

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 142

AN ACT

To repeal sections 386.370, 393.190, 393.320, 393.760, and 393.1075, RSMo, and to enact in lieu thereof five new sections relating to utilities, with a penalty provision.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 386.370, 393.190, 393.320, 393.760, and
2 393.1075, RSMo, are repealed and five new sections enacted in
3 lieu thereof, to be known as sections 386.370, 393.190, 393.320,
4 393.760, and 393.1075, to read as follows:

5 386.370. 1. The commission shall, prior to the beginning
6 of each fiscal year beginning with the fiscal year commencing on
7 July 1, 1947, make an estimate of the expenses to be incurred by
8 it during such fiscal year reasonably attributable to the
9 regulation of public utilities as provided in chapters 386, 392
10 and 393 and shall also separately estimate the amount of such
11 expenses directly attributable to such regulation of each of the
12 following groups of public utilities: Electrical corporations,
13 gas corporations, water corporations, heating companies and
14 telephone corporations, telegraph corporations, sewer
15 corporations, and any other public utility as defined in section
16 386.020, as well as the amount of such expenses not directly

1 attributable to any such group. For purposes of this section,
2 water corporations and sewer corporations will be combined and
3 considered one group of public utilities.

4 2. The commission shall allocate to each such group of
5 public utilities the estimated expenses directly attributable to
6 the regulation of such group and an amount equal to such
7 proportion of the estimated expenses not directly attributable to
8 any group as the gross intrastate operating revenues of such
9 group during the preceding calendar year bears to the total gross
10 intrastate operating revenues of all public utilities subject to
11 the jurisdiction of the commission, as aforesaid, during such
12 calendar year. The commission shall then assess the amount so
13 allocated to each group of public utilities, subject to reduction
14 as herein provided, to the public utilities in such group in
15 proportion to their respective gross intrastate operating
16 revenues during the preceding calendar year, except that the
17 total amount so assessed to all such public utilities shall not
18 exceed one-fourth of one percent of the total gross intrastate
19 operating revenues of all utilities subject to the jurisdiction
20 of the commission.

21 3. The commission shall render a statement of such
22 assessment to each such public utility on or before July first
23 and the amount so assessed to each such public utility shall be
24 paid by it to the director of revenue in full on or before July
25 fifteenth next following the rendition of such statement, except
26 that any such public utility may at its election pay such
27 assessment in four equal installments not later than the
28 following dates next following the rendition of said statement,

1 to wit: July fifteenth, October fifteenth, January fifteenth and
2 April fifteenth. The director of revenue shall remit such
3 payments to the state treasurer.

4 4. The state treasurer shall credit such payments to a
5 special fund, which is hereby created, to be known as "The Public
6 Service Commission Fund", which fund, or its successor fund
7 created pursuant to section 33.571, shall be devoted solely to
8 the payment of expenditures actually incurred by the commission
9 and attributable to the regulation of such public utilities
10 subject to the jurisdiction of the commission, as aforesaid. Any
11 amount remaining in such special fund or its successor fund at
12 the end of any fiscal year shall not revert to the general
13 revenue fund, but shall be applicable by appropriation of the
14 general assembly to the payment of such expenditures of the
15 commission in the succeeding fiscal year and shall be applied by
16 the commission to the reduction of the amount to be assessed to
17 such public utilities in such succeeding fiscal year, such
18 reduction to be allocated to each group of public utilities in
19 proportion to the respective gross intrastate operating revenues
20 of the respective groups during the preceding calendar year.

21 5. In order to enable the commission to make the
22 allocations and assessments herein provided for, each public
23 utility subject to the jurisdiction of the commission as
24 aforesaid shall file with the commission, within ten days after
25 August 28, 1996, and thereafter on or before March thirty-first
26 of each year, a statement under oath showing its gross intrastate
27 operating revenues for the preceding calendar year, and if any
28 public utility shall fail to file such statement within the time

1 aforesaid the commission shall estimate such revenue which
2 estimate shall be binding on such public utility for the purpose
3 of this section.

