

SENATE BILL NO. 44

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHITE.

0809S.011

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal section 393.358, RSMo, and to enact in lieu thereof five new sections relating to water and sewer infrastructure.

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

Section A. Section 393.358, RSMo, is repealed and five
2 new sections enacted in lieu thereof, to be known as sections
3 393.358, 393.1500, 393.1503, 393.1506, and 393.1509, to read as
4 follows:

393.358. 1. For purposes of this section, the
2 following terms shall mean:

3 (1) "Commission", the Missouri public service
4 commission established under section 386.040;

5 (2) "Water corporation", a corporation with more than
6 one thousand Missouri customers that otherwise meets the
7 definition of "water corporation" in section 386.020.

8 2. Water corporations shall develop a qualification
9 process open to all contractors seeking to provide
10 construction and construction-related services for planned
11 infrastructure projects on the water corporation's
12 distribution system. The water corporation shall specify
13 qualification requirements and goals for contractors seeking
14 to perform such work, including but not limited to
15 experience, performance criteria, safety record and
16 policies, technical expertise, scheduling needs and
17 available resources, supplier diversity and insurance

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 requirements. Contractors that meet the qualification
19 requirements shall be eligible to participate in a
20 competitive bidding process for providing construction and
21 construction-related services for planned infrastructure
22 projects on the water corporation's distribution system, and
23 the contractor making the lowest and best bid shall be
24 awarded such contract. For contractors not qualifying
25 through the competitive bid process, the water corporation,
26 upon request from the contractor, shall provide information
27 from the process in which the contractor can be informed as
28 to how to be better positioned to qualify for such bid
29 opportunities in the future. Nothing in this section shall
30 be construed as requiring any water corporation to use third
31 parties instead of its own employees to perform such work,
32 to use the contractor qualification or competitive bidding
33 process in the case of an emergency project, or to terminate
34 any existing contract with a contractor prior to its
35 expiration.

36 3. Within thirty days after August 28, 2018, and with
37 the filing of a general rate proceeding initiated by the
38 water corporation, the water corporation shall file a
39 statement with the commission confirming it has established
40 a qualification process meeting the requirements of this
41 section and that such process is used for no less than [ten]
42 **twenty** percent of the corporation's external expenditures
43 for planned infrastructure projects on the water
44 corporation's distribution system. The commission shall
45 have the authority to verify the statements to ensure
46 compliance with this section.

47 4. By December 31, 2020, the commission shall submit a
48 report to the general assembly on the effects of this
49 section, including water corporation compliance, the costs

50 of performing planned infrastructure projects prior to the
51 implementation of this section compared to after the
52 implementation of this section, and any other information
53 regarding the process established under this section that
54 the commission deems necessary.

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

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

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

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

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

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

20 (d) The property taxes applicable to the eligible
21 infrastructure that will be due within twelve months of the
22 filing of a request to implement a water and sewer
23 infrastructure rate adjustment pursuant to sections 393.1506
24 and 393.1509;

- 25 (2) "Commission", the Missouri public service
26 commission;
- 27 (3) "Eligible infrastructure system projects", water
28 or sewer utility plant projects that:
- 29 (a) Replace or extend the useful life of existing
30 infrastructure, or are installed to comply with any federal,
31 state, or local safety or environmental law, regulation,
32 rule, or order;
- 33 (b) Are in service and used and useful;
- 34 (c) Do not include projects intended solely for
35 customer growth; and
- 36 (d) The costs of which were not recovered in the water
37 or sewer corporation's base rates in its most recent general
38 rate case;
- 39 (4) "Sewer corporation", the same as defined in
40 section 386.020;
- 41 (5) "Water and sewer infrastructure rate adjustment"
42 or "WSIRA", a separate line item rate on a customer's water
43 or sewer bill designed to recover the appropriate pretax
44 revenues associated with eligible infrastructure system
45 projects implemented pursuant to sections 393.1500 to
46 393.1509;
- 47 (6) "Water corporation", the same as defined in
48 section 386.020;
- 49 (7) "Water or sewer utility plant projects", shall
50 consist of the following:
- 51 (a) Replacement of or cleaning and relining of
52 existing water and sewer pipes, and associated valves,
53 hydrants, meters, service lines, laterals, sewer taps,
54 curbstops, and manholes;
- 55 (b) Replacement of lead mains, lead goosenecks and
56 lead service lines, and associated valves and meters;

57 (c) Replacement of booster station and lift station
58 pumps, pipes, valves, and meters; and

