

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2094
100TH GENERAL ASSEMBLY

4156H.03C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 523.262, RSMo, and to enact in lieu thereof six new sections relating to utilities.

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

Section A. Section 523.262, RSMo, is repealed and six new sections enacted in lieu thereof, to be known as sections 393.1500, 393.1503, 393.1506, 393.1509, 523.262, and 701.200, to read as follows:

393.1500. Sections 393.1500 to 393.1509 shall be known and may be cited as the "Missouri Water and Sewer Infrastructure Act".

393.1503. As used in sections 393.1500 to 393.1509, the following terms shall mean:

(1) "Appropriate pretax revenues", the revenues necessary to produce net operating income equal to:

(a) The water or sewer corporation's pretax weighted cost of capital multiplied by the net original cost of eligible infrastructure system projects, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system projects which are included in the petition to establish or change a WSIRA, plus accumulated deferred income taxes and accumulated depreciation associated with any eligible infrastructure system projects in a currently effective WSIRA implemented pursuant to sections 393.1506 and 393.1509;

(b) The state, federal, and local income or excise taxes applicable to such revenues;

(c) The depreciation expense applicable to the eligible infrastructure system project; and

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.

- 14 (d) The property taxes applicable to the eligible infrastructure that will be due
15 within twelve months of the filing of a request to implement a water and sewer
16 infrastructure rate adjustment pursuant to sections 393.1506 and 393.1509;
- 17 (2) "Commission", the Missouri public service commission;
- 18 (3) "Eligible infrastructure system projects", water or sewer utility plant projects
19 that:
- 20 (a) Replace or extend the useful life of existing infrastructure;
- 21 (b) Are in service and used and useful;
- 22 (c) Do not include projects intended solely for customer growth; and
- 23 (d) The costs of which were not included in the water or sewer corporation's base
24 rates in its most recent general rate case;
- 25 (4) "Sewer corporation", the same as defined in section 386.020;
- 26 (5) "Water and sewer infrastructure rate adjustment" or "WSIRA", a separate
27 line item rate on a customer's water or sewer bill designed to recover the costs associated
28 with eligible infrastructure system projects implemented pursuant to sections 393.1500 to
29 393.1509;
- 30 (6) "Water corporation", the same as defined in section 386.020;
- 31 (7) "Water or sewer utility plant projects", shall consist of the following:
- 32 (a) Replacement of or cleaning and relining of existing water mains and sewer
33 collection system mains, and associated valves, hydrants, meters, service lines, laterals,
34 sewer taps, curbstops, and manholes;
- 35 (b) Replacement of lead mains, lead goosenecks and lead service lines, and
36 associated valves and meters;
- 37 (c) Replacement or repainting of storage tanks, pumping equipment, and lift
38 stations;
- 39 (d) Replacement of water production plant infrastructure and sewer treatment
40 plant infrastructure; and
- 41 (e) Facilities relocations required due to construction or improvement of a highway,
42 road, street, public way, or other public work by or on behalf of the United States, this
43 state, a political subdivision of this state, or another entity having the power of eminent
44 domain; provided that the costs related to such projects have not been reimbursed to the
45 water corporation;
- 46 (8) "WSIRA revenues", revenues produced through implementation of a WSIRA
47 pursuant to sections 393.1500 to 393.1509, exclusive of revenues from all other rates and
48 charges.

2 **393.1506. 1. Notwithstanding any provisions of chapter 386 and this chapter to the**
3 **contrary, a water or sewer corporation that provides water or sewer service to more than**
4 **eight thousand customer connections may file a petition and proposed rate schedules with**
5 **the commission to establish or change a WSIRA that will provide for the recovery of the**
6 **appropriate pretax revenues associated with the eligible infrastructure system projects, less**
7 **the appropriate pretax revenues associated with any retired utility plant that is being**
8 **replaced by the eligible infrastructure system projects. In addition, the WSIRA**
9 **individually, or when combined with a currently effective ISRS pursuant to subsection 1**
10 **of section 393.1003, shall not produce revenues in excess of ten percent of the water or**
11 **sewer corporation's base revenue requirement approved by the commission in the water**
12 **or sewer corporation's most recent general rate proceeding; provided, however, that**
13 **WSIRA revenues attributable to replacement of lead infrastructure shall not count toward**
14 **the program cap. The WSIRA and any future changes thereto shall be calculated and**
15 **implemented in accordance with the provisions of sections 393.1503 to 393.1509. WSIRA**
16 **revenues shall be subject to refund based upon a finding and order of the commission, to**
17 **the extent provided in subsections 5 and 8 of section 393.1509.**

