

FIRST REGULAR SESSION

HOUSE BILL NO. 397

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WALLINGFORD.

1168H.011

DANA RADEMAN MILLER, Chief Clerk

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Section A. Section 393.358, RSMo, is repealed and five new sections enacted in lieu thereof, to be known as sections 393.358, 393.1500, 393.1503, 393.1506, and 393.1509, to read as follows:

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

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

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

2. Water corporations shall develop a qualification process open to all contractors seeking to provide construction and construction-related services for planned infrastructure projects on the water corporation's distribution system. The water corporation shall specify qualification requirements and goals for contractors seeking to perform such work, including but not limited to experience, performance criteria, safety record and policies, technical expertise, scheduling needs and available resources, supplier diversity and insurance requirements. Contractors that meet the qualification requirements shall be eligible to participate in a competitive bidding process for providing construction and construction-related services for planned infrastructure projects on the water corporation's distribution system, and the contractor making the lowest and best bid shall be awarded such contract. For contractors not qualifying through the competitive bid process, the water corporation, upon request from the contractor,

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 shall provide information from the process in which the contractor can be informed as to how
18 to be better positioned to qualify for such bid opportunities in the future. Nothing in this section
19 shall be construed as requiring any water corporation to use third parties instead of its own
20 employees to perform such work, to use the contractor qualification or competitive bidding
21 process in the case of an emergency project, or to terminate any existing contract with a
22 contractor prior to its expiration.

23 3. Within thirty days after August 28, 2018, and with the filing of a general rate
24 proceeding initiated by the water corporation, the water corporation shall file a statement with
25 the commission confirming it has established a qualification process meeting the requirements
26 of this section and that such process is used for no less than ~~ten~~ **twenty** percent of the
27 corporation's external expenditures for planned infrastructure projects on the water corporation's
28 distribution system. The commission shall have the authority to verify the statements to ensure
29 compliance with this section.

30 4. By December 31, 2020, the commission shall submit a report to the general assembly
31 on the effects of this section, including water corporation compliance, the costs of performing
32 planned infrastructure projects prior to the implementation of this section compared to after the
33 implementation of this section, and any other information regarding the process established
34 under this section that the commission deems necessary.

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

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

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

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

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

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

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, or are installed to
- 21 comply with any federal, state, or local safety or environmental law, regulation, rule, or
- 22 order;
- 23 (b) Are in service and used and useful;
- 24 (c) Do not include projects intended solely for customer growth; and
- 25 (d) The costs of which were not recovered in the water or sewer corporation's base
- 26 rates in its most recent general rate case;
- 27 (4) "Sewer corporation", the same as defined in section 386.020;
- 28 (5) "Water and sewer infrastructure rate adjustment" or "WSIRA", a separate
- 29 line item rate on a customer's water or sewer bill designed to recover the appropriate
- 30 pretax revenues associated with eligible infrastructure system projects implemented
- 31 pursuant to sections 393.1500 to 393.1509;
- 32 (6) "Water corporation", the same as defined in section 386.020;
- 33 (7) "Water or sewer utility plant projects", shall consist of the following:
- 34 (a) Replacement of or cleaning and relining of existing water and sewer pipes, and
- 35 associated valves, hydrants, meters, service lines, laterals, sewer taps, curbstops, and
- 36 manholes;
- 37 (b) Replacement of lead mains, lead goosenecks and lead service lines, and
- 38 associated valves and meters;
- 39 (c) Replacement of booster station and lift station pumps, pipes, valves, and meters;
- 40 and
- 41 (d) Facilities relocations required due to construction or improvement of a
- 42 highway, road, street, public way, or other public work by or on behalf of the United
- 43 States, this state, a political subdivision of this state, or another entity having the power of
- 44 eminent domain; provided that the costs related to such projects have not been reimbursed
- 45 to the water or sewer corporation;
- 46 (e) Replacement of water and wastewater treatment mechanical equipment with
- 47 equipment of similar capacity and operation, including well and intake pumps, transfer
- 48 pumps, high service or discharge pumps, and metering pumps;
- 49 (f) Replacement of Supervisory Control and Data Acquisition System (SCADA)
- 50 components necessary for the operation and monitoring of remote installations including
- 51 radio and cellular communication equipment, and programmable logic controllers;

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

54 (8) "WSIRA revenues", revenues produced through implementation of a WSIRA
55 pursuant to sections 393.1500 to 393.1509, exclusive of revenues from all other rates and
56 charges.

393.1506. 1. Notwithstanding any provisions of chapter 386 and this chapter to the
2 contrary, a water or sewer corporation that provides water or sewer service to more than
3 eight thousand customer connections may file a petition and proposed rate schedules with
4 the commission to establish or change a WSIRA that will provide for the recovery of the
5 appropriate pretax revenues associated with the eligible infrastructure system projects, less
6 the appropriate pretax revenues associated with any retired utility plant that is being
7 replaced by the eligible infrastructure system projects. In addition, the WSIRA
8 individually, or when combined with a currently effective ISRS pursuant to subsection 1
9 of section 393.1003, shall not produce revenues in excess of fifteen percent of the water or
10 sewer corporation's base revenue requirement approved by the commission in the water
11 or sewer corporation's most recent general rate proceeding; provided, however, that
12 neither WSIRA revenues attributable to replacement of lead infrastructure, nor any
13 reconciliation amounts described in subdivision (2) of subsection 5 of section 393.1509,
14 shall count toward the program cap. The WSIRA and any future changes thereto shall be
15 calculated and implemented in accordance with the provisions of sections 393.1503 to
16 393.1509. WSIRA revenues shall be subject to refund based upon a finding and order of
17 the commission, to 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 pending 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
28 by issuance of a commission order without new rates being established.

393.1509. 1. (1) At the time that a water or sewer corporation files a petition with
2 the commission seeking to establish or change a WSIRA, it shall submit proposed WSIRA
3 rate schedules and supporting documentation regarding the calculation of the proposed

4 **WSIRA with the petition and shall serve the office of the public counsel with a copy of its**
5 **petition, its proposed WSIRA rate schedules, and its supporting documentation.**

6 **(2) Upon the filing of a petition and any associated WSIRA rate schedules, seeking**
7 **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 base rates resulting from its most recent
56 general 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, 2021,**
101 **shall be invalid and void.**

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