

FIRST REGULAR SESSION

# SENATE BILL NO. 145

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WALLINGFORD.

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ADRIANE D. CROUSE, Secretary.

0664S.011

## AN ACT

To repeal sections 386.020, 393.146, and 393.320, RSMo, and to enact in lieu thereof five new sections relating to small water and sewer corporations.

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

Section A. Sections 386.020, 393.146, and 393.320, RSMo, are repealed  
2 and five new sections enacted in lieu thereof, to be known as sections 386.020,  
3 393.146, 393.320, 393.323, and 393.326, to read as follows:

386.020. As used in this chapter, the following words and phrases mean:

2 (1) "Alternative local exchange telecommunications company", a local  
3 exchange telecommunications company certified by the commission to provide  
4 basic or nonbasic local telecommunications service or switched exchange access  
5 service, or any combination of such services, in a specific geographic area  
6 subsequent to December 31, 1995;

7 (2) "Alternative operator services company", any certificated  
8 interexchange telecommunications company which receives more than forty  
9 percent of its annual Missouri intrastate telecommunications service revenues  
10 from the provision of operator services pursuant to operator services contracts  
11 with traffic aggregators;

12 (3) "Basic interexchange telecommunications service" includes, at a  
13 minimum, two-way switched voice service between points in different local calling  
14 scopes as determined by the commission and shall include other services as  
15 determined by the commission by rule upon periodic review and update;

16 (4) "Basic local telecommunications service", two-way switched voice  
17 service within a local calling scope as determined by the commission comprised

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

18 of any of the following services and their recurring and nonrecurring charges:

19 (a) Multiparty, single line, including installation, touchtone dialing, and  
20 any applicable mileage or zone charges;

21 (b) Assistance programs for installation of, or access to, basic local  
22 telecommunications services for qualifying economically disadvantaged or  
23 disabled customers or both, including, but not limited to, lifeline services and  
24 link-up Missouri services for low-income customers or dual-party relay service for  
25 the hearing impaired and speech impaired;

26 (c) Access to local emergency services including, but not limited to, 911  
27 service established by local authorities;

28 (d) Access to basic local operator services;

29 (e) Access to basic local directory assistance;

30 (f) Standard intercept service;

31 (g) Equal access to interexchange carriers consistent with rules and  
32 regulations of the Federal Communications Commission;

33 (h) One standard white pages directory listing.

34 Basic local telecommunications service does not include optional toll-free calling  
35 outside a local calling scope but within a community of interest, available for an  
36 additional monthly fee or the offering or provision of basic local  
37 telecommunications service at private shared-tenant service locations;

38 (5) "Cable television service", the one-way transmission to subscribers of  
39 video programming or other programming service and the subscriber interaction,  
40 if any, which is required for the selection of such video programming or other  
41 programming service;

42 (6) "Carrier of last resort", any telecommunications company which is  
43 obligated to offer basic local telecommunications service to all customers who  
44 request service in a geographic area defined by the commission and cannot  
45 abandon this obligation without approval from the commission;

46 (7) "Commission", the "Public Service Commission" hereby created;

47 (8) "Commissioner", one of the members of the commission;

48 (9) "Competitive telecommunications company", a telecommunications  
49 company which has been classified as such by the commission pursuant to section  
50 392.245 or 392.361;

51 (10) "Competitive telecommunications service", a telecommunications  
52 service which has been classified as such by the commission pursuant to section  
53 392.245 or to section 392.361, or which has become a competitive

54 telecommunications service pursuant to section 392.370;

55 (11) "Corporation" includes a corporation, company, association and joint  
56 stock association or company;

57 (12) "Customer-owned pay telephone", a privately owned  
58 telecommunications device that is not owned, leased or otherwise controlled by  
59 a local exchange telecommunications company and which provides  
60 telecommunications services for a use fee to the general public;

61 (13) "Effective competition" shall be determined by the commission based  
62 on:

63 (a) The extent to which services are available from alternative providers  
64 in the relevant market;

65 (b) The extent to which the services of alternative providers are  
66 functionally equivalent or substitutable at comparable rates, terms and  
67 conditions;

68 (c) The extent to which the purposes and policies of chapter 392, including  
69 the reasonableness of rates, as set out in section 392.185, are being advanced;

70 (d) Existing economic or regulatory barriers to entry; and

71 (e) Any other factors deemed relevant by the commission and necessary  
72 to implement the purposes and policies of chapter 392;

73 (14) "Electric plant" includes all real estate, fixtures and personal  
74 property operated, controlled, owned, used or to be used for or in connection with  
75 or to facilitate the generation, transmission, distribution, sale or furnishing of  
76 electricity for light, heat or power; and any conduits, ducts or other devices,  
77 materials, apparatus or property for containing, holding or carrying conductors  
78 used or to be used for the transmission of electricity for light, heat or power;

79 (15) "Electrical corporation" includes every corporation, company,  
80 association, joint stock company or association, partnership and person, their  
81 lessees, trustees or receivers appointed by any court whatsoever, other than a  
82 railroad, light rail or street railroad corporation generating electricity solely for  
83 railroad, light rail or street railroad purposes or for the use of its tenants and not  
84 for sale to others, owning, operating, controlling or managing any electric plant  
85 except where electricity is generated or distributed by the producer solely on or  
86 through private property for railroad, light rail or street railroad purposes or for  
87 its own use or the use of its tenants and not for sale to others;

88 (16) "Exchange", a geographical area for the administration of  
89 telecommunications services, established and described by the tariff of a