4 393.190. 1. No gas corporation, electrical corporation,
5 water corporation or sewer corporation shall hereafter sell,
6 assign, lease, transfer, mortgage or otherwise dispose of or
7 encumber the whole or any part of its franchise, works or system,
8 necessary or useful in the performance of its duties to the
9 public, nor by any means, direct or indirect, merge or
10 consolidate such works or system, or franchises, or any part
11 thereof, with any other corporation, person or public utility,
12 without having first secured from the commission an order
13 authorizing it so to do. Every such sale, assignment, lease,
14 transfer, mortgage, disposition, encumbrance, merger or
15 consolidation made other than in accordance with the order of the
16 commission authorizing same shall be void. The permission and
17 approval of the commission to the exercise of a franchise or
18 permit under this chapter, or the sale, assignment, lease,
19 transfer, mortgage or other disposition or encumbrance of a
20 franchise or permit under this section shall not be construed to
21 revive or validate any lapsed or invalid franchise or permit, or
22 to enlarge or add to the powers or privileges contained in the
23 grant of any franchise or permit, or to waive any forfeiture.
24 Any person seeking any order under this subsection authorizing
25 the sale, assignment, lease, transfer, merger, consolidation or
26 other disposition, direct or indirect, of any gas corporation,
27 electrical corporation, water corporation, or sewer corporation,
28 shall, at the time of application for any such order, file with

1 the commission a statement, in such form, manner and detail as
2 the commission shall require, as to what, if any, impact such
3 sale, assignment, lease, transfer, merger, consolidation, or
4 other disposition will have on the tax revenues of the political
5 subdivisions in which any structures, facilities or equipment of
6 the corporations involved in such disposition are located. The
7 commission shall send a copy of all information obtained by it as
8 to what, if any, impact such sale, assignment, lease, transfer,
9 merger, consolidation or other disposition will have on the tax
10 revenues of various political subdivisions to the county clerk of
11 each county in which any portion of a political subdivision which
12 will be affected by such disposition is located. Nothing in this
13 subsection contained shall be construed to prevent the sale,
14 assignment, lease or other disposition by any corporation, person
15 or public utility of a class designated in this subsection of
16 property which is not necessary or useful in the performance of
17 its duties to the public, and any sale of its property by such
18 corporation, person or public utility shall be conclusively
19 presumed to have been of property which is not useful or
20 necessary in the performance of its duties to the public, as to
21 any purchaser of such property in good faith for value.

22 2. No such corporation shall directly or indirectly acquire
23 the stock or bonds of any other corporation incorporated for, or
24 engaged in, the same or a similar business, or proposing to
25 operate or operating under a franchise from the same or any other
26 municipality; neither shall any street railroad corporation
27 acquire the stock or bonds of any electrical corporation, unless,
28 in either case, authorized so to do by the commission. Save

1 where stock shall be transferred or held for the purpose of
2 collateral security, no stock corporation of any description,
3 domestic or foreign, other than a gas corporation, electrical
4 corporation, water corporation, sewer corporation or street
5 railroad corporation, shall, without the consent of the
6 commission, purchase or acquire, take or hold, more than ten
7 percent of the total capital stock issued by any gas corporation,
8 electrical corporation, water corporation or sewer corporation
9 organized or existing under or by virtue of the laws of this
10 state, except that a corporation now lawfully holding a majority
11 of the capital stock of any gas corporation, electrical
12 corporation, water corporation or sewer corporation may, with the
13 consent of the commission, acquire and hold the remainder of the
14 capital stock of such gas corporation, electrical corporation,
15 water corporation or sewer corporation, or any portion thereof.

16 3. No person, public utility, or other corporation shall
17 purchase or acquire, take, or hold fifty percent or more of the
18 total capital stock issued by any sewer or water corporation that
19 regularly provides service to eight thousand or fewer customers
20 without notifying the commission within thirty days of said
21 acquisition.

