

SECOND REGULAR SESSION

SENATE BILL NO. 1131

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR GIBBONS.

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TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 386.025, 393.295, 393.700, 393.705, 393.715, 393.725, 393.740 and 393.765, RSMo, relating to joint municipal utility projects, and to enact in lieu thereof five new sections relating to the same subject.

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

Section A. Sections 386.025, 393.295, 393.700, 393.705, 393.715, 393.725, 393.740 and 393.765, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 393.700, 393.705, 393.715, 393.725 and 393.740, to read as follows:

393.700. Sections 393.700 to 393.770 [and section 386.025, RSMo,] shall be known as the "Joint Municipal Utility Commission Act".

393.705. As used in sections 393.700 to 393.770 [and sections 386.025, RSMo, and 393.295], the following terms shall, unless the context clearly indicates otherwise, have the following meanings:

(1) "Bond" or "bonds", any bonds, interim certificates, notes, debentures or other obligations of a commission issued pursuant to sections 393.700 to 393.770 [and sections 386.025, RSMo, and 393.295];

(2) "Commission", any joint municipal utility commission established by a joint contract [under]

pursuant to sections 393.700 to 393.770 [and sections 386.025, RSMo, and 393.295];

(3) "Contracting municipality", each municipality which is a party to a joint contract

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

establishing a commission [under] **pursuant to** sections 393.700 to 393.770 [and sections 386.025, RSMo, and 393.295], a water supply district formed [under] **pursuant to** the provisions of chapter 247, RSMo, or a sewer district formed pursuant to the provisions of chapter 204, RSMo, or chapter 249, RSMo;

(4) "Joint contract", the contract entered into among or by and between two or more of the following contracting entities for the purpose of establishing a commission:

- (a) Municipalities;
- (b) Public water supply districts;
- (c) Sewer districts;
- (d) Nonprofit water companies; or
- (e) Nonprofit sewer companies;

(5) "Person", a natural person, cooperative or private corporation, association, firm, partnership, or business trust of any nature whatsoever, organized and existing [under] **pursuant to** the laws of any state or of the United States and any municipality or other municipal corporation, governmental unit, or public corporation created under the laws of this state or the United States, and any person, board, or other body declared by the laws of any state or the United States to be a department, agency or instrumentality thereof;

(6) "Project", the purchasing, construction, extending or improving of any revenue-producing water, sewage, gas or electric light works, heating or power plants, including all real and personal property of any nature whatsoever to be used in connection therewith, together with all parts thereof and appurtenances thereto, used or useful in the generation, production, transmission, distribution excluding retail sales, purchase, sale, exchange, transport and treatment of sewage or interchange of water, sewage, electric power and energy, or any interest therein or right to capacity thereof and the acquisition of fuel of any kind for any such purposes.

393.715. 1. The general powers of a commission to the extent provided in section 393.710 [herein and subject to the provisions of section 393.765 herein] shall include the power to:

(1) Plan, develop, acquire, construct, reconstruct, operate, manage, dispose of, participate in, maintain, repair, extend or improve one or more projects, either exclusively or jointly or by participation with electric cooperative associations, municipally owned or public utilities or acquire any interest in or any rights to capacity of a project, within or outside the state, and act as an agent, or designate one or more other persons participating in a project to act as its agent, in connection with the planning, acquisition, construction, operation, maintenance, repair, extension or improvement of such project;

(2) Acquire, sell, distribute and process fuels necessary to the production of electric power and energy; provided, however, the commission shall not have the power or authority to erect, own, use or maintain a transmission line which is parallel or generally parallel to another

transmission line in place within a distance of two miles, which serves the same general area sought to be served by the commission unless the public service commission finds that it is not feasible to utilize the transmission line which is in place;

(3) Acquire by purchase or lease, construct, install, and operate reservoirs, pipelines, wells, check dams, pumping stations, water purification plants, and other facilities for the production, wholesale distribution, and utilization of water and to own and hold such real and personal property as may be necessary to carry out the purposes of its organization; provided, however, that a commission shall not sell or distribute water, at retail or wholesale, within the certificated area of a water corporation which is subject to the jurisdiction of the public service commission unless the sale or distribution of water is within the boundaries of a public water supply district or municipality which is a contracting municipality in the commission and the commission has obtained the approval of the public service commission prior to commencing such said sale or distribution of water;

