

SENATE SUBSTITUTE
FOR
SENATE BILL NO. 44
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Section A. Section 393.358, RSMo, is repealed and five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
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 less annual
20 depreciation expense associated with any related facility
21 retirements; and

22 (d) The property taxes applicable to the eligible
23 infrastructure that will be due within twelve months of the
24 filing of a request to implement a water and sewer
25 infrastructure rate adjustment pursuant to sections 393.1506
26 and 393.1509, less any property taxes associated with any
27 related facility retirements;

28 (2) "Commission", the Missouri public service
29 commission;

30 (3) "Eligible infrastructure system projects", water
31 or sewer utility plant projects that:

32 (a) Replace or extend the useful life of existing
33 infrastructure;

34 (b) Are in service and used and useful;

35 (c) Do not include projects intended solely for
36 customer growth; and

37 (d) The costs of which were not recovered in the water
38 or sewer corporation's base rates in its most recent general
39 rate case;

40 (4) "Sewer corporation", the same as defined in
41 section 386.020;

42 (5) "Water and sewer infrastructure rate adjustment"
43 or "WSIRA", a separate line item rate on a customer's water
44 or sewer bill designed to recover the appropriate pretax
45 revenues associated with eligible infrastructure system
46 projects implemented pursuant to sections 393.1500 to
47 393.1509;

48 (6) "Water corporation", the same as defined in
49 section 386.020;

50 (7) "Water or sewer utility plant projects", shall
51 consist of the following:

52 (a) Replacement of or cleaning and relining of
53 existing water and sewer pipes, and associated valves,
54 hydrants, meters, service lines, laterals, sewer taps,
55 curbstops, and manholes;

56 (b) Replacement of lead mains, lead goosenecks and
57 lead service lines, and associated valves and meters;

58 (c) Replacement of booster station and lift station
59 pumps, with equipment of similar capacity and operation, as
60 well as related pipes, valves, and meters; and

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

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

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

77 (8) "WSIRA revenues", revenues produced through
78 implementation of a WSIRA pursuant to sections 393.1500 to
79 393.1509, exclusive of revenues from all other rates and
80 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. The WSIRA shall not produce
12 revenues in excess of fifteen percent of the water or sewer
13 corporation's base revenue requirement approved by the

14 commission in the water or sewer corporation's most recent
15 general rate proceeding; provided, however, that neither
16 WSIRA revenues attributable to replacement of customer-owned
17 lead service lines, nor any reconciliation amounts described
18 in subdivision (2) of subsection 5 of section 393.1509,
19 shall count toward the program cap. The WSIRA and any
20 future changes thereto shall be calculated and implemented
21 in accordance with the provisions of sections 393.1503 to
22 393.1509. WSIRA revenues shall be subject to refund based
23 upon a finding and order of the commission, to the extent
24 provided in subsections 5 and 8 of section 393.1509.

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

32 3. In no event shall a water or sewer corporation
33 collect a WSIRA for a period exceeding three years unless
34 the water or sewer corporation has filed for or is the
35 subject of a pending general rate proceeding; provided that
36 the WSIRA may be collected until the effective date of new
37 rate schedules established as a result of the new general
38 rate proceeding, or until the subject general rate
39 proceeding is otherwise decided or dismissed by issuance of
40 a commission order without new rates being established.

41 4. Except as provided in this subsection, in no event
42 shall a water or sewer corporation collect a WSIRA if also
43 collecting revenues from a commission approved
44 infrastructure system replacement surcharge as provided in
45 sections 393.1000 to 393.1006. In the event a water or
46 sewer corporation is collecting infrastructure system

47 replacement surcharge revenues under sections 393.1000 to
48 393.1006, that was approved prior to August 28, 2021, when
49 the initial WSIRA is filed, the approved infrastructure
50 system replacement surcharge revenues shall be included in
51 the new WSIRA filing.

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.

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

12 (3) Three months prior to a water or sewer corporation
13 filing a petition to establish a WSIRA, it shall also file
14 with the commission a five-year capital expenditure plan
15 unless such a plan has already been submitted during the
16 current calendar year. Thereafter, the water or sewer
17 commission shall annually file with the commission a five-
18 year capital expenditure plan by January thirty-first of
19 each year the corporation is collecting revenues through a
20 WSIRA.

21 2. (1) When a petition, along with any associated
22 proposed rate schedules, is filed pursuant to the provisions
23 of sections 393.1503 to 393.1509, the commission shall
24 conduct an examination of the proposed WSIRA.