22 4. Notwithstanding subsection 3 of this section, any sewer
23 or water corporation that regularly provides service to eight
24 thousand or fewer customers that is delinquent in filing its
25 public service commission annual report or is six months or more
26 delinquent in paying its public service commission assessment or
27 is in violation of any other public service commission or
28 Missouri department of natural resources rules or regulations

1 shall not sell or transfer fifty percent or more of its total
2 capital stock issued without the consent of the commission.

3 5. Nothing herein contained shall be construed to prevent
4 the holding of stock heretofore lawfully acquired, or to prevent
5 upon the surrender or exchange of said stock pursuant to a
6 reorganization plan, the purchase, acquisition, taking or holding
7 of a proportionate amount of stock of any new corporation
8 organized to take over, at foreclosure or other sale, the
9 property of any corporation whose stock has been thus surrendered
10 or exchanged. Every contract, assignment, transfer or agreement
11 for transfer of any stock by or through any person or corporation
12 to any corporation in violation of any provision of this chapter
13 shall be void and of no effect, and no such transfer or
14 assignment shall be made upon the books of any such gas
15 corporation, electrical corporation, water corporation or sewer
16 corporation or shall be recognized as effective for any purpose.

17 393.320. 1. As used in this section, the following terms
18 mean:

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

28 (2) "Small water utility", a public utility that regularly

1 provides water service or sewer service to eight thousand or
2 fewer customer connections; a water district established under
3 the provisions of chapter 247 that regularly provides water or
4 sewer service to eight thousand or fewer customer connections; a
5 sewer district established under the provisions of chapter 204,
6 249, or 250 that regularly provides sewer service to eight
7 thousand or fewer customer connections; or a water system or
8 sewer system owned by a municipality that regularly provides
9 water service or sewer service to eight thousand or fewer
10 customer connections; and all other entities that regularly
11 provide water service or sewer service to eight thousand or fewer
12 customer connections.

13 2. The procedures contained in this section may be chosen
14 by a large water public utility, and if so chosen shall be used
15 by the public service commission to establish the ratemaking rate
16 base of a small water utility during an acquisition.

17 3. (1) An appraisal shall be performed by three
18 appraisers. One appraiser shall be appointed by the small water
19 utility, one appraiser shall be appointed by the large water
20 public utility, and the third appraiser shall be appointed by the
21 two appraisers so appointed. Each of the appraisers shall be a
22 disinterested person who is a certified general appraiser under
23 chapter 339.

24 (2) The appraisers shall:

25 (a) Jointly prepare an appraisal of the fair market value
26 of the water system and/or sewer system. The determination of
27 fair market value shall be in accordance with Missouri law and
28 with the Uniform Standards of Professional Appraisal Practice;

1 and

2 (b) Return their appraisal, in writing, to the small water
3 utility and large water public utility in a reasonable and timely
4 manner.

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

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

11 5. (1) The lesser of the purchase price or the appraised
12 value, together with the reasonable and prudent transaction,
13 closing, and transition costs incurred by the large water public
14 utility, shall constitute the ratemaking rate base for the small
15 water utility as acquired by the acquiring large water public
16 utility; provided, however, that if the small water utility is a
17 public utility subject to chapter 386 and the small water utility
18 completed a rate case prior to the acquisition, the public
19 service commission may select as the ratemaking rate base for the
20 small water utility as acquired by the acquiring large water
21 public utility a ratemaking rate base in between:

22 (a) The lesser of the purchase price or the appraised
23 value, together with the reasonable and prudent transaction,
24 closing, and transition costs incurred by the large water public
25 utility unless such transaction, closing, and transition costs
26 are elsewhere recoverable in rates; and

27 (b) The ratemaking rate base of the small water utility as
28 ordered by the public service commission in the small water

1 utility's last previous rate case as adjusted by improvements and
2 depreciation reserve since the previous rate case together with
3 the transaction, closing, and transition costs incurred by the
4 large water public utility unless such transaction, closing, and
5 transition costs are elsewhere recoverable in rates. If the
6 small water utility and large water public utility proceed with
7 the sale, any past-due fees due to the state from the small water
8 utility or its customers under chapter 640 or 644 shall be
9 resolved prior to the transfer of ownership or the liability for
10 such past-due fees becomes the responsibility of the large water
11 public utility. Such fees shall not be included in the large
12 water public utility's rate base.

