

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 294
97TH GENERAL ASSEMBLY

1534H.05C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 386.210, 386.370, 393.190, 393.760, 393.1000, and 393.1003, 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Section A. Sections 386.210, 386.370, 393.190, 393.760, 393.1000, and 393.1003, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 386.210, 386.370, 393.190, 393.760, 393.1000, and 393.1003, to read as follows:

386.210. 1. The commission may confer in person, or by correspondence, by attending conventions, or in any other way, with the members of the public, any public utility or similar commission of this and other states and the United States of America, or any official, agency or instrumentality thereof, on any matter relating to the performance of its duties.

2. Such communications may address any issue that at the time of such communication is not the subject of a case that has been filed with the commission.

3. Such communications may also address substantive or procedural matters that are the subject of a pending filing or case in which no evidentiary hearing has been scheduled, provided that the communication:

(1) Is made at a public agenda meeting of the commission where such matter has been posted in advance as an item for discussion or decision;

(2) Is made at a forum where representatives of the public utility affected thereby, the office of public counsel, and any other party to the case are present; or

(3) If made outside such agenda meeting or forum, is subsequently disclosed to the public utility, the office of the public counsel, and any other party to the case in accordance with the following procedure:

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 (a) If the communication is written, the person or party making the communication shall
18 no later than the next business day following the communication file a copy of the written
19 communication in the official case file of the pending filing or case and serve it upon all parties
20 of record;

21 (b) If the communication is oral, the party making the oral communication shall no later
22 than the next business day following the communication file a memorandum in the official case
23 file of the pending case disclosing the communication and serve such memorandum on all parties
24 of record. The memorandum must contain a summary of the substance of the communication
25 and not merely a listing of the subjects covered.

26 4. Nothing in this section or any other provision of law shall be construed as imposing
27 any limitation on the free exchange of ideas, views, and information between any person and the
28 commission or any commissioner, provided that such communications relate to matters of
29 general regulatory policy and do not address the merits of the specific facts, evidence, claims,
30 or positions presented or taken in a pending case unless such communications comply with the
31 provisions of subsection 3 of this section.

32 5. The commission and any commissioner may also advise any member of the general
33 assembly or other governmental official of the issues or factual allegations that are the subject
34 of a pending case, provided that the commission or commissioner does not express an opinion
35 as to the merits of such issues or allegations, and may discuss in a public agenda meeting with
36 parties to a case in which an evidentiary hearing has been scheduled, any procedural matter in
37 such case or any matter relating to a unanimous stipulation or agreement resolving all of the
38 issues in such case.

39 6. The commission may enter into and establish fair and equitable cooperative
40 agreements or contracts with or act as an agent or licensee for the United States of America, or
41 any official, agency or instrumentality thereof, or any public utility or similar commission of
42 other states, that are proper, expedient, fair and equitable and in the interest of the state of
43 Missouri and the citizens thereof, for the purpose of carrying out its duties pursuant to section
44 386.250 as limited and supplemented by section 386.030 and to that end the commission may
45 receive and disburse any contributions, grants or other financial assistance as a result of or
46 pursuant to such agreements or contracts. Any contributions, grants or other financial assistance
47 so received shall be deposited in the public service commission utility fund or the state highway
48 commission fund depending upon the purposes for which they are received.

49 7. The commission may make joint investigations, hold joint hearings within or without
50 the state, and issue joint or concurrent orders in conjunction or concurrence with any railroad,
51 public utility or similar commission, of other states or the United States of America, or any
52 official, agency or any instrumentality thereof, except that in the holding of such investigations

53 or hearings, or in the making of such orders, the commission shall function under agreements or
54 contracts between states or under the concurrent power of states to regulate interstate commerce,
55 or as an agent of the United States of America, or any official, agency or instrumentality thereof,
56 or otherwise.

