider, and any independent contractor who performs or carries out such agreement**
82 **under contract with the water provider, harmless as a result of such agreement between**
83 **such sewer provider and water provider, including, but not limited to, all damages,**
84 **expenses, attorney fees and costs paid by the water provider and independent contractor**
85 **arising from such agreement or from the water provider's and independent contractor's**
86 **actions or performance under the provisions of such agreement, without exception of any**
87 **kind, or as a result of any claim, litigation or threatened litigation against the water**
88 **provider or independent contractor arising in any way from such agreement;**

89 **(6) Such agreement shall contain a provision providing that said expense and cost**
90 **of the water provider shall be recalculated annually and that the amount due it during the**
91 **subsequent year shall be increased or decreased according to any change occurring in such**
92 **costs and expenses; alternatively, upon agreement the parties to the agreement, the**
93 **agreement may provide for annual increases or decreases based upon the percentage of**
94 **increase or decrease in the National Consumers Price Index For All Urban Consumers**
95 **(unadjusted for seasonal variation), as published by the United States Department of**
96 **Labor for the most recent date prior to the annual anniversary date of the execution of**
97 **such agreement;**

98 **(7) When a water provider is collecting delinquent amounts for both water and**
99 **sewer service, all delinquent payments due to both the water and sewer provider shall be**
100 **received by the water provider before water service is restored. If for any reason water**
101 **service is never restored, any amount collected for delinquent accounts due both the water**
102 **and sewer provider shall be divided between the water provider and the sewer provider**
103 **so that each receives the same percentage of the amount owed to it.**

104 **5. Upon the filing of such petition the sewer provider shall appoint one**
105 **commissioner; the water provider shall appoint a commissioner within thirty days of the**
106 **service of the petition upon it. If the water provider fails to appoint a commissioner within**
107 **such time period, the court shall appoint a commissioner on behalf of the water provider**
108 **within forty-five days of service of the petition on the water provider. Such two named**
109 **commissioners shall agree to appoint a third commissioner within thirty days after the**
110 **appointment of the second commissioner, but in the event that they fail to do so, the court**
111 **shall appoint a third disinterested commissioner within sixty days after appointment of the**
112 **second commissioner.**

113 **6. The commissioners shall draft an agreement between the water provider and**
114 **sewer provider meeting the requirements set forth herein. Before drafting such agreement,**
115 **the water provider and sewer provider shall be given an opportunity to present evidence**
116 **and information pertaining to such agreement at a hearing to be held by the**
117 **commissioners, of which each party shall receive fifteen days' written notice. The hearing**
118 **may be continued from time to time by the commissioners. The commissioners shall**
119 **consider all such evidence and information submitted to them and prepare such agreement**
120 **as provided herein. Said agreement shall be submitted to the court within ninety days of**
121 **the selection or appointment of the last commissioner as herein provided.**

122 **7. If the court finds that such agreement meets the requirements of this section, then**
123 **the court shall enter its judgment approving such agreement and order it to become**
124 **effective sixty days after the date of such judgment. If such agreement does not meet the**

125 requirements of this section, the court shall return it to the commissioners with its reasons
126 for rejecting the agreement. The commissioners shall make the required changes and
127 resubmit the agreement to the court. Upon approval of the agreement by the court,
128 judgment shall be entered approving the agreement and ordering it to become effective
129 sixty days after the date of such judgment. Thereafter the parties shall abide by such
130 agreement. If either party fails to do so, the other party may file an action to compel
131 compliance. Venue shall be in the court issuing such judgment.

132 8. The judgment and order of the court shall be subject to appeal as provided by
133 law. All costs, including commissioners compensation, shall be taxed to and paid by the
134 sewer provider requesting an agreement. The court shall also order payment of a
135 reasonable attorney fee and fees of expert witnesses of the water provider by the sewer
136 provider to the water provider.