(4) Acquire by purchase or lease, construct, install, and operate lagoons, pipelines, wells, pumping stations, sewage treatment plants and other facilities for the treatment and transportation of sewage and to own and hold such real and personal property as may be necessary to carry out the purposes of its organization;

(5) Enter into operating, franchises, exchange, interchange, pooling, wheeling, transmission and other similar agreements with any person;

(6) Make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission;

(7) Employ agents and employees;

(8) Contract with any person, within or outside the state, for the construction of any project or for any interest therein or any right to capacity thereof, without advertising for bids, preparing final plans and specifications in advance of construction, or securing performance and payment of bonds, except to the extent and on such terms as its board of directors shall determine. Any contract entered into pursuant to this subdivision shall contain a provision that the requirements of sections 290.210 to 290.340, RSMo, shall apply;

(9) Purchase, sell, exchange, transmit, treat, dispose or distribute water, sewage, gas, heat or electric power and energy, or any by-product resulting therefrom, within and outside the state, in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, and to enter into agreements with any person with respect to such purchase, sale, exchange, treatment, disposal or transmission, on such terms and for such period of time as its board of directors shall determine.

A commission may not sell or distribute water, gas, heat or power and energy, or sell sewage service at retail to ultimate customers outside the boundary limits of its contracting municipalities except pursuant to subsection 2 or 3 of this section;

(10) Acquire, own, hold, use, lease, as lessor or lessee, sell or otherwise dispose of, mortgage, pledge, or grant a security interest in any real or personal property, commodity or service or interest therein;

(11) Exercise the powers of eminent domain for public use as provided in chapter 523, RSMo, except that the power of eminent domain shall not be exercised against any electric cooperative association, municipally owned or public utility;

(12) Incur debts, liabilities or obligations including the issuance of bonds pursuant to the authority granted in section 27 of article VI of the Missouri Constitution;

(13) Sue and be sued in its own name;

(14) Have and use a corporate seal;

(15) Fix, maintain and revise fees, rates, rents and charges for functions, services, facilities or commodities provided by the commission;

(16) Make, and from time to time, amend and repeal, bylaws, rules and regulations not inconsistent with this section to carry into effect the powers and purposes of the commission;

(17) Notwithstanding the provisions of any other law, invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, including the proceeds from the sale of any bonds, in such obligations, securities and other investments as the commission deems proper;

(18) Join organizations, membership in which is deemed by the board of directors to be beneficial to accomplishment of the commission's purposes;

(19) Exercise any other powers which are deemed necessary and convenient by the commission to effectuate the purposes of the commission; and

(20) Do and perform any acts and things authorized by this section under, through or by means of an agent or by contracts with any person.

2. When a municipality purchases a privately owned water utility and a commission is created pursuant to sections 393.700 to 393.770, the commission may continue to serve those locations previously receiving water from the private utility even though the location receives such service outside the geographical area of the municipalities forming the commission. New water service may be provided in such areas if the site to receive such service is located within one-fourth of a mile from a site serviced by the privately owned water utility.

3. When a commission created by any of the contracting entities listed in subdivision (4) of section 393.705 becomes a successor to any nonprofit water corporation, nonprofit sewer corporation or other nonprofit agency or entity organized to provide water or sewer service, the commission may continue to serve, as well as provide new service to, those locations and areas previously receiving water or sewer service from such nonprofit entity, regardless of whether or not such location receives such service outside the geographical service area of the contracting entities forming such commission; provided that such locations and areas previously receiving

water and sewer service from such nonprofit entity are not located within:

(1) Any county of the first classification with a population of more than six hundred thousand and less than nine hundred thousand;

(2) The boundaries of any sewer district established pursuant to article VI, section 30(a) of the Missouri Constitution; or

(3) The certificated area of a water or sewer corporation that is subject to the jurisdiction of the public service commission.

393.725. 1. Bonds issued pursuant to sections 393.700 to 393.770 by a commission shall be payable, as to the principal and interest, solely from the net revenues derived by the commission from the operation of the commission's project or projects, after providing for the costs of operation and maintenance of the commission's project or projects, or from any other funds made available to the commission from sources other than from proceeds of taxation.