59 (d) Facilities relocations required due to
60 construction or improvement of a highway, road, street,
61 public way, or other public work by or on behalf of the
62 United States, this state, a political subdivision of this
63 state, or another entity having the power of eminent domain;
64 provided that the costs related to such projects have not
65 been reimbursed to the water or sewer corporation;

66 (e) Replacement of water and wastewater treatment
67 mechanical equipment with equipment of similar capacity and
68 operation, including well and intake pumps, transfer pumps,
69 high service or discharge pumps, and metering pumps;

70 (f) Replacement of Supervisory Control and Data
71 Acquisition System (SCADA) components necessary for the
72 operation and monitoring of remote installations including
73 radio and cellular communication equipment, and programable
74 logic controllers;

75 (g) Installation or replacement of water or sewer
76 facilities to comply with any federal, state, or local
77 safety or environmental law, regulation, rule, or order;

78 (8) "WSIRA revenues", revenues produced through
79 implementation of a WSIRA pursuant to sections 393.1500 to
80 393.1509, exclusive of revenues from all other rates and
81 charges.

393.1506. 1. Notwithstanding any provisions of
2 chapter 386 and this chapter to the contrary, a water or
3 sewer corporation that provides water or sewer service to
4 more than eight thousand customer connections may file a
5 petition and proposed rate schedules with the commission to
6 establish or change a WSIRA that will provide for the
7 recovery of the appropriate pretax revenues associated with

8 the eligible infrastructure system projects, less the
9 appropriate pretax revenues associated with any retired
10 utility plant that is being replaced by the eligible
11 infrastructure system projects. In addition, the WSIRA
12 individually, or when combined with a currently effective
13 ISRS pursuant to subsection 1 of section 393.1003, shall not
14 produce revenues in excess of fifteen percent of the water
15 or sewer corporation's base revenue requirement approved by
16 the commission in the water or sewer corporation's most
17 recent general rate proceeding; provided, however, that
18 neither WSIRA revenues attributable to replacement of lead
19 infrastructure, nor any reconciliation amounts described in
20 subdivision (2) of subsection 5 of section 393.1509, shall
21 count toward the program cap. The WSIRA and any future
22 changes thereto shall be calculated and implemented in
23 accordance with the provisions of sections 393.1503 to
24 393.1509. WSIRA revenues shall be subject to refund based
25 upon a finding and order of the commission, to the extent
26 provided in subsections 5 and 8 of section 393.1509.

27 2. The commission shall not approve a WSIRA for a
28 water or sewer corporation that has not had a general rate
29 proceeding decided or dismissed by issuance of a commission
30 order within the past three years of the filing of a
31 petition pursuant to this section, unless the water or sewer
32 corporation has filed for or is the subject of a new general
33 rate proceeding.

34 3. In no event shall a water or sewer corporation
35 collect a WSIRA for a period exceeding three years unless
36 the water or sewer corporation has filed for or is the
37 subject of a pending general rate proceeding; provided that
38 the WSIRA may be collected until the effective date of new
39 rate schedules established as a result of the new general

40 rate proceeding, or until the subject general rate
41 proceeding is otherwise decided or dismissed by issuance of
42 a commission order without new rates being established.

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

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

2. (1) When a petition, along with any associated
11 proposed rate schedules, is filed pursuant to the provisions
12 of sections 393.1503 to 393.1509, the commission shall
13 conduct an examination of the proposed WSIRA.
14

(2) The staff of the commission may examine
15 information of the water or sewer corporation to confirm
16 that the underlying costs are in accordance with the
17 provisions of sections 393.1503 to 393.1509, and to confirm
18 proper calculation of the proposed WSIRA, and may submit a
19 report regarding its examination to the commission not later
20 than sixty days after the petition is filed. No other
21 revenue requirement or ratemaking issues shall be examined
22 in consideration of the petition or associated proposed
23 WSIRA rate schedules filed pursuant to the provisions of
24 sections 393.1503 to 393.1509.
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(3) The commission may hold a hearing on the petition
26 and any associated WSIRA rate schedule and shall issue an
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29 order to become effective not later than one hundred twenty
30 days after the petition is filed.

31 (4) If the commission finds that a petition complies
32 with the requirements of sections 393.1503 to 393.1509, the
33 commission shall enter an order authorizing the water or
34 sewer corporation to implement a WSIRA that is sufficient to
35 recover appropriate pretax revenues, as determined by the
36 commission pursuant to the provisions of sections 393.1503
37 to 393.1509.