57 **8. The commission may appear, participate, and intervene in any federal, state, or**
58 **other administrative, regulatory, or judicial proceeding in which the commission has**
59 **standing. This subsection applies to all proceedings now pending or commenced after the**
60 **effective date of this section.**

386.370. 1. The commission shall, prior to the beginning of each fiscal year beginning
2 with the fiscal year commencing on July 1, 1947, make an estimate of the expenses to be
3 incurred by it during such fiscal year reasonably attributable to the regulation of public utilities
4 as provided in chapters 386, 392 and 393 and shall also separately estimate the amount of such
5 expenses directly attributable to such regulation of each of the following groups of public
6 utilities: Electrical corporations, gas corporations, water corporations, heating companies and
7 telephone corporations, telegraph corporations, sewer corporations, and any other public utility
8 as defined in section 386.020, as well as the amount of such expenses not directly attributable
9 to any such group. **For purposes of this section, water corporations and sewer corporations**
10 **will be combined and considered one group of public utilities.**

11 2. The commission shall allocate to each such group of public utilities the estimated
12 expenses directly attributable to the regulation of such group and an amount equal to such
13 proportion of the estimated expenses not directly attributable to any group as the gross intrastate
14 operating revenues of such group during the preceding calendar year bears to the total gross
15 intrastate operating revenues of all public utilities subject to the jurisdiction of the commission,
16 as aforesaid, during such calendar year. The commission shall then assess the amount so
17 allocated to each group of public utilities, subject to reduction as herein provided, to the public
18 utilities in such group in proportion to their respective gross intrastate operating revenues during
19 the preceding calendar year, except that the total amount so assessed to all such public utilities
20 shall not exceed one-fourth of one percent of the total gross intrastate operating revenues of all
21 utilities subject to the jurisdiction of the commission.

22 3. The commission shall render a statement of such assessment to each such public
23 utility on or before July first and the amount so assessed to each such public utility shall be paid
24 by it to the director of revenue in full on or before July fifteenth next following the rendition of
25 such statement, except that any such public utility may at its election pay such assessment in four
26 equal installments not later than the following dates next following the rendition of said
27 statement, to wit: July fifteenth, October fifteenth, January fifteenth and April fifteenth. The
28 director of revenue shall remit such payments to the state treasurer.

29 4. The state treasurer shall credit such payments to a special fund, which is hereby
30 created, to be known as "The Public Service Commission Fund", which fund, or its successor
31 fund created pursuant to section 33.571, shall be devoted solely to the payment of expenditures
32 actually incurred by the commission and attributable to the regulation of such public utilities
33 subject to the jurisdiction of the commission, as aforesaid. Any amount remaining in such
34 special fund or its successor fund at the end of any fiscal year shall not revert to the general
35 revenue fund, but shall be applicable by appropriation of the general assembly to the payment
36 of such expenditures of the commission in the succeeding fiscal year and shall be applied by the
37 commission to the reduction of the amount to be assessed to such public utilities in such
38 succeeding fiscal year, such reduction to be allocated to each group of public utilities in
39 proportion to the respective gross intrastate operating revenues of the respective groups during
40 the preceding calendar year.

41 5. In order to enable the commission to make the allocations and assessments herein
42 provided for, each public utility subject to the jurisdiction of the commission as aforesaid shall
43 file with the commission, within ten days after August 28, 1996, and thereafter on or before
44 March thirty-first of each year, a statement under oath showing its gross intrastate operating
45 revenues for the preceding calendar year, and if any public utility shall fail to file such statement
46 within the time aforesaid the commission shall estimate such revenue which estimate shall be
47 binding on such public utility for the purpose of this section.

393.190. 1. No gas corporation, electrical corporation, water corporation or sewer
2 corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or
3 encumber the whole or any part of its franchise, works or system, necessary or useful in the
4 performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate
5 such works or system, or franchises, or any part thereof, with any other corporation, person or
6 public utility, without having first secured from the commission an order authorizing it so to do.
7 Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or
8 consolidation made other than in accordance with the order of the commission authorizing same
9 shall be void. The permission and approval of the commission to the exercise of a franchise or
10 permit under this chapter, or the sale, assignment, lease, transfer, mortgage or other disposition
11 or encumbrance of a franchise or permit under this section shall not be construed to revive or
12 validate any lapsed or invalid franchise or permit, or to enlarge or add to the powers or privileges
13 contained in the grant of any franchise or permit, or to waive any forfeiture. Any person seeking
14 any order under this subsection authorizing the sale, assignment, lease, transfer, merger,
15 consolidation or other disposition, direct or indirect, of any gas corporation, electrical
16 corporation, water corporation, or sewer corporation, shall, at the time of application for any such
17 order, file with the commission a statement, in such form, manner and detail as the commission