- 90 telecommunications company providing basic local telecommunications service;
- 91 (17) "Exchange access service", a service provided by a local exchange  
92 telecommunications company which enables a telecommunications company or  
93 other customer to enter and exit the local exchange telecommunications network  
94 in order to originate or terminate interexchange telecommunications service;
- 95 (18) "Gas corporation" includes every corporation, company, association,  
96 joint stock company or association, partnership and person, their lessees, trustees  
97 or receivers appointed by any court whatsoever, owning, operating, controlling or  
98 managing any gas plant operating for public use under privilege, license or  
99 franchise now or hereafter granted by the state or any political subdivision,  
100 county or municipality thereof;
- 101 (19) "Gas plant" includes all real estate, fixtures and personal property  
102 owned, operated, controlled, used or to be used for or in connection with or to  
103 facilitate the manufacture, distribution, sale or furnishing of gas, natural or  
104 manufactured, for light, heat or power;
- 105 (20) "Heating company" includes every corporation, company, association,  
106 joint stock company or association, partnership and person, their lessees, trustees  
107 or receivers, appointed by any court whatsoever, owning, operating, managing or  
108 controlling any plant or property for manufacturing and distributing and selling,  
109 for distribution, or distributing hot or cold water, steam or currents of hot or cold  
110 air for motive power, heating, cooking, or for any public use or service, in any  
111 city, town or village in this state; provided, that no agency or authority created  
112 by or operated pursuant to an interstate compact established pursuant to section  
113 70.370 shall be a heating company or subject to regulation by the commission;
- 114 (21) "High-cost area", a geographic area, which shall follow exchange  
115 boundaries and be no smaller than an exchange nor larger than a local calling  
116 scope, where the cost of providing basic local telecommunications service as  
117 determined by the commission, giving due regard to recovery of an appropriate  
118 share of joint and common costs as well as those costs related to carrier of last  
119 resort obligations, exceeds the rate for basic local telecommunications service  
120 found reasonable by the commission;
- 121 (22) "Incumbent local exchange telecommunications company", a local  
122 exchange telecommunications company authorized to provide basic local  
123 telecommunications service in a specific geographic area as of December 31, 1995,  
124 or a successor in interest to such a company;
- 125 (23) "Interconnected voice over internet protocol service", service that:

- 126 (a) Enables real-time, two-way voice communications;
- 127 (b) Requires a broadband connection from the user's location;
- 128 (c) Requires internet protocol-compatible customer premises equipment;
- 129 and
- 130 (d) Permits users generally to receive calls that originate on the public
- 131 switched telephone network and to terminate calls to the public switched
- 132 telephone network;
- 133 (24) "Interexchange telecommunications company", any company engaged
- 134 in the provision of interexchange telecommunications service;
- 135 (25) "Interexchange telecommunications service", telecommunications
- 136 service between points in two or more exchanges;
- 137 (26) "InterLATA", interexchange telecommunications service between
- 138 points in different local access and transportation areas;
- 139 (27) "IntraLATA", interexchange telecommunications service between
- 140 points within the same local access and transportation area;
- 141 (28) "Light rail" includes every rail transportation system in which one
- 142 or more rail vehicles are propelled electrically by overhead catenary wire upon
- 143 tracks located substantially within an urban area and are operated exclusively
- 144 in the transportation of passengers and their baggage, and including all bridges,
- 145 tunnels, equipment, switches, spurs, tracks, stations, used in connection with the
- 146 operation of light rail;
- 147 (29) "Line" includes route;
- 148 (30) "Local access and transportation area" or "LATA", contiguous
- 149 geographic area approved by the U.S. District Court for the District of Columbia
- 150 in *United States v. Western Electric*, Civil Action No. 82-0192 that defines the
- 151 permissible areas of operations for the Bell Operating companies;
- 152 (31) "Local exchange telecommunications company", any company engaged
- 153 in the provision of local exchange telecommunications service. A local exchange
- 154 telecommunications company shall be considered a "large local exchange
- 155 telecommunications company" if it has at least one hundred thousand access lines
- 156 in Missouri and a "small local exchange telecommunications company" if it has
- 157 less than one hundred thousand access lines in Missouri;
- 158 (32) "Local exchange telecommunications service", telecommunications
- 159 service between points within an exchange;
- 160 (33) "Long-run incremental cost", the change in total costs of the company
- 161 of producing an increment of output in the long run when the company uses least

162 cost technology, and excluding any costs that, in the long run, are not brought  
163 into existence as a direct result of the increment of output. The relevant  
164 increment of output shall be the level of output necessary to satisfy total current  
165 demand levels for the service in question, or, for new services, demand levels that  
166 can be demonstrably anticipated;

167 (34) "Municipality" includes a city, village or town;

168 (35) "Nonbasic telecommunications services" shall be all regulated  
169 telecommunications services other than basic local and exchange access  
170 telecommunications services, and shall include the services identified in  
171 paragraphs (d) and (e) of subdivision (4) of this section. Any retail  
172 telecommunications service offered for the first time after August 28, 1996, shall  
173 be classified as a nonbasic telecommunications service, including any new service  
174 which does not replace an existing service;

175 (36) "Noncompetitive telecommunications company", a telecommunications  
176 company other than a competitive telecommunications company or a  
177 transitionally competitive telecommunications company;

178 (37) "Noncompetitive telecommunications service", a telecommunications  
179 service other than a competitive or transitionally competitive telecommunications  
180 service;

181 (38) "Operator services", operator-assisted interexchange  
182 telecommunications service by means of either human or automated call  
183 intervention and includes, but is not limited to, billing or completion of calling  
184 card, collect, person-to-person, station-to-station or third number billed calls;

185 (39) "Operator services contract", any agreement between a traffic  
186 aggregator and a certificated interexchange telecommunications company to  
187 provide operator services at a traffic aggregator location;

188 (40) "Person" includes an individual, and a firm or copartnership;

