

FIRST REGULAR SESSION

SENATE BILL NO. 367

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR MCCREERY.

0355S.02I

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 393.320, RSMo, and to enact in lieu thereof one new section relating to acquisition of small water utilities.

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

Section A. Section 393.320, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 393.320, to read as follows:

393.320. 1. As used in this section, the following terms mean:

(1) "Large water public utility", a public utility that regularly provides water service or sewer service to more than eight thousand customer connections and that provides safe and adequate service but shall not include a sewer district established under Section 30(a), Article VI of the Missouri Constitution, sewer districts established under the provisions of chapter 204, 249, or 250, public water supply districts established under the provisions of chapter 247, or municipalities that own water or sewer systems;

(2) "Small water utility", a public utility that regularly provides water service or sewer service to eight thousand or fewer customer connections; a water district established under the provisions of chapter 247 that regularly provides water or sewer service to eight thousand or fewer customer connections; a sewer district established

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

19 under the provisions of chapter 204, 249, or 250 that
20 regularly provides sewer service to eight thousand or fewer
21 customer connections; or a water system or sewer system
22 owned by a municipality that regularly provides water
23 service or sewer service to eight thousand or fewer customer
24 connections; and all other entities that regularly provide
25 water service or sewer service to eight thousand or fewer
26 customer connections.

27 2. The procedures contained in this section may be
28 chosen by a large water public utility, and if so chosen
29 **[shall] may** be used by the public service commission to
30 establish the ratemaking rate base of a small water utility
31 during an acquisition, **provided that the public service**
32 **commission independently concludes that a certificate of**
33 **convenience and necessity should be granted pursuant to**
34 **section 393.170, unless the public service commission finds**
35 **that the application of this section results in rates that**
36 **are unjust and unreasonable.**

37 3. (1) An appraisal shall be performed by three
38 appraisers. One appraiser shall be appointed by the small
39 water utility, one appraiser shall be appointed by the large
40 water public utility, and the third appraiser shall be
41 appointed by the **[two appraisers so appointed] the public**
42 **service commission or the staff of the public service**
43 **commission upon delegation.** Each of the appraisers shall be
44 a disinterested person who is a certified general appraiser
45 under chapter 339.

46 (2) The appraisers shall:

47 (a) Jointly prepare **[an] a fair and independent**
48 appraisal of the fair market value of the water system
49 and/or sewer system, **along with supporting rationale.** The
50 determination of fair market value shall be in accordance

51 with Missouri law and with the Uniform Standards of
52 Professional Appraisal Practice; and

53 (b) Return **only** their **final** appraisal, in writing **and**
54 **at the same time**, to the small water utility and large water
55 public utility in a reasonable and timely manner.

56 (3) If all three appraisers cannot agree as to the
57 appraised value, the appraisal, when signed by two of the
58 appraisers, constitutes a good and valid appraisal.

59 4. Nothing in this section shall prohibit a party from
60 declining to proceed with an acquisition or be deemed as
61 establishing the final purchase price of an acquisition.

62 5. (1) The lesser of the purchase price or the
63 appraised value, together with the reasonable and prudent
64 transaction, closing, and transition costs incurred by the
65 large water public utility, **[shall] may** constitute the
66 ratemaking rate base for the small water utility as acquired
67 by the acquiring large water public utility; provided,
68 however, that if the small water utility is a public utility
69 subject to chapter 386 and the small water utility completed
70 a rate case prior to the acquisition, the public service
71 commission may select as the ratemaking rate base for the
72 small water utility as acquired by the acquiring large water
73 public utility a ratemaking rate base in between:

74 (a) The lesser of the purchase price or the appraised
75 value, together with the reasonable and prudent transaction,
76 closing, and transition costs incurred by the large water
77 public utility unless such transaction, closing, and
78 transition costs are elsewhere recoverable in rates; and

79 (b) The ratemaking rate base of the small water
80 utility as ordered by the public service commission in the
81 small water utility's last previous rate case as adjusted by
82 improvements and depreciation reserve since the previous

83 rate case together with the transaction, closing, and
84 transition costs incurred by the large water public utility
85 unless such transaction, closing, and transition costs are
86 elsewhere recoverable in rates. If the small water utility
87 and large water public utility proceed with the sale, any
88 past-due fees due to the state from the small water utility
89 or its customers under chapter 640 or 644 shall be resolved
90 prior to the transfer of ownership or the liability for such
91 past-due fees becomes the responsibility of the large water
92 public utility. Such fees shall not be included in the
93 large water public utility's rate base.

94 (2) The public service commission shall issue its
95 decision establishing the ratemaking rate base of the small
96 water utility in its order approving the acquisition.

97 6. Upon the date of the acquisition of a small water
98 utility by a large water public utility, whether or not the
99 procedures for establishing ratemaking rate base provided by
100 this section have been utilized, the small water utility
101 shall, for ratemaking purposes, become part of an existing
102 service area, as defined by the public service commission,
103 of the acquiring large water public utility that is either
104 contiguous to the small water utility, the closest
105 geographically to the small water utility, or best suited
106 due to operational or other factors. This consolidation
107 shall be approved by the public service commission in its
108 order approving the acquisition.

109 7. Any new permit issued pursuant to chapters 640 and
110 644, when a small water utility is acquired by a large water
111 public utility, shall include a plan to resolve all
112 outstanding permit compliance issues. After the transfer of
113 ownership, the acquiring large public water utility shall

114 continue providing service to all customers that were served
115 by the small water utility at the time of sale.

116 8. This section is intended for the specific and
117 unique purpose of determining the ratemaking rate base of
118 small water utilities and shall be exclusively applied to
119 large water public utilities in the acquisition of a small
120 water utility. **A large water public utility's choice to**
121 **comply with the provisions of this section does not**
122 **automatically ensure that the transaction is in the public**
123 **interest. The public service commission shall independently**
124 **determine whether the acquisition is in the public interest,**
125 **regardless of whether the matter has been put to a vote of**
126 **the small water utility's ratepayers. If the acquisition of**
127 **a small water utility is put to a vote pursuant to any**
128 **provision of current law, the ballot shall indicate that the**
129 **public service commission shall independently determine**
130 **whether the acquisition of a small water utility is in the**
131 **public interest regardless of the vote of the small water**
132 **utility's ratepayers. This section is not intended to apply**
133 beyond its specific purpose and shall not be construed in
134 any manner to apply to electric corporations, natural gas
135 corporations, or any other utility regulated by the public
136 service commission.

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