

HCS HB 1695 -- UTILITY COMPANIES

SPONSOR: Townley

COMMITTEE ACTION: Voted "do pass" by the Committee on Conservation and Natural Resources by a vote of 19 to 0.

This substitute allows the Missouri Public Service Commission to order a public utility to acquire a small water or sewer corporation serving fewer than 8,000 customers, if the commission determines that the corporation has violated statutory or regulatory standards that affect the safety and adequacy of service, the corporation has failed to comply with any order of the Department of Natural Resources or the commission, or it is unlikely the corporation will provide and maintain safe and adequate service and facilities in the future.

The commission must consider alternatives to acquisition and must determine that the public utility is financially, managerially, and technically capable of operating the corporation so that it is in compliance with statutory and regulatory standards. The commission must also find that rates will not be unreasonably increased by the public utility after acquisition.

The substitute specifies the alternatives to acquisition that must be investigated and what must be considered by the commission when making its decision.

The corporation and the public utility must agree on the acquisition's price, and the commission must agree that the price is reasonable. If an agreement cannot be reached by the parties or if the commission determines that the price is unreasonable, the commission will direct the public utility to acquire the corporation at a price that is equal to the ratemaking rate base, as determined by the commission. The burden of establishing the ratemaking rate base is upon the corporation.

Any public utility that is required to acquire a corporation must submit to the commission a plan for bringing the corporation into compliance with statutory and regulatory standards. The plan is due within 30 days from the date of acquisition.

The public utility is not liable for damages in excess of \$50,000, with a maximum of \$5,000 per incident, nor will it be subject to any enforcement actions by state or local agencies who were made aware of the plan, if the damages or basis for the enforcement action are related to violations committed by the corporation.

The commission must require the public utility to implement a

rate surcharge that would recover all costs of the acquisition and necessary improvements to the corporation's system. The rate surcharge must be revised quarterly and may recover 100% of the revenues necessary to provide a net after-tax return on investment actually made in the acquisition and improvement of the corporation.

Acquisition proceedings may be initiated by complaints filed by the commission's staff, the Office of the Public Counsel, or the mayor, president, or chair of the Board of Aldermen; by a majority of the council, commission, or other legislative body of any city, town, village, or county where the alleged unsafe or inadequate service is provided; or by at least 25 customers of the corporation.

Current law allows the commission to place sewer or water corporations with fewer than 1,000 customers into receivership, if warranted. The substitute allows the commission to place any sewer or water corporation into receivership after a hearing, regardless of its number of customers.

The substitute allows the commission to appoint an interim receiver in the same order in which it asks the General Counsel to petition the circuit court for a receiver. The interim receiver will have the same authority as a receiver, except he or she will not be able to liquidate the assets of the utility.

Any receiver or interim receiver is immune from personal liability for any civil damages resulting from his or her official capacity. This immunity does not extend to intentional conduct or gross negligence.

FISCAL NOTE: Not available at time of printing.

PROPOSERS: Supporters say that the bill will help the Missouri Public Service Commission to act more quickly when small water or sewer companies are providing sub-standard services. The commission can acquire these non-compliant companies and appoint someone to operate the company to make sure that customers receive good water and sewer service while it is in litigation.

Testifying for the bill were Representative Luetkemeyer; Missouri Public Service Commission; and Missouri American Water.

OPPOSERS: There was no opposition voiced to the committee.

Marc Webb, Legislative Analyst