189 (41) "Private shared tenant services" includes the provision of  
190 telecommunications and information management services and equipment within  
191 a user group located in discrete private premises as authorized by the commission  
192 by a commercial-shared services provider or by a user association, through  
193 privately owned customer premises equipment and associated data processing and  
194 information management services and includes the provision of connections to the  
195 facilities of local exchange telecommunications companies and to interexchange  
196 telecommunications companies;

197 (42) "Private telecommunications system", a telecommunications system

198 controlled by a person or corporation for the sole and exclusive use of such  
199 person, corporation or legal or corporate affiliate thereof;

200 (43) "Public utility" includes every pipeline corporation, gas corporation,  
201 electrical corporation, telecommunications company, water corporation, heat or  
202 refrigerating corporation, and sewer corporation, as these terms are defined in  
203 this section, and each thereof is hereby declared to be a public utility and to be  
204 subject to the jurisdiction, control and regulation of the commission and to the  
205 provisions of this chapter;

206 (44) "Railroad" includes every railroad and railway, other than street  
207 railroad or light rail, by whatsoever power operated for public use in the  
208 conveyance of persons or property for compensation, with all bridges, ferries,  
209 tunnels, equipment, switches, spurs, tracks, stations, real estate and terminal  
210 facilities of every kind used, operated, controlled or owned by or in connection  
211 with any such railroad;

212 (45) "Railroad corporation" includes every corporation, company,  
213 association, joint stock company or association, partnership and person, their  
214 lessees, trustees or receivers appointed by any court whatsoever, owning, holding,  
215 operating, controlling or managing any railroad or railway as defined in this  
216 section, or any cars or other equipment used thereon or in connection therewith;

217 (46) "Rate", every individual or joint rate, fare, toll, charge, reconsigning  
218 charge, switching charge, rental or other compensation of any corporation, person  
219 or public utility, or any two or more such individual or joint rates, fares, tolls,  
220 charges, reconsigning charges, switching charges, rentals or other compensations  
221 of any corporation, person or public utility or any schedule or tariff thereof;

222 (47) "Resale of telecommunications service", the offering or providing of  
223 telecommunications service primarily through the use of services or facilities  
224 owned or provided by a separate telecommunications company, but does not  
225 include the offering or providing of private shared tenant services;

226 (48) "Service" includes not only the use and accommodations afforded  
227 consumers or patrons, but also any product or commodity furnished by any  
228 corporation, person or public utility and the plant, equipment, apparatus,  
229 appliances, property and facilities employed by any corporation, person or public  
230 utility in performing any service or in furnishing any product or commodity and  
231 devoted to the public purposes of such corporation, person or public utility, and  
232 to the use and accommodation of consumers or patrons;

233 (49) "Sewer corporation" includes every corporation, company, association,

234 joint stock company or association, partnership or person, their lessees, trustees  
235 or receivers appointed by any court, owning, operating, controlling or managing  
236 any sewer system, plant or property, for the collection, carriage, treatment, or  
237 disposal of sewage anywhere within the state for gain, except that the term shall  
238 not include sewer systems with fewer than twenty-five outlets;

239 (50) "Sewer system" includes all pipes, pumps, canals, lagoons, plants,  
240 structures and appliances, and all other real estate, fixtures and personal  
241 property, owned, operated, controlled or managed in connection with or to  
242 facilitate the collection, carriage, treatment and disposal of sewage for municipal,  
243 domestic or other beneficial or necessary purpose;

244 (51) **"Small sewer corporation", a sewer corporation that provides**  
245 **sewer service to eight thousand or fewer customer connections;**

246 (52) **"Small water corporation", a water corporation that provides**  
247 **water service to eight thousand or fewer customer connections;**

248 (53) "Street railroad" includes every railroad by whatsoever type of power  
249 operated, and all extensions and branches thereof and supplementary facilities  
250 thereto by whatsoever type of vehicle operated, for public use in the conveyance  
251 of persons or property for compensation, mainly providing local transportation  
252 service upon the streets, highways and public places in a municipality, or in and  
253 adjacent to a municipality, and including all cars, buses and other rolling stock,  
254 equipment, switches, spurs, tracks, poles, wires, conduits, cables, subways,  
255 tunnels, stations, terminals and real estate of every kind used, operated or owned  
256 in connection therewith but this term shall not include light rail as defined in  
257 this section; and the term "street railroad" when used in this chapter shall also  
258 include all motor bus and trolley bus lines and routes and similar local  
259 transportation facilities, and the rolling stock and other equipment thereof and  
260 the appurtenances thereto, when operated as a part of a street railroad or trolley  
261 bus local transportation system, or in conjunction therewith or supplementary  
262 thereto, but such term shall not include a railroad constituting or used as part  
263 of a trunk line railroad system and any street railroad as defined above which  
264 shall be converted wholly to motor bus operation shall nevertheless continue to  
265 be included within the term street railroad as used herein;

266 [(52)] (54) "Telecommunications company" includes telephone  
267 corporations as that term is used in the statutes of this state and every  
268 corporation, company, association, joint stock company or association, partnership  
269 and person, their lessees, trustees or receivers appointed by any court



270 whatsoever, owning, operating, controlling or managing any facilities used to  
271 provide telecommunications service for hire, sale or resale within this state;

272 [(53)] **(55)** "Telecommunications facilities" includes lines, conduits, ducts,  
273 poles, wires, cables, crossarms, receivers, transmitters, instruments, machines,  
274 appliances and all devices, real estate, easements, apparatus, property and routes  
275 used, operated, controlled or owned by any telecommunications company to  
276 facilitate the provision of telecommunications service;

277 [(54)] **(56)** "Telecommunications service", the transmission of information  
278 by wire, radio, optical cable, electronic impulses, or other similar means. As used  
279 in this definition, "information" means knowledge or intelligence represented by  
280 any form of writing, signs, signals, pictures, sounds, or any other  
281 symbols. Telecommunications service does not include:

282 (a) The rent, sale, lease, or exchange for other value received of customer  
283 premises equipment except for customer premises equipment owned by a  
284 telephone company certificated or otherwise authorized to provide telephone  
285 service prior to September 28, 1987, and provided under tariff or in inventory on  
286 January 1, 1983, which must be detariffed no later than December 31, 1987, and  
287 thereafter the provision of which shall not be a telecommunications service, and  
288 except for customer premises equipment owned or provided by a  
289 telecommunications company and used for answering 911 or emergency calls;

290 (b) Answering services and paging services;

291 (c) The offering of radio communication services and facilities when such  
292 services and facilities are provided under a license granted by the Federal  
293 Communications Commission under the commercial mobile radio services rules  
294 and regulations;

295 (d) Services provided by a hospital, hotel, motel, or other similar business  
296 whose principal service is the provision of temporary lodging through the owning  
297 or operating of message switching or billing equipment solely for the purpose of  
298 providing at a charge telecommunications services to its temporary patients or  
299 guests;

300 (e) Services provided by a private telecommunications system;

301 (f) Cable television service;

302 (g) The installation and maintenance of inside wire within a customer's  
303 premises;

304 (h) Electronic publishing services;

305 (i) Services provided pursuant to a broadcast radio or television license

306 issued by the Federal Communications Commission; or

307 (j) Interconnected voice over internet protocol service;

308 [(55)] **(57)** "Telephone cooperative", every corporation defined as a  
309 telecommunications company in this section, in which at least ninety percent of  
310 those persons and corporations subscribing to receive local telecommunications  
311 service from the corporation own at least ninety percent of the corporation's  
312 outstanding and issued capital stock and in which no subscriber owns more than  
313 two shares of the corporation's outstanding and issued capital stock;

314 [(56)] **(58)** "Traffic aggregator", any person, firm, partnership or  
315 corporation which furnishes a telephone for use by the public and includes, but  
316 is not limited to, telephones located in rooms, offices and similar locations in  
317 hotels, motels, hospitals, colleges, universities, airports and public or  
318 customer-owned pay telephone locations, whether or not coin operated;

319 [(57)] **(59)** "Transitionally competitive telecommunications company", an  
320 interexchange telecommunications company which provides any noncompetitive  
321 or transitionally competitive telecommunications service, except for an  
322 interexchange telecommunications company which provides only noncompetitive  
323 telecommunications service;

324 [(58)] **(60)** "Transitionally competitive telecommunications service", a  
325 telecommunications service offered by a noncompetitive or transitionally  
326 competitive telecommunications company and classified as transitionally  
327 competitive by the commission pursuant to section 392.361 or 392.370;

328 [(59)] **(61)** "Water corporation" includes every corporation, company,  
329 association, joint stock company or association, partnership and person, their  
330 lessees, trustees, or receivers appointed by any court whatsoever, owning,  
331 operating, controlling or managing any plant or property, dam or water supply,  
332 canal, or power station, distributing or selling for distribution, or selling or  
333 supplying for gain any water;

334 [(60)] **(62)** "Water system" includes all reservoirs, tunnels, shafts, dams,  
335 dikes, headgates, pipes, flumes, canals, structures and appliances, and all other  
336 real estate, fixtures and personal property, owned, operated, controlled or  
337 managed in connection with or to facilitate the diversion, development, storage,  
338 supply, distribution, sale, furnishing or carriage of water for municipal, domestic  
339 or other beneficial use.

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

2 (1) "Capable public utility", a public utility that regularly provides the

3 same type of service as a small water corporation or a small sewer corporation to  
4 more than eight thousand customer connections, that is not an affiliate of a small  
5 water corporation or a small sewer corporation, and that provides safe and  
6 adequate service; and shall not include a sewer district established pursuant to  
7 Article VI, Section 30(a) of the Missouri Constitution, sewer districts established  
8 under the provisions of chapter 204, 249 or 250, public water supply districts  
9 established under the provisions of chapter 247, or municipalities that own and  
10 operate water or sewer systems;

11 (2) "Department", the department of natural resources[;

12 (3) "Small sewer corporation", a public utility that regularly provides  
13 sewer service to eight thousand or fewer customer connections;

14 (4) "Small water corporation", a public utility that regularly provides  
15 water service to eight thousand or fewer customer connections].

16 2. The commission may order a capable public utility to acquire a small  
17 water or sewer corporation if, after providing notice and an opportunity to be  
18 heard, the commission determines:

19 (1) That the small water or sewer corporation is in violation of statutory  
20 or regulatory standards that affect the safety and adequacy of the service  
21 provided by the small water or sewer corporation, including but not limited to the  
22 public service commission law, the federal clean water law, the federal Safe  
23 Drinking Water Act, as amended, and the regulations adopted under these laws;  
24 or

25 (2) That the small water or sewer corporation has failed to comply, within  
26 a reasonable period of time, with any order of the department or the commission  
27 concerning the safety and adequacy of service, including but not limited to the  
28 availability of water, the potability of water, the palatability of water, the  
29 provision of water at adequate volume and pressure, the prevention of discharge  
30 of untreated or inadequately treated sewage to the waters of the state, and the  
31 prevention of environmental damage; or

32 (3) That it is not reasonable to expect that the small water or sewer  
33 corporation will furnish and maintain safe and adequate service and facilities in  
34 the future; and

35 (4) That the commission has considered alternatives to acquisition in  
36 accordance with subsection 3 of this section and has determined that they are  
37 impractical or not economically feasible; and

38 (5) That the acquiring capable public utility is financially, managerially,

39 and technically capable of acquiring and operating the small water or sewer  
40 corporation in compliance with applicable statutory and regulatory standards.