18 **2. The commission shall not approve a WSIRA for a water or sewer corporation**
19 **that has not had a general rate proceeding decided or dismissed by issuance of a**
20 **commission order within the past three years of the filing of a petition pursuant to this**
21 **section, unless the water or sewer corporation has filed for or is the subject of a new**
22 **general rate proceeding.**

23 **3. In no event shall a water or sewer corporation collect a WSIRA for a period**
24 **exceeding three years unless the water or sewer corporation has filed for or is the subject**
25 **of a new general rate proceeding; provided that the WSIRA may be collected until the**
26 **effective date of new rate schedules established as a result of the new general rate**
27 **proceeding, or until the subject general rate proceeding is otherwise decided or dismissed**
by issuance of a commission order without new rates being established.

2 **393.1509. 1. (1) At the time that a water or sewer corporation files a petition with**
3 **the commission seeking to establish or change a WSIRA, it shall submit proposed WSIRA**
4 **rate schedules and supporting documentation regarding the calculation of the proposed**
5 **WSIRA with the petition and shall serve the office of the public counsel with a copy of its**
6 **petition, its proposed WSIRA rate schedules, and its supporting documentation.**

7 **(2) Upon the filing of a petition and any associated WSIRA rate schedules, seeking**
8 **to establish or change a WSIRA, the commission shall publish notice of the filing.**

8 **2. (1) When a petition, along with any associated proposed rate schedules, is filed**
9 **pursuant to the provisions of sections 393.1503 to 393.1509, the commission shall conduct**
10 **an examination of the proposed WSIRA.**

11 **(2) The staff of the commission may examine information of the water or sewer**
12 **corporation to confirm that the underlying costs are in accordance with the provisions of**
13 **sections 393.1503 to 393.1509, and to confirm proper calculation of the proposed WSIRA,**
14 **and may submit a report regarding its examination to the commission not later than sixty**
15 **days after the petition is filed. No other revenue requirement or ratemaking issues shall**
16 **be examined in consideration of the petition or associated proposed WSIRA rate schedules**
17 **filed pursuant to the provisions of sections 393.1503 to 393.1509.**

18 **(3) The commission may hold a hearing on the petition and any associated WSIRA**
19 **rate schedule and shall issue an order to become effective not later than one hundred**
20 **twenty days after the petition is filed.**

21 **(4) If the commission finds that a petition complies with the requirements of**
22 **sections 393.1503 to 393.1509, the commission shall enter an order authorizing the water**
23 **or sewer corporation to implement a WSIRA that is sufficient to recover appropriate**
24 **pretax revenues, as determined by the commission pursuant to the provisions of sections**
25 **393.1503 to 393.1509.**

26 **3. A water or sewer corporation may effectuate a change in its WSIRA pursuant**
27 **to this section no more often than two times in every twelve-month period.**

28 **4. In determining the appropriate pretax revenues, the commission shall consider**
29 **only the following factors:**

30 **(1) The current state, federal, and local income or excise tax rates, including any**
31 **income tax deductions and net operating loss carryforwards associated with the eligible**
32 **infrastructure system projects;**

33 **(2) The water or sewer corporation's actual regulatory capital structure as**
34 **determined during the most recent general rate proceeding of the water or sewer**
35 **corporation;**

36 **(3) The actual cost rates for the water or sewer corporation's debt and preferred**
37 **stock as determined during the most recent general rate proceeding of the water or sewer**
38 **corporation;**

39 **(4) The water or sewer corporation's cost of common equity as determined during**
40 **the most recent general rate proceeding of the water or sewer corporation;**

41 **(5) The current property tax rate or rates applicable to the eligible infrastructure**
42 **system projects;**

43 **(6) The current depreciation rates applicable to the eligible infrastructure system**
44 **projects;**

45 **(7) In the event information described in subdivisions (2), (3), and (4) of this**
46 **subsection is unavailable and the commission is not provided with such information on an**
47 **agreed-upon basis, the commission shall utilize the overall pretax weighted average cost**
48 **of capital last authorized for the water or sewer corporation in a WSIRA or general rate**
49 **proceeding.**

