

FIRST REGULAR SESSION

# SENATE BILL NO. 160

98TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR BROWN.

Pre-filed December 17, 2014, and ordered printed.

ADRIANE D. CROUSE, Secretary.

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## AN ACT

To repeal sections 393.140 and 393.150, RSMo, and to enact in lieu thereof two new sections relating to rates of return on equity for corporations regulated by the public service commission, with an existing penalty provision.

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

Section A. Sections 393.140 and 393.150, RSMo, are repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 393.140 and 393.150, to  
3 read as follows:

393.140. The commission shall:

2 (1) Have general supervision of all gas corporations, electrical  
3 corporations, water corporations and sewer corporations having authority under  
4 any special or general law or under any charter or franchise to lay down, erect or  
5 maintain wires, pipes, conduits, ducts or other fixtures in, over or under the  
6 streets, highways and public places of any municipality, for the purpose of  
7 furnishing or distributing water or gas or of furnishing or transmitting electricity  
8 for light, heat or power, or maintaining underground conduits or ducts for  
9 electrical conductors, or for the purpose of collecting, carrying, treating, or  
10 disposing of sewage, and all gas plants, electric plants, water systems and sewer  
11 systems owned, leased or operated by any gas corporation, electrical corporation,  
12 water corporation, or sewer corporation.

13 (2) Investigate and ascertain, from time to time, the quality of gas or  
14 water supplied and sewer service furnished by persons and corporations, examine  
15 or investigate the methods employed by such persons and corporations in  
16 manufacturing, distributing and supplying gas or electricity for light, heat or  
17 power and in transmitting the same, and in supplying and distributing water for  
18 any purpose whatsoever, and in furnishing a sewer system, and have power to  
19 order such reasonable improvements as will best promote the public interest,

20 preserve the public health and protect those using such gas, electricity, water, or  
21 sewer system, and those employed in the manufacture and distribution thereof,  
22 and have power to order reasonable improvements and extensions of the works,  
23 wires, poles, pipes, lines, conduits, ducts and other reasonable devices, apparatus  
24 and property of gas corporations, electrical corporations, water corporations, and  
25 sewer corporations.

26 (3) Have power, by order, to fix from time to time standards for the  
27 measurement of the purity or illuminating power of gas to be manufactured,  
28 distributed or sold by persons or corporations for lighting, heating or power  
29 purposes, to prescribe from time to time the efficiency of the electric supply  
30 system, of the current supplied and of the lamps furnished by the persons or  
31 corporations generating and selling electric current, and to fix from time to time  
32 standards for the measurement of the purity or pressure of water to be  
33 distributed or sold by persons or corporations for any purpose whatsoever, and  
34 to fix from time to time the standards for designing, constructing, operating and  
35 maintaining sewer systems of sewer corporations, including sewers, sewage  
36 pumping stations, sewage treatment works, primary treatment facilities, sludge  
37 digestion and disposal facilities, secondary treatment facilities, disinfection  
38 facilities, and any and all facilities related thereto; provided, however, that such  
39 standards shall be supplemental to and in no way set standards lesser than the  
40 minimum standards adopted by the state water pollution board, and by order to  
41 require gas so manufactured, distributed or sold to equal the standards so fixed  
42 by it, and to prescribe from time to time the reasonable minimum and maximum  
43 pressure at which gas shall be delivered by said persons or corporations. For the  
44 purpose of determining whether the gas manufactured, distributed or sold by  
45 such persons or corporations for lighting, heating or power purposes conforms to  
46 the standards of illuminating power, purity and pressure, and for the purpose of  
47 determining whether the efficiency of the electric supply system, of the current  
48 supplied and of the lamps furnished, and for the purpose of determining whether  
49 the water furnished or sold conforms to the standard of purity and pressure, and  
50 for the purpose of determining whether the sewer system conforms to the  
51 standards for designing, constructing, operating and maintaining sewer systems,  
52 and conforms to the orders issued by the commission, the commission shall have  
53 power, of its own motion, to examine and investigate the plants and methods  
54 employed in manufacturing, delivering and supplying gas, electricity or water,  
55 and the collecting, carrying, treating and disposing of sewage, and shall have

56 access, through its members or persons employed and authorized by it, to make  
57 such examinations and investigations to all parts of the manufacturing plants  
58 owned, used or operated for the manufacture, transmission or distribution of gas  
59 or electricity by any such person or corporation, and to all parts of the systems  
60 owned, used or operated for the supplying and distribution of water and the  
61 collecting, carrying, treating and disposing of sewage by any such person or  
62 corporation. Any employee or agent of the commission who divulges any fact or  
63 information which may come to his knowledge during the course of any such  
64 inspection or examination, except insofar as he may be directed by the  
65 commission, or by a court or judge thereof, or authorized by law, shall be guilty  
66 of a misdemeanor.