25 (2) The staff of the commission may examine
26 information of the water or sewer corporation to confirm
27 that the underlying costs are in accordance with the
28 provisions of sections 393.1503 to 393.1509, and to confirm

29 proper calculation of the proposed WSIRA, and may submit a
30 report regarding its examination to the commission not later
31 than ninety days after the petition is filed. No other
32 revenue requirement or ratemaking issues shall be examined
33 in consideration of the petition or associated proposed
34 WSIRA rate schedules filed pursuant to the provisions of
35 sections 393.1503 to 393.1509.

36 (3) The commission may hold a hearing on the petition
37 and any associated WSIRA rate schedule and shall issue an
38 order to become effective not later than one hundred eighty
39 days after the petition is filed.

40 (4) If the commission finds that a petition complies
41 with the requirements of sections 393.1503 to 393.1509, the
42 commission shall enter an order authorizing the water or
43 sewer corporation to implement a WSIRA that is sufficient to
44 recover appropriate pretax revenues, as determined by the
45 commission pursuant to the provisions of sections 393.1503
46 to 393.1509.

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

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

52 (1) The current state, federal, and local income or
53 excise tax rates, including any income tax deductions and
54 net operating loss carryforwards associated with the
55 eligible infrastructure system projects;

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

59 (3) The actual cost rates for the water or sewer
60 corporation's debt and preferred stock as determined during

61 the most recent general rate proceeding of the water or
62 sewer corporation;

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

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

68 (6) The current depreciation rates applicable to the
69 eligible infrastructure system projects;

70 (7) In the event information described in subdivisions
71 (2), (3), and (4) of this subsection is unavailable and the
72 commission is not provided with such information on an
73 agreed-upon basis, the commission shall utilize the overall
74 pretax weighted average cost of capital last authorized for
75 the water or sewer corporation in a general rate proceeding
76 regarding a WSIRA or an infrastructure system replacement
77 surcharge under sections 393.1000 to 393.1006.

78 5. (1) A WSIRA shall be calculated based upon the
79 amount of infrastructure system project costs that are
80 eligible for recovery during the period in which the WSIRA
81 will be in effect and upon the applicable tariff rate group
82 billing determinants utilized in designing the water or
83 sewer corporation's customer rates in its most recent
84 general rate proceeding and allocated in a manner consistent
85 with the rate design methodology utilized to develop the
86 water or sewer corporation's base rates resulting from its
87 most recent general rate proceeding.

88 (2) At the end of each twelve-month calendar period
89 that a WSIRA is in effect, the water or sewer corporation
90 shall reconcile the differences between the revenues
91 resulting from a WSIRA and the appropriate pretax revenues
92 as found by the commission for that period and shall submit
93 the reconciliation and a proposed WSIRA to the commission

94 for approval to recover or credit the difference, as
95 appropriate, through a WSIRA.

96 6. (1) A water or sewer corporation that has
97 implemented a WSIRA pursuant to the provisions of sections
98 393.1503 to 393.1509 shall file revised WSIRA schedules to
99 reset the WSIRA to zero when new base rates and charges
100 become effective for the water or sewer corporation
101 following a commission order establishing customer rates in
102 a general rate proceeding that incorporates in the utility's
103 base rates, subject to subsections 8 and 9 of this section,
104 eligible costs previously reflected in a WSIRA.

105 (2) Upon the inclusion in a water or sewer
106 corporation's base rates, subject to subsections 8 and 9 of
107 this section, of eligible costs previously reflected in a
108 WSIRA, the water or sewer corporation shall immediately
109 thereafter reconcile any previously unreconciled WSIRA
110 revenues as necessary to ensure that revenues resulting from
111 the WSIRA match as closely as possible the appropriate
112 pretax revenues as found by the commission for that period.

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

118 8. Commission approval of a petition, and any
119 associated rate schedules, to establish or change a WSIRA
120 pursuant to the provisions of sections 393.1503 to 393.1509
121 shall in no way be binding upon the commission in
122 determining the ratemaking treatment to be applied to
123 eligible infrastructure system projects during a subsequent
124 general rate proceeding when the commission may undertake to
125 review the prudence of such costs. In the event the
126 commission disallows, during a subsequent general rate

127 proceeding, recovery of costs associated with eligible
128 infrastructure system projects previously included in a
129 WSIRA, the water or sewer corporation shall offset its WSIRA
130 in the future as necessary to recognize and account for any
131 such overcollections.

132 9. Nothing contained in sections 393.1503 to 393.1509
133 shall be construed to impair in any way the authority of the
134 commission to review the reasonableness of the rates or
135 charges of a water or sewer corporation, including review of
136 the prudence of eligible infrastructure system replacements
137 made by a water or sewer corporation, pursuant to the
138 provisions of section 386.390.

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