50 **5. (1) A WSIRA shall be calculated based upon the amount of infrastructure**
51 **system project costs that are eligible for recovery during the period in which the WSIRA**
52 **will be in effect and upon the applicable customer class billing determinants utilized in**
53 **designing the water or sewer corporation's customer rates in its most recent general rate**
54 **proceeding and allocated in a manner consistent with the rate design methodology utilized**
55 **to develop the water or sewer corporation's rates resulting from its most recent general**
56 **rate proceeding.**

57 **(2) At the end of each twelve-month calendar period that a WSIRA is in effect, the**
58 **water or sewer corporation shall reconcile the differences between the revenues resulting**
59 **from a WSIRA and the appropriate pretax revenues as found by the commission for that**
60 **period and shall submit the reconciliation and a proposed WSIRA to the commission for**
61 **approval to recover or credit the difference, as appropriate, through a WSIRA.**

62 **6. (1) A water or sewer corporation that has implemented a WSIRA pursuant to**
63 **the provisions of sections 393.1503 to 393.1509 shall file revised WSIRA schedules to reset**
64 **the WSIRA to zero when new base rates and charges become effective for the water or**
65 **sewer corporation following a commission order establishing customer rates in a general**
66 **rate proceeding that incorporates in the utility's base rates, subject to subsections 8 and**
67 **9 of this section, eligible costs previously reflected in a WSIRA.**

68 **(2) Upon the inclusion in a water or sewer corporation's base rates, subject to**
69 **subsections 8 and 9 of this section, of eligible costs previously reflected in a WSIRA, the**
70 **water or sewer corporation shall immediately thereafter reconcile any previously**
71 **unreconciled WSIRA revenues as necessary to ensure that revenues resulting from the**
72 **WSIRA match as closely as possible the appropriate pretax revenues as found by the**
73 **commission for that period.**

74 **7. A water or sewer corporation's filing of a petition to establish or change a**
75 **WSIRA pursuant to the provisions of sections 393.1503 to 393.1509 shall not be considered**
76 **a request for a general increase in the water or sewer corporation's base rates and charges.**

77 **8. Commission approval of a petition, and any associated rate schedules, to**
78 **establish or change a WSIRA pursuant to the provisions of sections 393.1503 to 393.1509**

79 shall in no way be binding upon the commission in determining the ratemaking treatment
80 to be applied to eligible infrastructure system projects during a subsequent general rate
81 proceeding when the commission may undertake to review the prudence of such costs. In
82 the event the commission disallows, during a subsequent general rate proceeding, recovery
83 of costs associated with eligible infrastructure system projects previously included in a
84 WSIRA, the water or sewer corporation shall offset its WSIRA in the future as necessary
85 to recognize and account for any such overcollections.

86 9. Nothing contained in sections 393.1503 to 393.1509 shall be construed to impair
87 in any way the authority of the commission to review the reasonableness of the rates or
88 charges of a water or sewer corporation, including review of the prudence of eligible
89 infrastructure system replacements made by a water or sewer corporation, pursuant to the
90 provisions of section 386.390.

91 10. The commission shall have authority to promulgate rules for the
92 implementation of sections 393.1503 to 393.1509, but only to the extent such rules are
93 consistent with, and do not delay the implementation of, the provisions of sections 393.1503
94 to 393.1509. Any rule or portion of a rule, as that term is defined in section 536.010, that
95 is created under the authority delegated in this section shall become effective only if it
96 complies with and is subject to all of the provisions of chapter 536 and, if applicable,
97 section 536.028. This section and chapter 536 are nonseverable and if any of the powers
98 vested with the general assembly pursuant to chapter 536 to review, to delay the effective
99 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
100 grant of rulemaking authority and any rule proposed or adopted after August 28, 2020,
101 shall be invalid and void.

523.262. 1. Except as set forth in subsection 2 of this section, the power of eminent
2 domain shall only be vested in governmental bodies or agencies whose governing body is elected
3 or whose governing body is appointed by elected officials or in an urban redevelopment
4 corporation operating pursuant to a redevelopment agreement with the municipality for a
5 particular redevelopment area, which agreement was executed prior to or on December 31, 2006.