67 (4) Have power, in its discretion, to prescribe uniform methods of keeping  
68 accounts, records and books, to be observed by gas corporations, electrical  
69 corporations, water corporations and sewer corporations engaged in the  
70 manufacture, sale or distribution of gas and electricity for light, heat or power,  
71 or in the distribution and sale of water for any purpose whatsoever, or in the  
72 collection, carriage, treatment and disposal of sewage for municipal, domestic or  
73 other necessary beneficial purpose. It may also, in its discretion, prescribe, by  
74 order, forms of accounts, records and memoranda to be kept by such persons and  
75 corporations. Notice of alterations by the commission in the required method or  
76 form of keeping a system of accounts shall be given to such persons or  
77 corporations by the commission at least six months before the same shall take  
78 effect. Any other and additional forms of accounts, records and memoranda kept  
79 by such corporation shall be subject to examination by the commission.

80 (5) Examine all persons and corporations under its supervision and keep  
81 informed as to the methods, practices, regulations and property employed by them  
82 in the transaction of their business. Whenever the commission shall be of the  
83 opinion, after a hearing had upon its own motion or upon complaint, that the  
84 rates or charges or the acts or regulations of any such persons or corporations are  
85 unjust, unreasonable, unjustly discriminatory or unduly preferential or in any  
86 wise in violation of any provision of law, the commission shall determine and  
87 prescribe the just and reasonable rates and charges thereafter to be in force for  
88 the service to be furnished, notwithstanding that a higher rate or charge has  
89 heretofore been authorized by statute, and the just and reasonable acts and  
90 regulations to be done and observed; and whenever the commission shall be of the  
91 opinion, after a hearing had upon its own motion or upon complaints, that the

92 property, equipment or appliances of any such person or corporation are unsafe,  
93 insufficient or inadequate, the commission shall determine and prescribe the safe,  
94 efficient and adequate property, equipment and appliances thereafter to be used,  
95 maintained and operated for the security and accommodation of the public and  
96 in compliance with the provisions of law and of their franchises and charters.

97 (6) Require every person and corporation under its supervision and it  
98 shall be the duty of every person and corporation to file with the commission an  
99 annual report, verified by the oath of the president, treasurer, general manager  
100 or receiver, if any, thereof. The verification shall be made by said official holding  
101 office at the time of the filing of said report, and if not made upon the knowledge  
102 of the person verifying the same, shall set forth the sources of his information and  
103 the grounds of his belief as to any matters not stated to be verified upon his  
104 knowledge. The report shall show in detail the amount of its authorized capital  
105 stock and the amount thereof issued and outstanding; the amount of its  
106 authorized bonded indebtedness and the amount of its bonds and other forms of  
107 evidence of indebtedness issued and outstanding; its receipts and expenditures  
108 during the preceding year; the amount paid as dividends upon its stock and as  
109 interest upon its bonds; the names of its officers and the aggregate amount paid  
110 as salaries to them and the amount paid as wages to its employees; the location  
111 of its plant or plants and system, with a full description of its property and  
112 franchises, stating in detail how each franchise stated to be owned was acquired;  
113 and such other facts pertaining to the operation and maintenance of the plant  
114 and system, and the affairs of such person or corporation as may be required by  
115 the commission. Such reports shall be in the form, cover the period and be filed  
116 at the time prescribed by the commission. The commission may, from time to  
117 time, make changes and additions in such forms. When any such report is  
118 defective or believed to be erroneous, the commission shall notify the person or  
119 corporation making such report to amend the same within a time prescribed by  
120 the commission. Any such person or corporation which shall neglect to make any  
121 such report or which shall fail to correct any such report within the time  
122 prescribed by the commission shall be liable to a penalty of one hundred dollars  
123 and an additional penalty of one hundred dollars for each day after the prescribed  
124 time for which it shall neglect to file or correct the same, to be sued for in the  
125 name of the state of Missouri. The amount recovered in any such action shall be  
126 paid to the public school fund of the state. The commission may extend the time  
127 prescribed for cause shown.