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

16 6. Upon the date of the acquisition of a small water
17 utility by a large water public utility, whether or not the
18 procedures for establishing ratemaking rate base provided by this
19 section have been utilized, the small water utility shall, for
20 ratemaking purposes, become part of an existing service area, as
21 defined by the public service commission, of the acquiring large
22 water public utility that is either contiguous to the small water
23 utility, the closest geographically to the small water utility,
24 or best suited due to operational or other factors. This
25 consolidation shall be approved by the public service commission
26 in its order approving the acquisition.

27 7. Any new permit issued pursuant to chapters 640 and 644,
28 when a small water utility is acquired by a large water public

1 utility, shall include a plan to resolve all outstanding permit
2 compliance issues. After the transfer of ownership, the
3 acquiring large public water utility shall continue providing
4 service to all customers that were served by the small water
5 utility at the time of sale.

6 [7.] 8. This section is intended for the specific and
7 unique purpose of determining the ratemaking rate base of small
8 water utilities and shall be exclusively applied to large water
9 public utilities in the acquisition of a small water utility.
10 This section is not intended to apply beyond its specific purpose
11 and shall not be construed in any manner to apply to electric
12 corporations, natural gas corporations, or any other utility
13 regulated by the public service commission.

14 393.760. 1. Each participating municipality shall, in
15 accordance with the provisions of chapter 115, order an election
16 to be held whereby the qualified electors in such participating
17 municipality shall approve or disapprove the issuance of its
18 bonds to finance its individual interest in the project. The
19 participating municipality may not order such an election until
20 it has received a report from an independent consulting engineer
21 as defined in section 327.181 for the purpose of determining the
22 economic and engineering feasibility of any proposed project the
23 costs of which are to be financed through the issuance of bonds.
24 The report of the consulting engineer shall be provided to and
25 approved by the legislative body and executive of each such
26 participating municipality and such report shall be open to
27 public inspection and shall be the subject of a public hearing in
28 each participating municipality. Notice of the time and place of

1 each such hearing shall be published in a daily newspaper of
2 general circulation within each such participating municipality.
3 Interested parties may appear and fully participate in such
4 hearings.

5 2. Each participating municipality shall notify the
6 election authority or authorities responsible for conducting
7 elections within such participating municipality in accordance
8 with chapter 115.

9 3. The question shall be submitted in substantially the
10 following form:

11 OFFICIAL BALLOT

12 Shall (name of participating municipality) issue its (type)
13 revenue bonds in an amount not to exceed \$.....
14 for the purpose of paying its share of the cost of participating
15 in (describe project)?

16 YES NO

17 If you are in favor of the resolution, place an "X" in the box
18 opposite "Yes".

19 If you are opposed to the question, place an "X" in the box
20 opposite "No".

21 4. If the issuance of the bonds is approved by at least a
22 majority of the qualified electors voting thereon in the
23 participating municipality, the participating municipality shall
24 declare the result of the election and cause the bonds to be
25 issued.

26 5. Each participating municipality shall bear all expenses
27 associated with the elections in such participating municipality.

28 6. [In lieu of the public voting procedure set forth in

1 subsections 1 to 5 of this section,] In the case of purchasing or
2 leasing, constructing, installing, and operating reservoirs,
3 pipelines, wells, check dams, pumping stations, water
4 purification plants, and other facilities for the production,
5 wholesale distribution, and utilization of water, the commission
6 may provide for a vote by the governing body of each contracting
7 municipality. Such vote shall require the approval of
8 three-quarters of all governing bodies of the contracting
9 municipalities. The commission may not order such a vote until
10 it has engaged and received a report from an independent
11 consulting engineer as defined in section 327.181 for the purpose
12 of determining the economic and engineering feasibility of any
13 proposed project the costs of which are to be financed through
14 the issuance of bonds. The report of the consulting engineer
15 shall be provided to and approved by the legislative body and
16 executive of each contracting municipality participating in the
17 project and such report shall be open to public inspection and
18 shall be the subject of a public hearing in each municipality
19 participating in the project. Notice of the time and place of
20 each such hearing shall be published in a daily newspaper of
21 general circulation within each municipality. Interested parties
22 may appear and fully participate in such hearings. Each
23 contracting municipality shall vote by ordinance or resolution
24 and such ordinance or resolution shall approve the issuance of
25 revenue bonds by the joint municipal water commission in an
26 amount not to exceed a specified amount.