41 3. Except when there is an imminent threat of serious harm to life or  
42 property, before the commission may order the acquisition of a small water or  
43 sewer corporation in accordance with subsection 2 of this section, the commission  
44 shall discuss alternatives to acquisition with the small water or sewer corporation  
45 and shall give such small water or sewer corporation thirty days to investigate  
46 alternatives to acquisition, including:

47 (1) The reorganization of the small water or sewer corporation under new  
48 management;

49 (2) The entering of a contract with another public utility or a management  
50 or service company to operate the small water or sewer corporation;

51 (3) The merger of the small water or sewer corporation with one or more  
52 other public utilities; and

53 (4) The acquisition of the small water or sewer corporation by a  
54 municipality, a municipal authority, a public water supply district, a public sewer  
55 district, or a cooperative.

56 4. When the commission determines that there is an imminent threat of  
57 serious harm to life or property, the commission may appoint an interim receiver  
58 prior to the opportunity for hearing, provided that the commission shall provide  
59 opportunity for hearing as soon as practicable after the issuance of such order.

60 5. In making a determination under subsection 2 of this section, the  
61 commission shall consider:

62 (1) The financial, managerial, and technical ability of the small water or  
63 sewer corporation;

64 (2) The financial, managerial, and technical ability of all proximate public  
65 utilities that provide the same type of service and constitute an alternative to  
66 acquisition;

67 (3) The expenditures that are needed to improve the facilities of the small  
68 water or sewer corporation to assure compliance with applicable statutory and  
69 regulatory standards concerning the adequacy, efficiency, safety, and  
70 reasonableness of utility service, and to sufficiently provide safe and adequate  
71 service to the customers of the small water or sewer corporation;

72 (4) The potential for expansion of the certificated service area of the small  
73 water or sewer corporation; and

74 (5) The opinion and advice, if any, of the department as to what steps may

75 be necessary to assure compliance with applicable statutory or regulatory  
76 standards concerning the safety and adequacy of utility service.

77         6. Subsequent to the determination required under subsection 2 of this  
78 section, the commission shall issue an order for the acquisition of a small water  
79 or sewer corporation by a capable public utility. Such order shall include  
80 granting a certificate of public convenience and necessity to the acquiring capable  
81 public utility for the small water or sewer corporation's established service area.

82         7. The price for the acquisition of a small water or sewer corporation shall  
83 be determined by agreement between the small water or sewer corporation and  
84 the acquiring capable public utility, subject to a determination by the commission  
85 that the price is reasonable. If the small water or sewer corporation and the  
86 acquiring capable public utility are unable to agree on the acquisition price, or  
87 the commission disapproves the acquisition price to which the utilities agreed, the  
88 commission shall issue an order directing the acquiring capable public utility to  
89 acquire the small water or sewer corporation at an acquisition price that is equal  
90 to the ratemaking rate base as determined by the commission after notice and  
91 hearing, or providing that the acquiring capable public utility will not be allowed  
92 to earn a rate of return on the portion of the purchase price that is in excess of  
93 the ratemaking rate base determined by the commission after notice and  
94 hearing. The burden of establishing the ratemaking rate base shall be upon the  
95 small water or sewer corporation.

96         8. Any capable public utility that is ordered by the commission to acquire  
97 a small water or sewer corporation shall, within thirty days after acquisition,  
98 submit a plan, including a timetable, for bringing the small water or sewer  
99 corporation into compliance with applicable statutory and regulatory standards  
100 to the commission for approval. The capable public utility shall also provide a  
101 copy of the plan to the department and such other state or local agency as the  
102 commission may direct. The commission shall give the department adequate  
103 opportunity to comment on the plan and shall consider any comments submitted  
104 by the department and shall expeditiously decide whether to approve the plan.

105         9. Upon the acquisition of a small water or sewer corporation by a capable  
106 public utility, and approval by the commission of a plan for improvements  
107 submitted under subsection 8 of this section, the acquiring capable public utility  
108 shall not be liable for any damages if the cause of those damages is proximately  
109 related to violations of applicable statutes or regulations by the small water or  
110 sewer corporation and the acquiring capable public utility remains in compliance

111 with the plan for improvements submitted under subsection 8 of this  
112 section. This subsection shall not apply:

113 (1) Beyond the end of the timetable in the plan for improvements;

114 (2) Whenever the acquiring capable public utility is not in compliance  
115 with the plan for improvements; or

116 (3) If, within sixty days after receipt of notice of the proposed plan for  
117 improvements, the department submitted written objections to the commission  
118 and those objections have not subsequently been withdrawn.

119 10. Upon approval by the commission of a plan for improvements  
120 submitted under subsection 8 of this section, and the acquisition of a small water  
121 or sewer corporation by a capable public utility, the acquiring capable utility shall  
122 not be subject to any enforcement actions by state or local agencies that had  
123 notice of the plan, if the basis of such enforcement action is proximately related  
124 to violations of applicable statutes or regulations by the small water or sewer  
125 corporation. This subsection shall not apply:

126 (1) Beyond the end of the timetable in the plan for improvements;

127 (2) Whenever the acquiring capable public utility is not in compliance  
128 with the plan for improvements;

129 (3) If, within sixty days of having received notice of the proposed plan for  
130 improvements, the department submitted written objections to the commission  
131 and those objections have not subsequently been withdrawn; or

132 (4) To emergency interim actions of the commission or the department,  
133 including but not limited to the ordering of boil-water advisories or other water  
134 supply warnings, of emergency treatment, or of temporary alternate supplies of  
135 water or sewer services.

