

FIRST REGULAR SESSION

SENATE BILL NO. 270

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAAF.

Read 1st time January 10, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1220S.011

AN ACT

To repeal sections 250.236, 386.430, 393.015, 393.016, 393.108, and 620.010, RSMo, and to enact in lieu thereof seven new sections relating to public utilities.

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

Section A. Sections 250.236, 386.430, 393.015, 393.016, 393.108, and
2 620.010, RSMo, are repealed and seven new sections enacted in lieu thereof, to
3 be known as sections 250.236, 386.430, 386.715, 393.015, 393.016, 393.108, and
4 620.010, to read as follows:

250.236. [1. Any city, town or village may contract with a private or
2 public water company to terminate water services, at the direction of the city,
3 because a customer fails to pay his sewer bill. When charges for sewer services
4 are in arrears for more than three months and after the city sends notice to the
5 customer, the city may disconnect the customer's sewer line or request in writing
6 that the private or public water company discontinue water service until such
7 time as the sewer charges and all related costs are paid.

8 2. A private or public water company acting pursuant to a written request
9 from the city as provided in subsection 1 of this section is not liable for damages
10 related to termination of water services. All costs related to disconnection and
11 reconnections shall be reimbursed to the private water company by the city.] **No
12 city, town, or village shall terminate service for nonpayment of a
13 delinquent sewer bill owed to the city, town, or village either directly
14 or by contracting with a private or public water company.**

386.430. In all trials, actions, suits and proceedings arising under the
2 provisions of this chapter or growing out of the exercise of the authority and
3 powers granted herein to the commission, the burden of proof shall be upon the

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

4 party adverse to such commission or seeking to set aside any determination,
5 requirement, direction or order of said commission, to show by clear and
6 satisfactory evidence that the determination, requirement, direction or order of
7 the commission complained of is unreasonable or unlawful as the case may be,
8 **except in any proceeding involving a formal complaint by an individual**
9 **consumer against a public utility, the burden of proof shall be upon the**
10 **public utility to show by clear and satisfactory evidence that the public**
11 **utility is not in violation of any determination, requirement, or**
12 **direction or order of the commission.**

386.715. 1. The public counsel shall, prior to the beginning of
2 each fiscal year, make available to the commission an estimate of the
3 expenses to be incurred by the public counsel during such fiscal year,
4 reasonably attributable to his or her responsibilities under sections
5 386.700 and 386.710, and shall also separately estimate the amount of
6 such expenses directly attributable to such responsibilities with respect
7 to each of the following groups of public utilities: electrical
8 corporations, gas corporations, water corporations, heating companies,
9 telephone corporations, telegraph corporations, sewer corporations,
10 and any other public utility as defined in section 386.020, as well as the
11 amount of such expenses not directly attributable to any such group.

12 2. The public counsel shall allocate to each such group of public
13 utilities the estimated expenses directly attributable to his or her
14 responsibilities under sections 386.700 and 386.710 with respect to such
15 group and an amount equal to such proportion of the estimated
16 expenses not directly attributable to any group in the same proportion
17 as the directly attributable expenses to each group. The commission
18 shall then assess, on behalf of the public counsel, the amount so
19 allocated to each group of public utilities, subject to reduction as
20 provided in this section, to the public utilities in such group in
21 proportion to its respective gross intrastate operating revenues during
22 the preceding calendar year. The amount assessed shall not exceed
23 one-eighth of one percent. Nothing in this section shall authorize the
24 commission to determine how the public counsel allocates the
25 estimated expenses directly attributable to his or her responsibilities
26 under sections 386.700 and 386.710 or how the assessment imposed
27 under this section is spent by the public counsel.

28 3. A utility shall be exempt from an assessment under this

29 section if the commission has no jurisdiction over its retail services, as
30 provided by section 392.611.

31 4. On behalf of the public counsel, the commission shall render
32 a statement of such assessment to each such public utility on or before
33 July first and the amount so assessed to each such public utility shall
34 be paid by it to the director of revenue in full on or before July
35 fifteenth next following the rendition of such statement, except that
36 any such public utility may at its election pay such assessment in four
37 equal installments not later than the following dates next following the
38 rendition of such statement, to wit: July fifteenth, October fifteenth,
39 January fifteenth, and April fifteenth. The director of revenue shall
40 remit such payments to the state treasurer.