18 shall require, as to what, if any, impact such sale, assignment, lease, transfer, merger,
19 consolidation, or other disposition will have on the tax revenues of the political subdivisions in
20 which any structures, facilities or equipment of the corporations involved in such disposition are
21 located. The commission shall send a copy of all information obtained by it as to what, if any,
22 impact such sale, assignment, lease, transfer, merger, consolidation or other disposition will have
23 on the tax revenues of various political subdivisions to the county clerk of each county in which
24 any portion of a political subdivision which will be affected by such disposition is located.
25 Nothing in this subsection contained shall be construed to prevent the sale, assignment, lease or
26 other disposition by any corporation, person or public utility of a class designated in this
27 subsection of property which is not necessary or useful in the performance of its duties to the
28 public, and any sale of its property by such corporation, person or public utility shall be
29 conclusively presumed to have been of property which is not useful or necessary in the
30 performance of its duties to the public, as to any purchaser of such property in good faith for
31 value.

32 2. No such corporation shall directly or indirectly acquire the stock or bonds of any other
33 corporation incorporated for, or engaged in, the same or a similar business, or proposing to
34 operate or operating under a franchise from the same or any other municipality; neither shall any
35 street railroad corporation acquire the stock or bonds of any electrical corporation, unless, in
36 either case, authorized so to do by the commission. Save where stock shall be transferred or held
37 for the purpose of collateral security, no stock corporation of any description, domestic or
38 foreign, other than a gas corporation, electrical corporation, water corporation, sewer corporation
39 or street railroad corporation, shall, without the consent of the commission, purchase or acquire,
40 take or hold, more than ten percent of the total capital stock issued by any gas corporation,
41 electrical corporation, water corporation or sewer corporation organized or existing under or by
42 virtue of the laws of this state, except that a corporation now lawfully holding a majority of the
43 capital stock of any gas corporation, electrical corporation, water corporation or sewer
44 corporation may, with the consent of the commission, acquire and hold the remainder of the
45 capital stock of such gas corporation, electrical corporation, water corporation or sewer
46 corporation, or any portion thereof.

47 3. **No person, public utility, or other corporation shall purchase or acquire, take,**
48 **or hold fifty percent or more of the total capital stock issued by any sewer or water**
49 **corporation that regularly provides service to eight thousand or fewer customers without**
50 **notifying the commission within thirty days of said acquisition.**

51 4. **Notwithstanding subsection 3 of this section, any sewer or water corporation that**
52 **regularly provides service to eight thousand or fewer customers that is delinquent in filing**
53 **its public service commission annual report or is six months or more delinquent in paying**

23 YES NO

24 If you are in favor of the resolution, place an "X" in the box opposite "Yes".

25 If you are opposed to the question, place an "X" in the box opposite "No".

26

27 4. If the issuance of the bonds is approved by at least a majority of the qualified electors
28 voting thereon in the participating municipality, the participating municipality shall declare the
29 result of the election and cause the bonds to be issued.

30 5. Each participating municipality shall bear all expenses associated with the elections
31 in such participating municipality.

32 6. [In lieu of the public voting procedure set forth in subsections 1 to 5 of this section,]
33 In the case of purchasing or leasing, constructing, installing, and operating reservoirs, pipelines,
34 wells, check dams, pumping stations, water purification plants, and other facilities for the
35 production, wholesale distribution, and utilization of water, the commission may provide for a
36 vote by the governing body of each contracting municipality. Such vote shall require the
37 approval of three-quarters of all governing bodies of the contracting municipalities. The
38 commission may not order such a vote until it has engaged and received a report from an
39 independent consulting engineer as defined in section 327.181 for the purpose of determining
40 the economic and engineering feasibility of any proposed project the costs of which are to be
41 financed through the issuance of bonds. The report of the consulting engineer shall be provided
42 to and approved by the legislative body and executive of each contracting municipality
43 participating in the project and such report shall be open to public inspection and shall be the
44 subject of a public hearing in each municipality participating in the project. Notice of the time
45 and place of each such hearing shall be published in a daily newspaper of general circulation
46 within each municipality. Interested parties may appear and fully participate in such hearings.
47 Each contracting municipality shall vote by ordinance or resolution and such ordinance or
48 resolution shall approve the issuance of revenue bonds by the joint municipal water commission
49 in an amount not to exceed a specified amount.