136 11. If the commission orders the acquisition of a small water or sewer  
137 corporation, the commission shall authorize the acquiring capable public utility  
138 to utilize the commission's small company rate case procedure for establishing the  
139 rates to be applicable to the system being acquired. Such rates may be designed  
140 to recover the costs of operating the acquired system and to recover one hundred  
141 percent of the revenues necessary to provide a net after-tax return on the  
142 ratemaking rate base value of the small water or sewer corporation's facilities  
143 acquired by the capable public utility, and the ratemaking rate base value of any  
144 improvements made to the facilities by the acquiring capable public utility  
145 subsequent to the acquisition, at a rate of return equivalent to one hundred basis  
146 points above the rate of return authorized for the acquiring capable public utility

147 in its last general rate proceeding. The acquiring capable public utility may  
148 utilize the commission's small company rate case procedure for the purposes  
149 stated in this section until such time that a determination is made on the  
150 acquiring utility's next company-wide general rate increase, but not in excess of  
151 three years from the date of the acquisition of the subject small water or sewer  
152 corporation.

153         12. Proceedings under this section may be initiated by complaint filed by  
154 the staff of the commission, the office of the public counsel, the mayor, or the  
155 president or chair of the board of aldermen, or a majority of the council,  
156 commission, or other legislative body of any city, town, village, or county within  
157 which the alleged unsafe or inadequate service is provided, or by not less than  
158 twenty-five consumers or purchasers, or prospective consumers or purchasers, of  
159 the utility service provided by a small water or sewer corporation. The  
160 complainant shall have the burden of proving that the acquisition of the small  
161 water or sewer corporation would be in the public interest and in compliance with  
162 the provisions of this section.

163         13. The notice required by subsection 2 of this section, or any other  
164 provision of this section, shall be served upon the small water or sewer  
165 corporation affected, the office of the public counsel, the department, all  
166 proximate public utilities providing the same type of service as the small water  
167 or sewer corporation, all proximate municipalities and municipal authorities  
168 providing the same type of service as the small water or sewer corporation, and  
169 the municipalities served by the small water or sewer corporation. The  
170 commission shall order the affected small water or sewer corporation to provide  
171 notice to its customers of the initiation of proceedings under this section in the  
172 same manner in which the utility is required to notify its customers of proposed  
173 general rate increases.

174         14. A public utility that would otherwise be a capable public utility except  
175 for the fact that it has fewer than eight thousand customer connections may  
176 petition the commission to be designated a capable public utility for the purposes  
177 of this section regardless of the number of its customer connections and  
178 regardless of whether it is proximate to the small water corporation or small  
179 water corporation to be acquired. The commission may grant such a petition  
180 upon finding that designating the petitioning public utility as a capable public  
181 utility is not detrimental to the public interest.

182         15. Notwithstanding the requirement of section 386.600 to the contrary,

183 penalties for violations of the public service commission law or related  
184 commission regulations that have been imposed on a small sewer or water  
185 corporation that has been placed in receivership under the provisions of section  
186 393.145 may, upon the order of the court that imposed the penalties, be used to  
187 reduce the purchase price paid by a capable public utility for the acquisition of  
188 the assets of the subject small sewer or water corporation. In such a case, the  
189 commission shall make a corresponding reduction to the ratemaking rate base  
190 value of the subject assets for purposes of future ratemaking activities.

191 16. The commission shall, no later than June 29, 2005, initiate a  
192 rulemaking, pursuant to the provisions of its internal rulemaking procedures, to  
193 promulgate rules to carry out the purposes of this section. Any rule or portion  
194 of a rule, as that term is defined in section 536.010, that is created under the  
195 authority delegated in this section shall become effective only if it complies with  
196 and is subject to all of the provisions of chapter 536 and, if applicable, section  
197 536.028. This section and chapter 536 are nonseverable and if any of the powers  
198 vested with the general assembly pursuant to chapter 536 to review, to delay the  
199 effective date, or to disapprove and annul a rule are subsequently held  
200 unconstitutional, then the grant of rulemaking authority and any rule proposed  
201 or adopted after August 28, 2005, shall be invalid and void.

393.320. 1. **The provisions of section 386.020 defining words,  
2 phrases, and terms, shall apply to and determine the meaning of all  
3 such words, phrases, or terms as used in this section and sections  
4 393.321 to 393.326.**

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

6 (1) ["Large water public utility", a public utility that regularly provides  
7 water service or sewer service to more than eight thousand customer connections  
8 and that provides safe and adequate service but shall not include a sewer district  
9 established under Section 30(a), Article VI of the Missouri Constitution, sewer  
10 districts established under the provisions of chapter 204, 249, or 250, public  
11 water supply districts established under the provisions of chapter 247, or  
12 municipalities that own water or sewer systems] **"Capable public utility", the  
13 same as defined in section 393.146;**

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



18 district established under the provisions of chapter 204, 249, or 250 that regularly  
19 provides sewer service to eight thousand or fewer customer connections; or a  
20 water system or sewer system owned by a municipality that regularly provides  
21 water service or sewer service to eight thousand or fewer customer connections;  
22 and all other entities that regularly provide water service or sewer service to  
23 eight thousand or fewer customer connections] **"Eligible lending institution",**  
24 **a financial institution that is eligible to make commercial or**  
25 **agricultural loans or discount or purchase such loans, and is a public**  
26 **depository of state funds or obtains its funds through the issuance of**  
27 **obligations, either directly or through a related entity.**

28         2. The procedures contained in this section may be chosen by a [large  
29 water] **capable** public utility, and if so chosen shall be used by the public service  
30 commission to establish the ratemaking rate base of a small water [utility]  
31 **corporation** during an acquisition.

32         3. (1) An appraisal shall be performed by three appraisers. One  
33 appraiser shall be appointed by the small water [utility] **or sewer corporation,**  
34 one appraiser shall be appointed by the [large water] **capable** public utility, and  
35 the third appraiser shall be appointed by the two appraisers so appointed. Each  
36 of the appraisers shall be a disinterested person who is a certified general  
37 appraiser under chapter 339.