27 393.1075. 1. This section shall be known as the "Missouri
28 Energy Efficiency Investment Act".

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

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

3 (2) "Demand response", measures that decrease peak demand
4 or shift demand to off-peak periods;

5 (3) "Demand-side program", any program conducted by the
6 utility to modify the net consumption of electricity on the
7 retail customer's side of the electric meter, including but not
8 limited to energy efficiency measures, load management, demand
9 response, and interruptible or curtailable load;

10 (4) "Energy efficiency", measures that reduce the amount of
11 electricity required to achieve a given end use;

12 (5) "Interruptible or curtailable rate", a rate under which
13 a customer receives a reduced charge in exchange for agreeing to
14 allow the utility to withdraw the supply of electricity under
15 certain specified conditions;

16 (6) "Total resource cost test", a test that compares the
17 sum of avoided utility costs and avoided probable environmental
18 compliance costs to the sum of all incremental costs of end-use
19 measures that are implemented due to the program, as defined by
20 the commission in rules.

21 3. It shall be the policy of the state to value demand-side
22 investments equal to traditional investments in supply and
23 delivery infrastructure and allow recovery of all reasonable and
24 prudent costs of delivering cost-effective demand-side programs.
25 In support of this policy, the commission shall:

26 (1) Provide timely cost recovery for utilities;

27 (2) Ensure that utility financial incentives are aligned
28 with helping customers use energy more efficiently and in a

1 manner that sustains or enhances utility customers' incentives to
2 use energy more efficiently; and

3 (3) Provide timely earnings opportunities associated with
4 cost-effective measurable and verifiable efficiency savings.

5 4. The commission shall permit electric corporations to
6 implement commission-approved demand-side programs proposed
7 pursuant to this section with a goal of achieving all
8 cost-effective demand-side savings. Recovery for such programs
9 shall not be permitted unless the programs are approved by the
10 commission, result in energy or demand savings and are beneficial
11 to all customers in the customer class in which the programs are
12 proposed, regardless of whether the programs are utilized by all
13 customers. The commission shall consider the total resource cost
14 test a preferred cost-effectiveness test. Programs targeted to
15 low-income customers or general education campaigns do not need
16 to meet a cost-effectiveness test, so long as the commission
17 determines that the program or campaign is in the public
18 interest. Nothing herein shall preclude the approval of
19 demand-side programs that do not meet the test if the costs of
20 the program above the level determined to be cost-effective are
21 funded by the customers participating in the program or through
22 tax or other governmental credits or incentives specifically
23 designed for that purpose.

24 5. To comply with this section the commission may develop
25 cost recovery mechanisms to further encourage investments in
26 demand-side programs including, in combination and without
27 limitation: capitalization of investments in and expenditures
28 for demand-side programs, rate design modifications, accelerated

1 depreciation on demand-side investments, and allowing the utility
2 to retain a portion of the net benefits of a demand-side program
3 for its shareholders. In setting rates the commission shall
4 fairly apportion the costs and benefits of demand-side programs
5 to each customer class except as provided for in subsection 6 of
6 this section. Prior to approving a rate design modification
7 associated with demand-side cost recovery, the commission shall
8 conclude a docket studying the effects thereof and promulgate an
9 appropriate rule.

10 6. The commission may reduce or exempt allocation of
11 demand-side expenditures to low-income classes, as defined in an
12 appropriate rate proceeding, as a subclass of residential
13 service.