6 2. A private utility company, public utility, rural electric cooperative, municipally owned
7 utility, pipeline, railroad or common carrier shall have the power of eminent domain as may be
8 granted pursuant to the provisions of other sections of the revised statutes of Missouri. For the
9 purposes of this section, the term "common carrier" shall not include motor carriers, contract
10 carriers, or express companies. Where a condemnation by such an entity results in a displaced
11 person, as defined in section 523.200, the provisions of subsections 3 and 6 to 10 of section
12 523.205 shall apply unless the condemning entity is subject to the relocation assistance
13 provisions of the federal Uniform Relocation Assistance Act.

14 3. Any entity with the power of eminent domain and pursuing the acquisition of property
15 for the purpose of constructing a power generation facility after December 31, 2006, after
16 providing notice in a newspaper of general circulation in the county where the facility is to be
17 constructed, shall conduct a public meeting disclosing the purpose of the proposed facility prior
18 to making any offer to purchase property in pursuit thereof or, alternatively, shall provide the
19 property owner with notification of the identity of the condemning authority and the proposed
20 purpose for which the condemned property shall be used at the time of making the initial offer.

21 **4. (1) Notwithstanding the provisions of subsection 2 of this section, no entity shall**
22 **have the power of eminent domain under the provisions of this section for the purpose of**
23 **constructing above-ground merchant lines.**

24 **(2) For the purpose of this subsection, the following terms mean:**

25 **(a) "Merchant line", a high-voltage direct current electric transmission line that**
26 **does not provide for the erection of electric substations at intervals of less than fifty miles,**
27 **which substations are necessary to accommodate both the purchase and sale to persons**
28 **located in this state of electricity generated or transmitted by such entity; and**

29 **(b) "Entity", a utility company that does not provide service to end-use customers**
30 **or provide retail service in Missouri, or does not collect its costs to provide service under**
31 **a regional transmission organization tariff, regardless of whether it has received a**
32 **certificate of convenience and necessity from the public service commission under section**
33 **393.170.**

34 **(3) This subsection shall not apply to any rural electric cooperative organized or**
35 **operating under the provisions of chapter 394, or to any corporation organized on a**
36 **nonprofit or a cooperative basis as described in subsection 1 of section 394.200, or to any**
37 **electrical corporation operating under a cooperative business plan as described in**
38 **subsection 2 of section 393.110.**

701.200. 1. Subject to appropriations, each school district, as such term is defined
2 **in section 160.011, may test a sample of a source of potable water in a public school**
3 **building in that district serving students under first grade and constructed before 1996 for**
4 **lead contamination in accordance with guidance provided by the department of health and**
5 **senior services. The school district may submit the samples to a department-approved**
6 **laboratory for analysis for lead and provide the written sampling results to the department**
7 **within seven days of receipt.**

8 **2. The department shall develop guidance for schools in collecting and testing first-**
9 **draw samples of potable water. The department shall develop and make publicly available**
10 **a list of approved laboratories for lead analysis.**

11 **3. If any of the samples taken in the building exceed five parts per billion of lead,**
12 **the school district shall promptly provide individual notification of the sampling results,**
13 **by written or electronic communication, to the parents or legal guardians of all enrolled**
14 **students and include the following information: the corresponding sampling location**
15 **within the building and the U.S. Environmental Protection Agency's website for**
16 **information about lead in drinking water. If any of the samples taken in the building are**
17 **at or below five parts per billion, notification may be made as provided in this subsection**
18 **or by posting on the school's website.**

19 **4. The department may promulgate rules and regulations necessary to implement**
20 **the provisions of this section. Any rule or portion of a rule, as that term is defined in**
21 **section 536.010, that is created under the authority delegated in this section shall become**
22 **effective only if it complies with and is subject to all of the provisions of chapter 536 and,**
23 **if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of**
24 **the powers vested with the general assembly pursuant to chapter 536 to review, to delay**
25 **the effective date, or to disapprove and annul a rule are subsequently held**
26 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**
27 **after August 28, 2020, shall be invalid and void.**

28 **5. As used in this section, the term "source of potable water" shall mean the point**
29 **at which nonbottled water that may be ingested by children or used for food preparation**
30 **exits any tap, faucet, drinking fountain, wash basin in a classroom occupied by children**
31 **or students under first grade, or similar point of use; provided, that all bathroom sinks and**
32 **wash basins used by janitorial staff are excluded from this definition.**

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