38         (2) The appraisers shall:

39         (a) Jointly prepare an appraisal of the fair market value of the water  
40 [system] **corporation** and/or sewer [system] **corporation.** The determination  
41 of fair market value shall be in accordance with Missouri law and with the  
42 Uniform Standards of Professional Appraisal Practice; and

43         (b) Return their appraisal, in writing, to the small water [utility and large  
44 water public utility] **or sewer corporation and capable public utility** in a  
45 reasonable and timely manner.

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

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

52         5. (1) The lesser of the purchase price or the appraised value, together  
53 with the reasonable and prudent transaction, closing, and transition costs

54 incurred by the [large water] **capable** public utility, shall constitute the  
55 ratemaking rate base for the small water [utility] **or sewer corporation** as  
56 acquired by the acquiring [large water] **capable** public utility; provided[,]  
57 however, that if the small water [utility] **or sewer corporation** is a public  
58 utility subject to chapter 386 and the small water [utility] **or sewer**  
59 **corporation** completed a rate case prior to the acquisition, the public service  
60 commission may select as the ratemaking rate base for the small water [utility]  
61 **or sewer corporation** as acquired by the acquiring [large water] **capable**  
62 public utility a ratemaking rate base in between:

63 (a) The lesser of the purchase price or the appraised value, together with  
64 the reasonable and prudent transaction, closing, and transition costs incurred by  
65 the [large water] **capable** public utility unless such transaction, closing, and  
66 transition costs are elsewhere recoverable in rates; and

67 (b) The ratemaking rate base of the small water [utility] **or sewer**  
68 **corporation** as ordered by the public service commission in the small water  
69 [utility's last previous rate case] **or sewer corporation's most recently**  
70 **completed general rate proceeding** as adjusted by improvements and  
71 depreciation reserve since the [previous rate case] **most recently completed**  
72 **general rate proceeding** together with the transaction, closing, and transition  
73 costs incurred by the [large water] **capable** public utility unless such  
74 transaction, closing, and transition costs are elsewhere recoverable in rates. If  
75 the small water [utility] **or sewer corporation** and [large water] **capable**  
76 public utility proceed with the sale, any past-due fees due to the state from the  
77 small water [utility] **or sewer corporation** or its customers under chapter 640  
78 or 644 shall be resolved prior to the transfer of ownership or the liability for such  
79 past-due fees becomes the responsibility of the [large water] **capable** public  
80 utility. Such fees shall not be included in the [large water] **capable** public  
81 utility's rate base.

82 (2) The public service commission shall issue its decision establishing the  
83 ratemaking rate base of the small water [utility] **or sewer corporation** in its  
84 order approving the acquisition.

85 6. Upon the date of the acquisition of a small water [utility] **or sewer**  
86 **corporation** by a [large water] **capable** public utility, whether or not the  
87 procedures for establishing ratemaking rate base provided by this section have  
88 been utilized, the small water [utility] **or sewer corporation** shall, for  
89 ratemaking purposes, become part of an existing service area, as defined by the

90 public service commission, of the acquiring [large water] **capable** public utility  
91 that is either contiguous to the small water [utility] **or sewer corporation**, the  
92 closest geographically to the small water [utility] **or sewer corporation**, or best  
93 suited due to operational or other factors. This consolidation shall be approved  
94 by the public service commission in its order approving the acquisition.

95 **7. The commission shall, as part of the acquisition, evaluate the**  
96 **financial capability of the acquiring corporation. This evaluation shall**  
97 **include an examination of the source of financing for the acquisition**  
98 **of the small water or sewer corporation. If the acquiring corporation**  
99 **does not meet the definition of a capable public utility, the commission**  
100 **shall require the corporation to provide proof of financing for the**  
101 **transaction. Such proof shall include loan applications, personal**  
102 **financial applications, credit reports, and all documentation submitted**  
103 **to any eligible lending institutions in an effort to obtain financing. The**  
104 **corporation shall provide at least three lending determinations from**  
105 **three eligible lending institutions, including all documentation**  
106 **submitted to the eligible lending institution and all communications**  
107 **and documentation between the corporation and the lending institution**  
108 **as part of such lending application, before the commission can include**  
109 **into the corporation's rate base any other form of financing by the**  
110 **corporation for the acquisition. Failure to provide the lending**  
111 **application and all documentation from three eligible lending**  
112 **institutions shall result in the commission excluding any other form of**  
113 **financing for the acquisition into the rate base. If the financing for the**  
114 **acquisition does not come from funding from an eligible lending**  
115 **institution, and the acquisition is being done by other than a capable**  
116 **public utility, then the corporation shall provide all documentation for**  
117 **the source of the financing including any interest rate or stated return**  
118 **on investment. The burden of proof shall be on the corporation to show**  
119 **that financing through an eligible lending institution was not possible.**  
120 **No presumption of prudence shall be granted to the corporation for**  
121 **financing obtained through institutions other than eligible lending**  
122 **institutions. In no case shall the commission authorize the inclusion**  
123 **into the rate base of an interest rate or stated return on investment of**  
124 **more than seven percent plus prime for a corporation other than a**  
125 **capable public utility for the acquisition of a small water or sewer**

126 **corporation.**

127           8. Any new permit issued [pursuant to] **under** chapters 640 and 644,  
128 when a small water [utility] **or sewer corporation** is acquired by a [large  
129 water] **capable** public utility, shall include a plan to resolve all outstanding  
130 permit compliance issues. After the transfer of ownership, the acquiring [large  
131 public water] **capable public** utility shall continue providing service to all  
132 customers that were served by the small water [utility] **or sewer corporation**  
133 at the time of sale.