2. Each bond issued pursuant to the provisions of sections 393.700 to 393.770 shall contain a statement that such bond is not an indebtedness of the state, or of any political subdivision thereof, other than the joint municipal utility commission, or of the contracting municipalities, the contracting public water supply districts or the contracting sewer districts, but shall be special obligations of the commission only and that neither the faith and credit nor the taxing power of the state or of any political subdivision thereof, or of the contracting municipalities, contracting public water supply districts or contracting sewer districts is pledged to the payment of or the interest on such bonds. The bonds shall not be deemed to be an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness. Neither the members of the board of directors of a commission nor any person executing the bonds shall be liable personally on the bonds by reason of the lawful issuance thereof.

3. A commission, subject to the provisions of section 393.760, may from time to time issue its bonds in such principal amounts as it deems necessary to provide sufficient funds to purchase, construct, extend or improve a project, including the establishment or increase of reserves, interest accrued during construction of such project and for a period not exceeding one year after the completion of construction of such project, and the payment of all other costs or expenses of the commission incident to and necessary or convenient to carry out its corporate purposes and powers.

4. Bonds of a commission shall be authorized by resolution of the board of directors and may be issued under such resolution or under a trust indenture or other security instrument, as authorized by the resolution, in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon, registered or both, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium

of payment, at such place or places within or without the state, and be subject to such terms of redemption, with or without premium, as such resolution, trust indenture or other security instrument may provide, and without limitation by the provisions of any other law limiting amounts, maturities or interest rates.

5. The bonds shall be sold at public sale [and in the event of a rejection of all bids by the commission, the bonds may be sold] **or** at private sale as the commission may provide and at such price or prices as the commission shall determine [or for a joint municipal utility commission within a fifteen-county area being served with water from a lake constructed by the U.S. Army Corps of Engineers and located north of the Missouri River, if the commission determines it is in the best interest of the commission, at private sale. The reason or reasons why private sale is in the best interest of the people served shall be set forth in the order or resolution authorizing the private sale]. The decision of the commission shall be conclusive.

6. The bonds may be signed by manual or facsimile signatures as determined by resolution of the board. In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such obligations, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officers had remained in office until such delivery.

7. Pending preparation of definitive bonds, a commission may issue temporary bonds which shall be exchanged for the definitive bonds when such bonds shall have been executed and are available for delivery.

8. All bonds issued under the provisions of sections 393.700 to 393.770 shall be negotiable instruments [under] **pursuant to** the provisions of the uniform commercial code of the state.

393.740. 1. All bonds issued pursuant to sections 393.700 to 393.770 and all income or interest thereon shall be exempt from all state taxes, except estate and transfer taxes.

2. All property, real and tangible personal, **except for properties acquired exclusively for water supply districts**, acquired by the bonds issued pursuant to sections 393.700 and 393.770 or otherwise acquired by a commission shall be subject to taxation for state, county, and municipal and other local purposes **only** to the same extent as [bridge and public utility companies under the provisions of sections 153.030, RSMo, and 138.420, RSMo, except for those properties acquired exclusively for water supply districts] **if such property was owned directly by each participating municipality in proportion to the percentage of each municipality's interest or participation in the facility or property.**

[386.025. Any joint municipal utility commission established by contract for the purpose of owning, operating, controlling or managing all or part of any gas or electric light works, heating or power plants, or gas or electrical production, distribution or transmission facilities shall be considered a gas corporation or electrical corporation, as the case may be, as those terms are defined in this chapter.]

[393.295. All provisions of this chapter and chapter 386, RSMo, concerning court proceedings and the jurisdiction, supervision, powers and duties of the public service commission with reference to gas corporations and electrical corporations, including, but not limiting by enumeration those provisions concerning supervision, investigations, complaints, hearings, reports, approval of certificates of franchises, granting of certificates, approval of issues of stocks, bonds, notes and other evidence of indebtedness, keeping of accounts, fixing of just and reasonable rates, which shall be based on costs associated with any property of such corporations, shall be and are hereby made fully applicable to any joint municipal utility commission which owns, operates, controls or manages all or part of any gas or electric light works, heating or power plants, electrical energy resources or gas or electrical production, distribution or transmission facilities in this state. Nothing contained herein, however, shall affect the rights, privileges or duties of existing corporations pursuant to this chapter, including the construction of facilities within an existing certificated area.]

[393.765. All provisions of chapters 386, RSMo, and 393 in reference to the jurisdiction, supervision, powers and duties of the public service commission with reference to gas and electrical corporations are hereby made applicable to any commission proposed to be created pursuant to sections 393.700 to 393.770 which commission proposes to own, operate, control or manage any gas or electrical light works, heating or power plant in this state, and such provisions shall have full application thereto.]

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