393.1000. As used in sections 393.1000 to 393.1006, the following terms mean:

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

4 (a) The water corporation's weighted cost of capital multiplied by the net original cost
5 of eligible infrastructure system replacements, including recognition of accumulated deferred
6 income taxes and accumulated depreciation associated with eligible infrastructure system
7 replacements which are included in a currently effective ISRS; and

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

9 and

- 10 (c) Recover all other ISRS costs;
- 11 (2) "Commission", the Missouri public service commission;
- 12 (3) "Eligible infrastructure system replacements", water utility plant projects that:
- 13 (a) Replace or extend the useful life of existing infrastructure;
- 14 (b) Are in service and used and useful;
- 15 (c) Do not increase revenues by directly connecting the infrastructure replacement to new
- 16 customers; and
- 17 (d) Were not included in the water corporation's rate base in its most recent general rate
- 18 case;
- 19 (4) "ISRS", infrastructure system replacement surcharge;
- 20 (5) "ISRS costs", depreciation expenses and property taxes that will be due within twelve
- 21 months of the ISRS filing;
- 22 (6) "ISRS revenues", revenues produced through an ISRS, exclusive of revenues from
- 23 all other rates and charges;
- 24 (7) "Water corporation", every corporation, company, association, joint stock company
- 25 or association, partnership, and person, their lessees, trustees, or receivers appointed by any court
- 26 whatsoever, owning, operating, controlling, or managing any plant or property, dam or water
- 27 supply, canal, or power station, distributing or selling for distribution, or selling or supplying for
- 28 gain any water to more than ten thousand customers;
- 29 (8) "Water utility plant projects" may consist only of the following:
- 30 (a) Mains, [and associated] valves [and] , hydrants, **service lines, and meters**, installed
- 31 as replacements for existing facilities that have worn out or are in deteriorated condition **or**
- 32 **replaced as part of a commission order, or meters for automated meter reading**;
- 33 (b) Main cleaning and relining projects; and
- 34 (c) Facilities relocations required due to construction or improvement of a highway,
- 35 road, street, public way, or other public work by or on behalf of the United States, this state, a
- 36 political subdivision of this state, or another entity having the power of eminent domain provided
- 37 that the costs related to such projects have not been reimbursed to the water corporation.

393.1003. 1. Notwithstanding any provisions of chapter 386 and this chapter to the

2 contrary, as of August 28, [2003] **2013**, a water corporation [providing water service in a county

3 with a charter form of government and with more than one million inhabitants] may file a

4 petition and proposed rate schedules with the commission to establish or change ISRS rate

5 schedules that will allow for the adjustment of the water corporation's rates and charges to

6 provide for the recovery of costs for eligible infrastructure system replacements [made in such

7 county with a charter form of government and with more than one million inhabitants]; provided

8 that an ISRS[, on an annualized basis,] must produce ISRS revenues of at least one million

9 dollars **on an annualized basis**, but not in excess of ten percent **on an annualized basis** of the
10 water corporation's base revenue level approved by the commission in the water corporation's
11 most recent general rate proceeding. An ISRS and any future changes thereto shall be calculated
12 and implemented in accordance with the provisions of sections 393.1000 to 393.1006. ISRS
13 revenues shall be subject to refund based upon a finding and order of the commission, to the
14 extent provided in subsections 5 and 8 of section 393.1006.

15 2. The commission shall not approve an ISRS for a water corporation [in a county with
16 a charter form of government and with more than one million inhabitants] that has not had a
17 general rate proceeding decided or dismissed by issuance of a commission order within the past
18 three years, unless the water corporation has filed for or is the subject of a new general rate
19 proceeding.

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

26 **4. As of August 28, 2019, the provisions of this section shall only apply to a water**
27 **corporation in a county with a charter form of government and more than one million**
28 **inhabitants.**

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