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

41 4. In determining the appropriate pretax revenues, the
42 commission shall consider only the following factors:

43 (1) The current state, federal, and local income or
44 excise tax rates, including any income tax deductions and
45 net operating loss carryforwards associated with the
46 eligible infrastructure system projects;

47 (2) The water or sewer corporation's actual regulatory
48 capital structure as determined during the most recent
49 general rate proceeding of the water or sewer corporation;

50 (3) The actual cost rates for the water or sewer
51 corporation's debt and preferred stock as determined during
52 the most recent general rate proceeding of the water or
53 sewer corporation;

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

57 (5) The current property tax rate or rates applicable
58 to the eligible infrastructure system projects;

59 (6) The current depreciation rates applicable to the
60 eligible infrastructure system projects;

61 (7) In the event information described in subdivisions
62 (2), (3), and (4) of this subsection is unavailable and the
63 commission is not provided with such information on an
64 agreed-upon basis, the commission shall utilize the overall
65 pretax weighted average cost of capital last authorized for
66 the water or sewer corporation in a WSIRA or general rate
67 proceeding.

68 5. (1) A WSIRA shall be calculated based upon the
69 amount of infrastructure system project costs that are
70 eligible for recovery during the period in which the WSIRA
71 will be in effect and upon the applicable customer class
72 billing determinants utilized in designing the water or
73 sewer corporation's customer rates in its most recent
74 general rate proceeding and allocated in a manner consistent
75 with the rate design methodology utilized to develop the
76 water or sewer corporation's base rates resulting from its
77 most recent general rate proceeding.

78 (2) At the end of each twelve-month calendar period
79 that a WSIRA is in effect, the water or sewer corporation
80 shall reconcile the differences between the revenues
81 resulting from a WSIRA and the appropriate pretax revenues
82 as found by the commission for that period and shall submit
83 the reconciliation and a proposed WSIRA to the commission
84 for approval to recover or credit the difference, as
85 appropriate, through a WSIRA.

86 6. (1) A water or sewer corporation that has
87 implemented a WSIRA pursuant to the provisions of sections
88 393.1503 to 393.1509 shall file revised WSIRA schedules to
89 reset the WSIRA to zero when new base rates and charges
90 become effective for the water or sewer corporation
91 following a commission order establishing customer rates in
92 a general rate proceeding that incorporates in the utility's

93 base rates, subject to subsections 8 and 9 of this section,
94 eligible costs previously reflected in a WSIRA.

95 (2) Upon the inclusion in a water or sewer
96 corporation's base rates, subject to subsections 8 and 9 of
97 this section, of eligible costs previously reflected in a
98 WSIRA, the water or sewer corporation shall immediately
99 thereafter reconcile any previously unreconciled WSIRA
100 revenues as necessary to ensure that revenues resulting from
101 the WSIRA match as closely as possible the appropriate
102 pretax revenues as found by the commission for that period.

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

108 8. Commission approval of a petition, and any
109 associated rate schedules, to establish or change a WSIRA
110 pursuant to the provisions of sections 393.1503 to 393.1509
111 shall in no way be binding upon the commission in
112 determining the ratemaking treatment to be applied to
113 eligible infrastructure system projects during a subsequent
114 general rate proceeding when the commission may undertake to
115 review the prudence of such costs. In the event the
116 commission disallows, during a subsequent general rate
117 proceeding, recovery of costs associated with eligible
118 infrastructure system projects previously included in a
119 WSIRA, the water or sewer corporation shall offset its WSIRA
120 in the future as necessary to recognize and account for any
121 such overcollections.

122 9. Nothing contained in sections 393.1503 to 393.1509
123 shall be construed to impair in any way the authority of the
124 commission to review the reasonableness of the rates or

125 charges of a water or sewer corporation, including review of
126 the prudence of eligible infrastructure system replacements
127 made by a water or sewer corporation, pursuant to the
128 provisions of section 386.390.

129 10. The commission shall have authority to promulgate
130 rules for the implementation of sections 393.1503 to
131 393.1509, but only to the extent such rules are consistent
132 with, and do not delay the implementation of, the provisions
133 of sections 393.1503 to 393.1509. Any rule or portion of a
134 rule, as that term is defined in section 536.010, that is
135 created under the authority delegated in this section shall
136 become effective only if it complies with and is subject to
137 all of the provisions of chapter 536 and, if applicable,
138 section 536.028. This section and chapter 536 are
139 nonseverable and if any of the powers vested with the
140 general assembly pursuant to chapter 536 to review, to delay
141 the effective date, or to disapprove and annul a rule are
142 subsequently held unconstitutional, then the grant of
143 rulemaking authority and any rule proposed or adopted after
144 August 28, 2021, shall be invalid and void.

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