134           [8.] **9.** This section is intended for the specific and unique purpose of  
135 determining the ratemaking rate base of small water [utilities] **and sewer**  
136 **corporations** and shall be exclusively applied to [large water] **capable** public  
137 utilities in the acquisition of a small water [utility] **or sewer**  
138 **corporation.** This section is not intended to apply beyond its specific purpose  
139 and shall not be construed in any manner to apply to [electric] **electrical**  
140 corporations, [natural] gas corporations, or any other utility regulated by the  
141 public service commission.

**393.323. 1.** The commission shall not grant a certificate of  
2 **convenience and necessity** to any small water or sewer corporation  
3 **until the applicant furnishes a bond, secured with sufficient surety as**  
4 **approved by the commission, in the amount of sixty thousand dollars**  
5 **or the amount of rate base determined through the appraisal process**  
6 **in accordance with subsection 3 of section 393.320, whichever is**  
7 **lower. The bond shall be conditioned upon providing safe and**  
8 **adequate service within all of the applicant's service areas, including**  
9 **those for which franchises have previously been granted, shall be**  
10 **payable to the commission, and shall be in a form acceptable to the**  
11 **commission.**

12           **(1)** The acceptable forms of surety bond shall be either a  
13 **certificate of deposit, letter of credit, or corporate surety bond as**  
14 **specified in this subdivision. The amount of bond shall be approved by**  
15 **the commission before the acquisition application can be approved, and**  
16 **the surety bond shall be provided to the commission before a final**  
17 **order can be issued on the granting of a certificate of convenience and**  
18 **necessity. The burden of proof on the amount of the surety bond shall**  
19 **be on the corporation and shall not shift to any other party.**

20           **(a)** If the bond selected is a certificate of deposit, the applicant

21 shall deposit the appropriate surety in the amount determined by the  
22 commission in the application process with the bank of the  
23 corporation's choosing, upon consultation with commission staff and  
24 the office of the public counsel. Both the commission staff and the  
25 office of the public counsel shall provide their written approval, filed  
26 with the commission, accepting the bank selected by the corporation.  
27 If the parties cannot agree on the bank selected, then any party may  
28 file a notice of hearing on the issue before the commission, which shall  
29 be heard and determined before any final hearing on the issuance of  
30 the certificate of convenience and necessity.

31 (b) If the bond selected is a letter of credit, the applicant shall  
32 file the letter of credit surety and commitment letter with the  
33 commission. The letter of credit shall contain the following language:

34 If for any reason the letter of credit is not to be  
35 renewed upon its expiration, the bank shall, at least sixty  
36 days prior to the expiration date of the letter of credit,  
37 provide written notification by means of certified mail,  
38 return receipt requested, to the Public Service Commission  
39 Staff Counsel and to the Office of Public Counsel that the  
40 letter of credit will not be renewed beyond the current  
41 maturity date for an additional period. Failure to renew  
42 the letter of credit shall, without the necessity of the  
43 Commission being required to hold a hearing or appoint an  
44 emergency operator, allow the Commission to convert the  
45 letter of credit to cash and deposit such cash proceeds  
46 with the Secretary of the Commission. Such cash proceeds  
47 from the converted letter of credit shall be used to post a  
48 cash bond on behalf of the Secretary of the Commission.

49 (c) If the bond selected is a corporate surety bond, the applicant  
50 shall file a power of attorney and commitment letter with the  
51 commission.

52 2. The commission and the commission staff shall not provide  
53 any preference for one potential acquirer or purchaser of a small water  
54 or sewer corporation over another. Commission staff and employees  
55 shall be prohibited from providing information, other than what is  
56 publically available, to any potential purchaser or acquirer of a small

57 water or sewer corporation. The commission staff and employees are  
58 strictly prohibited from providing any opinion or commitment to a  
59 potential purchaser or acquirer of a small water or sewer corporation  
60 of the amount of rate base treatment or the rate of return the  
61 commission may authorize. Any meeting, presentation, inquiry, or  
62 other form of communication from a corporation, affiliate, or individual  
63 seeking to acquire or purchase a small water or sewer corporation shall  
64 include a representative from both the commission staff and the office  
65 of public counsel.

66 3. The commission shall provide a link on its website listing  
67 small water or sewer corporations that have notified the commission  
68 staff of their intent to be acquired or purchased. The information shall  
69 include the system's name, date of the commission-issued certificate of  
70 convenience and necessity, number of customers, and contact  
71 information for the system owner. No other information shall be  
72 provided by the commission staff or its employees.

393.326. 1. Small water corporations and small sewer  
2 corporations shall be required to file a general rate proceeding with  
3 the commission every three years from the date the commission first  
4 issues a certificate of convenience and necessity to the corporation, or  
5 from August 28, 2017, whichever occurs later. This section shall apply  
6 to all small water and sewer corporations, regardless of whether the  
7 system is under the common ownership of a corporation. This section  
8 shall not apply to a capable public utility who owns or operates a small  
9 water or sewer corporation.

10 2. Upon filing a general rate proceeding, any capital  
11 expenditures for water or sewer system additions or upgrades that  
12 would result in a maximum average retail rate increase to residential  
13 customers of five percent annually or greater shall be amortized and  
14 recovered from customers over a reasonable period of time as  
15 determined by the commission.

16 3. The commission shall have the authority to promulgate rules  
17 to implement the provisions of sections 393.323 to 393.326. Any rule or  
18 portion of a rule, as that term is defined in section 536.010 that is  
19 created under the authority delegated in this section shall become  
20 effective only if it complies with and is subject to all of the provisions

21 of chapter 536, and, if applicable, section 536.028. This section and  
22 chapter 536 are nonseverable and if any of the powers vested with the  
23 general assembly pursuant to chapter 536, to review, to delay the  
24 effective date, or to disapprove and annul a rule are subsequently held  
25 unconstitutional, then the grant of rulemaking authority and any rule  
26 proposed or adopted after August 28, 2017, shall be invalid and void.

✓

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