

HCS SB 897 -- UTILITIES

SPONSOR: Lager (Emery)

COMMITTEE ACTION: Voted "do pass" by the Committee on Utilities by a vote of 10 to 2.

This substitute changes the laws regarding utilities. In its main provisions, the substitute:

(1) Allows a majority of the remaining members in office of the board of trustees of a common sewer district to fill a vacancy on the board if the county governing body fails to fill the vacancy within 60 days of receiving written notice of the vacancy. Trustees for a common sewer district may also appoint members to a sewer subdistrict's advisory board if the positions are not filled by a county or political subdivision within 60 days of receiving a written request;

(2) Increases, from eight to 10, the number of members on the sewer district boards of trustees in the counties of Cass and Jackson. Each board will consist of the county executive, mayors of the five largest-user cities, mayors of three other cities who are members of the sewer district advisory board, and one member of the county legislature. In the event the district extends its boundaries into a bordering county, the presiding commissioner or chief executive officer of the bordering county will become the eleventh member of the board;

(3) Specifies the procedures for providing sewer service in third classification counties when a city and a sewer district cannot reach an agreement related to providing these services. Currently, the City of Poplar Bluff and sewer districts in Butler County are allowed to develop agreements to provide sewer services;

(4) Allows a board member to serve in multiple positions on a common sewer subdistrict advisory board if the board consists of less than three members;

(5) Requires private and public water supply districts to provide water service data to sewer districts. Currently, water districts are required to provide this data to cities, towns, and villages in order to calculate rates for service;

(6) Allows the Missouri Public Service Commission to appear in any proceeding at the Federal Energy Regulatory Commission, Nuclear Regulatory Commission, Federal Communications Commission, or any other federal agency with jurisdiction over a Missouri-regulated utility. The Missouri Public Service

Commission may also file or participate in appeals from the federal administrative agencies in all proceedings pending at the time of, or commenced after, the substitute's effective date;

(7) Creates an assessment-based funding mechanism is created for the Office of the Public Counsel. Prior to the beginning of each fiscal year, the counsel must make available to the commission an estimate of the expenses to be incurred during the year which are reasonably attributable to the regulation of public utilities under Sections 386.700 and 386.710, RSMo, a separate estimate of expenses directly attributable to the various public utility groups, and the amount of expenses not directly attributable to these groups. The calculation of the assessments is specified in the substitute with the amount allocated to telephone corporations limited to no more than 10% of the total estimated expenses and the total amount of the counsel's assessment limited at two hundredths of 1% of the total gross intrastate operating revenues of all utilities regulated by the commission. In order for the counsel to make the allocations and assessments, every commission-regulated public utility must file with the commission a statement under oath of its gross intrastate operating revenues on or before March 31 of each year for the preceding calendar year. If a utility fails to timely file a statement, the commission will estimate the revenues. A statement of the assessments must be rendered by the commission on behalf of the counsel to each public utility on or before July 1 with the amount assessed paid by July 15 or, if the utility elects, in four equal installments throughout the fiscal year. The moneys from the assessments will be deposited into the newly created Public Counsel Fund solely for the payment of expenditures actually incurred by the counsel. Moneys remaining in the fund will not revert to the General Revenue Fund;

(8) Reduces from 120 days to 90 days the time period that the commission can suspend a rate change filed with the commission by a gas, electrical, water, or sewer corporation in order to hold a hearing. The commission may extend the suspension for no more than two months if a hearing cannot be conducted within the period of the suspension. Currently, the suspension can be extended for a period not to exceed six months. The commission is required to issue its decision at least 20 days prior to the end of the suspension period, and the order will be effective 10 days after its issuance. The corporation must file new rate schedules at least five business days prior to the end of the suspension period, and the new schedules must take effect no later than the first day following the end of the suspension period unless rejected by the commission or a rehearing is pending. If the schedules are rejected by the commission, the corporation is permitted to file replacement schedules in order to comply with the commission's order and must also take effect

automatically on the proposed effective date. If the commission further suspends a rate schedule, it must determine the new rate using certain information updated as of 60 days prior to the end of the suspension period;

(9) Requires a small utility whenever it decides to sell or otherwise dispose of its water or sewer system to a large public utility to authorize an appraisal of the system and set a date that the appraisal is due by ordinance, resolution, or board action;