14 7. Provided that the customer has notified the electric
15 corporation that the customer elects not to participate in
16 demand-side measures offered by an electrical corporation, none
17 of the costs of demand-side measures of an electric corporation
18 offered under this section or by any other authority, and no
19 other charges implemented in accordance with this section, shall
20 be assigned to any account of any customer, including its
21 affiliates and subsidiaries, meeting one or more of the following
22 criteria:

23 (1) The customer has one or more accounts within the
24 service territory of the electrical corporation that has a demand
25 of five thousand kilowatts or more;

26 (2) The customer operates an interstate pipeline pumping
27 station, regardless of size; or

28 (3) The customer has accounts within the service territory

1 of the electrical corporation that have, in aggregate, a demand
2 of two thousand five hundred kilowatts or more, and the customer
3 has a comprehensive demand-side or energy efficiency program and
4 can demonstrate an achievement of savings at least equal to those
5 expected from utility-provided programs.

6 8. Customers that have notified the electrical corporation
7 that they do not wish to participate in demand-side programs
8 under this section shall not subsequently be eligible to
9 participate in demand-side programs except under guidelines
10 established by the commission in rulemaking.

11 9. Customers who participate in demand-side programs
12 initiated after August 1, 2009, shall be required to participate
13 in program funding for a period of time to be established by the
14 commission in rulemaking.

15 10. Customers electing not to participate in an electric
16 corporation's demand-side programs under this section shall still
17 be allowed to participate in interruptible or curtailable rate
18 schedules or tariffs offered by the electric corporation.

19 11. The commission shall provide oversight and may adopt
20 rules and procedures and approve corporation-specific settlements
21 and tariff provisions, independent evaluation of demand-side
22 programs, as necessary, to ensure that electric corporations can
23 achieve the goals of this section. Any rule or portion of a
24 rule, as that term is defined in section 536.010, that is created
25 under the authority delegated in this section shall become
26 effective only if it complies with and is subject to all of the
27 provisions of chapter 536 and, if applicable, section 536.028.
28 This section and chapter 536 are nonseverable and if any of the

1 powers vested with the general assembly pursuant to chapter 536
2 to review, to delay the effective date, or to disapprove and
3 annul a rule are subsequently held unconstitutional, then the
4 grant of rulemaking authority and any rule proposed or adopted
5 after August 28, 2009, shall be invalid and void.

6 12. Each electric corporation shall submit an annual report
7 to the commission describing the demand-side programs implemented
8 by the utility in the previous year. The report shall document
9 program expenditures, including incentive payments, peak demand
10 and energy savings impacts and the techniques used to estimate
11 those impacts, avoided costs and the techniques used to estimate
12 those costs, the estimated cost-effectiveness of the demand-side
13 programs, and the net economic benefits of the demand-side
14 programs.

15 13. Charges attributable to demand-side programs under this
16 section shall be clearly shown as a separate line item on bills
17 to the electrical corporation's customers.

18 14. (1) Any customer of an electrical corporation who has
19 received a state tax credit under sections 135.350 to 135.362 or
20 under sections 253.545 to 253.561 shall not be eligible for
21 participation in any demand-side program offered by an electrical
22 corporation under this section if such program offers a monetary
23 incentive to the customer, except as provided in subdivision (4)
24 of this subsection.

25 (2) As a condition of participation in any demand-side
26 program offered by an electrical corporation under this section
27 when such program offers a monetary incentive to the customer,
28 the commission shall develop rules that require documentation to

1 be provided by the customer to the electrical corporation to show
2 that the customer has not received a tax credit listed in
3 subdivision (1) of this subsection.

4 (3) The penalty for a customer who provides false
5 documentation under subdivision (2) of this subsection shall be a
6 class A misdemeanor.

7 (4) The provisions of this subsection shall not apply to
8 any low-income customer who would otherwise be eligible to
9 participate in a demand-side program that is offered by an
10 electrical corporation to low-income customers.

11 15. The commission shall develop rules that provide for
12 disclosure of participants in all demand-side programs offered by
13 electrical corporations under this section when such programs
14 provide monetary incentives to the customer. The disclosure
15 required by this subsection may include, but not be limited to,
16 the following: the name of the participant, or the names of the
17 principles if for a company, the property address, and the amount
18 of the monetary incentive received.