128           (7) Have power, either through its members or inspectors or employees  
129 duly authorized by it, to enter in or upon and to inspect the property, buildings,  
130 plants, factories, powerhouses, ducts, conduits and offices of any such  
131 corporations or persons.

132           (8) Have power to examine the accounts, books, contracts, records,  
133 documents and papers of any such corporation or person, and have power, after  
134 hearing, to prescribe by order the accounts in which particular outlays and  
135 receipts shall be entered, charged or credited.

136           (9) Have power to compel, by subpoena duces tecum, the production of any  
137 accounts, books, contracts, records, documents, memoranda and papers. In lieu  
138 of requiring production of originals by subpoena duces tecum the commission or  
139 any commissioner may require sworn copies of any such books, records, contracts,  
140 documents and papers, or parts thereof, to be filed with it. The commission may  
141 require of all such corporations or persons specific answers to questions upon  
142 which the commission may need information, and may also require such  
143 corporations or persons to file periodic reports in the form, covering the period  
144 and filed at the time prescribed by the commission.

145 If such corporation or person shall fail to make specific answer to any question  
146 or shall fail to make a periodic report when required by the commission as herein  
147 provided within the time and in the form prescribed by the commission for the  
148 making and filing of any such report or answer, such corporation or person shall  
149 forfeit to the state the sum of one hundred dollars for each and every day it shall  
150 continue to be in default with respect to such report or answer. Such forfeiture  
151 shall be recovered in an action brought by the commission in the name of the  
152 state of Missouri. The amount recovered in any such action shall be paid to the  
153 public school fund of the state.

154           (10) Have power in all parts of the state, either as a commission or  
155 through its members, to subpoena witnesses, take testimony and administer oaths  
156 to witnesses in any proceeding or examination instituted before it, or conducted  
157 by it, in reference to any matter under sections 393.110 to 393.285.

158           (11) Have power to require every gas corporation, electrical corporation,  
159 water corporation, and sewer corporation to file with the commission and to print  
160 and keep open to public inspection schedules showing all rates and charges made,  
161 established or enforced or to be charged or enforced, all forms of contract or  
162 agreement and all rules and regulations relating to rates, charges or service used  
163 or to be used, and all general privileges and facilities granted or allowed by such

164 gas corporation, electrical corporation, water corporation, or sewer corporation;  
165 but this subdivision shall not apply to state, municipal or federal  
166 contracts. Unless the commission otherwise orders, no change shall be made in  
167 any rate or charge, or in any form of contract or agreement, or any rule or  
168 regulation relating to any rate, charge or service, or in any general privilege or  
169 facility, which shall have been filed and published by a gas corporation, electrical  
170 corporation, water corporation, or sewer corporation in compliance with an order  
171 or decision of the commission, except after thirty days' notice to the commission  
172 and publication for thirty days as required by order of the commission, which  
173 shall plainly state the changes proposed to be made in the schedule then in force  
174 and the time when the change will go into effect. The commission for good cause  
175 shown may allow changes without requiring the thirty days' notice under such  
176 conditions as it may prescribe. No corporation shall charge, demand, collect or  
177 receive a greater or less or different compensation for any service rendered or to  
178 be rendered than the rates and charges applicable to such services as specified  
179 in its schedule filed and in effect at the time; nor shall any corporation refund or  
180 remit in any manner or by any device any portion of the rates or charges so  
181 specified, nor to extend to any person or corporation any form of contract or  
182 agreement, or any rule or regulation, or any privilege or facility, except such as  
183 are regularly and uniformly extended to all persons and corporations under like  
184 circumstances. The commission shall have power to prescribe the form of every  
185 such schedule, and from time to time prescribe by order such changes in the form  
186 thereof as may be deemed wise. The commission shall also have power to  
187 establish such rules and regulations, to carry into effect the provisions of this  
188 subdivision, as it may deem necessary, and to modify and amend such rules or  
189 regulations from time to time.