(10) Requires the appraisal to be performed by three disinterested individuals who are certified general appraisers under Chapter 339, RSMo. One will be appointed by the small utility, one by the large public utility, and one by the two appraisers appointed by the utilities;

(11) Requires the appraisers to jointly prepare an appraisal of the fair market value of the system and return the appraisal, in writing, to the small and large public utilities by the required due date. If all three appraisers cannot agree on the appraised value, an appraisal signed by two of them will constitute a valid appraisal;

(12) Allows either utility, after receiving the appraisal, to decline to proceed with the sale or disposition. If the small utility is a municipality required to submit the proposed sale to a public vote, the vote must be conducted as required by law;

(13) Specifies that the purchase price or the appraised value of the system, whichever is less, and the transaction, closing, and transition costs incurred by the large public utility will be the ratemaking rate base for the small utility as incorporated into the ratemaking rate base of the district designated by the large public utility. If the small utility is governed by the commission, the commission may establish a rate base in its order authorizing the acquisition of the small utility. The criteria for selecting a rate base are specified in the substitute;

(14) Revises the definition for "eligible infrastructure system replacements" to include energy efficiency projects that are in service, used, and useful; do not increase revenues by connecting the infrastructure replacements to new customers; and were not included in the water corporation's rate base in its most recent general rate case and defines "energy efficiency" as measures that reduce the amount of energy required to achieve a given end result. The definition of "water corporation" is also revised to include a corporation serving a population of any size. Currently, it is a business or person serving more than 10,000 customers. Rate schedule modifications related to infrastructure

replacement surcharges will be allowed for water corporations with \$10,000 or more in annual surcharge revenue. Currently, the required amount is \$1 million;

(15) Adds service lines and meters that have worn out, are in a deteriorated condition, or replaced as part of an order issued by the commission, as well as energy efficiency projects, to the list of projects that are allowable water utility plant projects;

(16) Allows, beginning August 28, 2011, all water corporations to file a petition and proposed rate schedules with the commission to establish or change its infrastructure system replacement surcharge rate schedules that will allow for the adjustment of the corporation's rates and charges to provide for the recovery of costs for eligible infrastructure system replacements. Currently, only water corporations in St. Louis County are allowed to file a petition and proposed rate schedules;

(17) Extends the public notice requirements of the Clean Water Commission when listing any impaired waters of the state under Section 303(d) of the federal Clean Water Act from August 28, 2010, to August 28, 2012. The commission's authority to charge fees for construction permits, operating permits, and operator's certifications related to water pollution control is extended from December 31, 2010, to December 31, 2012;

(18) Repeals the provisions regarding a joint committee to review proposals for the restructuring of fees, storm water programs, and the state's implementation of the federal Clean Water Program; and

(19) Specifies that any attempt to pay, or an actual payment of, a utility bill will not adversely affect the assistance that an otherwise eligible household would receive through the Utilicare Program and removes the requirement that a household must have its service disconnected for failure to pay its bill before being eligible for assistance. Electric or gas companies must allow customers who incur an arrearage during the cold weather rule period to retain service by paying one-third of the arrearage, plus the current bill, in each of the three months following the cold weather rule period.

The substitute contains an emergency clause for the provisions regarding the commission's participation at hearings before certain specified federal agencies.

FISCAL NOTE: Estimated Cost on General Revenue Fund of Up to \$10,654,995 in FY 2011, Up to \$13,031,128 in FY 2012, and Up to \$13,031,128 in FY 2013. Estimated Effect on Other State Funds of

an income of \$0 to a cost of Unknown in FY 2011, FY 2012, and FY 2013.

PROPOSERS: Supporters say that the bill clarifies the existing practice of the Missouri Public Service Commission participating in federal administrative and court cases. Missouri requires representation before the Federal Energy Regulatory Commission and in federal courts.

Testifying for the bill were Senator Lager; Missouri Public Service Commission; Missouri Association of Municipal Utilities; and Missouri Energy Development Association.

OPPOSERS: Those who oppose the bill say that the Federal Energy Regulatory Commission serves the same role as the Missouri Public Service Commission and that it should not intervene as an advocate against Missouri corporations in federal cases that are based on federal law. Only a few states allow their commissions to litigate in federal court. The Office of Public Counsel of the Attorney General can represent Missouri's interests at the federal level.

Testifying against the bill was MoGas Pipeline LLC.