190 (12) In case any electrical corporation, gas corporation, water corporation  
191 or sewer corporation engaged in carrying on any other business than owning,  
192 operating or managing a gas plant, electric plant, water system or sewer system  
193 which other business is not otherwise subject to the jurisdiction of the  
194 commission, and is so conducted that its operations are to be substantially kept  
195 separate and apart from the owning, operating, managing or controlling of such  
196 gas plant, electric plant, water system or sewer system, said corporation in  
197 respect to such other business shall not be subject to any of the provisions of this  
198 chapter and shall not be required to procure the consent or authorization of the  
199 commission to any act in such other business or to make any report in respect

200 thereof. But this subdivision shall not restrict or limit the powers of the  
201 commission in respect to the owning, operating, managing or controlling by such  
202 corporation of such gas plant, electric plant, water system or sewer system, and  
203 said powers shall include also the right to inquire as to, and prescribe the  
204 apportionment of, capitalization, earnings, debts and expenses fairly and justly  
205 to be awarded to or borne by the ownership, operation, management or control of  
206 such gas plant, electric plant, water system or sewer system as distinguished  
207 from such other business. In any such case if the owning, operating, managing  
208 or controlling of such gas plant, electric plant, water system or sewer system by  
209 any such corporation is wholly subsidiary and incidental to the other business  
210 carried on by it and is inconsiderable in amount and not general in its character,  
211 the commission may by general rules exempt such corporation from making full  
212 reports and from the keeping of accounts as to such subsidiary and incidental  
213 business.

214 **(13) Require every person and corporation under its supervision,**  
215 **and it shall be the duty of such person and corporation, to file with the**  
216 **commission a quarterly report which shall include its actual earned**  
217 **return on equity for the preceding twelve-month period and the**  
218 **preceding quarter, and such supporting information as required by the**  
219 **commission. Such reports shall be in the form and be filed at the time**  
220 **prescribed by the commission. Notwithstanding the provisions of**  
221 **section 386.480 or any other provision of law to the contrary, such**  
222 **reports shall be available to the public; however, the person or**  
223 **corporation may request that the commission restrict the disclosure of**  
224 **any information included in the report, except for the actual earned**  
225 **return on equity, on the grounds that such information is proprietary**  
226 **or highly confidential. The commission may grant such a request for**  
227 **good cause shown.**

393.150. 1. Whenever there shall be filed with the commission by any gas  
2 corporation, electrical corporation, water corporation or sewer corporation any  
3 schedule stating a new rate or charge, or any new form of contract or agreement,  
4 or any new rule, regulation or practice relating to any rate, charge or service or  
5 to any general privilege or facility, the commission shall have, and it is hereby  
6 given, authority, either upon complaint or upon its own initiative without  
7 complaint, at once, and if it so orders without answer or other formal pleading by  
8 the interested gas corporation, electrical corporation, water corporation or sewer

9 corporation, but upon reasonable notice, to enter upon a hearing concerning the  
10 propriety of such rate, charge, form of contract or agreement, rule, regulation or  
11 practice, and pending such hearing and the decision thereon, the commission  
12 upon filing with such schedule, and delivering to the gas corporation, electrical  
13 corporation, water corporation or sewer corporation affected thereby, a statement  
14 in writing of its reasons for such suspension, may suspend the operation of such  
15 schedule and defer the use of such rate, charge, form of contract or agreement,  
16 rule, regulation or practice, but not for a longer period than one hundred and  
17 twenty days beyond the time when such rate, charge, form of contract or  
18 agreement, rule, regulation or practice would otherwise go into effect; and after  
19 full hearing, whether completed before or after the rate, charge, form of contract  
20 or agreement, rule, regulation or practice goes into effect, the commission may  
21 make such order in reference to such rate, charge, form of contract or agreement,  
22 rule, regulation or practice as would be proper in a proceeding initiated after the  
23 rate, charge, form of contract or agreement, rule, regulation or practice had  
24 become effective.

25         2. If any such hearing cannot be concluded within the period of  
26 suspension, as above stated, the commission may, in its discretion, extend the  
27 time of suspension for a further period not exceeding six months. At any hearing  
28 involving a rate sought to be increased, the burden of proof to show that the  
29 increased rate or proposed increased rate is just and reasonable shall be upon the  
30 gas corporation, electrical corporation, water corporation or sewer corporation,  
31 and the commission shall give to the hearing and decision of such questions  
32 preference over all other questions pending before it and decide the same as  
33 speedily as possible.

34         **3. In determining the authorized rate of return on equity for any**  
35 **gas corporation, electrical corporation, water corporation, or sewer**  
36 **corporation in a general rate proceeding, the commission's**  
37 **determination of the appropriate return on equity shall take into**  
38 **consideration the impact of changing economic conditions and the**  
39 **proposed rate of return on customers. The commission shall hear**  
40 **evidence concerning these factors and shall make specific findings of**  
41 **fact concerning its consideration of these factors and their impact on**  
42 **the corporation's rate of return on equity.**