41 5. The state treasurer shall credit such payments to a special
42 fund, which is hereby created, to be known as "The Public Counsel
43 Fund", which fund shall be devoted solely to the payment of
44 expenditures actually incurred by the public counsel and attributable
45 to his or her responsibilities under section 386.700 and 386.710. Any
46 amount remaining in such fund at the end of any fiscal year shall not
47 revert to the general revenue fund, but shall be applicable to the
48 payment of such expenditures of the public counsel in the succeeding
49 fiscal year and shall be applied by the public counsel to the reduction
50 of the amount to be assessed to such public utilities in such succeeding
51 fiscal year, such reduction to be allocated to each group of public
52 utilities in proportion to the respective gross intrastate operating
53 revenues of the respective groups during the preceding calendar year.

54 6. In order to enable the public counsel to make the allocations
55 and assessments provided for in this section, each public utility subject
56 to the jurisdiction of the commission shall file with the commission on
57 or before March thirty-first of each year, a statement under oath
58 showing its gross intrastate operating revenues for the preceding
59 calendar year, and if any public utility shall fail to file such statement
60 within the time established in this subsection, the commission shall
61 estimate such revenue. Such estimate shall be binding on such public
62 utility for the purpose of this section.

63 7. (1) The commission, on behalf of the public counsel, may
64 adopt rules establishing charges for copies of papers and records,
65 official documents, and orders filed; certified copies of evidence and

66 proceedings taken before the commission; and the transmission by
67 electronic transmittal of papers, records, evidence and transcripts,
68 diskettes, and other documents or papers for which requests for copies
69 are received. Fees charged for copies of papers and records shall
70 comply with the provisions of section 610.026.

71 (2) No fees shall be charged or collected for copies of papers,
72 records, or official documents furnished to public officers for use in
73 their official capacity.

74 (3) All fees collected under subdivision (1) of this subsection
75 shall be deposited to the credit of the public counsel fund from which
76 the expenses of furnishing the copies listed in subdivision (1) of this
77 subsection are paid and shall be used by the public counsel to offset
78 such expenses.

79 8. After the effective date of this section and until tariffs are
80 filed in compliance with a utility's next general rate proceeding order
81 of the commission, any gas corporation, water corporation, or sewer
82 corporation, which is assessed an amount under this section greater
83 than such utility was assessed for expenses of the office of public
84 counsel in fiscal year 2017, may file and the commission shall approve
85 rate adjustments, outside of a general rate proceeding in an amount
86 which would substantially reimburse such utility for such increase of
87 assessment.

393.015. [1. Notwithstanding any other provision of law to the contrary,
2 any sewer corporation, municipality or sewer district established under the
3 provisions of chapter 249 or 250, or sections 204.250 to 204.470, or any sewer
4 district created and organized pursuant to constitutional authority may contract
5 with any water corporation, any municipality providing water, or any water
6 districts established under chapter 247, which for purposes of this section shall
7 collectively be designated as a water provider, to terminate water services to any
8 customer premises for nonpayment of a sewer bill. No such termination of water
9 service may occur until thirty days after the sewer corporation, municipality or
10 statutory sewer district or sewer district created and organized pursuant to
11 constitutional authority sends a written notice to the customer, except that if the
12 water provider is performing a combined water and sewer billing service for the
13 sewer corporation, municipality or sewer district, no additional notice or any
14 additional waiting period shall be required other than the notice and waiting

15 period already used by the water provider to disconnect water service for
16 nonpayment of the water bill. Acting pursuant to a contract, the water provider
17 shall discontinue water service until such time as the sewer charges and all
18 related costs of termination and reestablishment of sewer and water services are
19 paid by the customer.

20 2. A water provider acting pursuant to a contract with a sewer
21 corporation, municipality or sewer district as provided in subsection 1 of this
22 section shall not be liable for damages related to termination of water services
23 unless such damage is caused by the negligence of such water provider, in which
24 case the water provider shall be indemnified by the sewer corporation,
25 municipality or sewer district. Unless otherwise specified in the contract, all
26 costs related to the termination and reestablishment of services by the water
27 provider shall be reimbursed by the sewer corporation, municipality, sewer
28 district or sewer district created and organized pursuant to constitutional
29 authority.] **No sewer corporation, municipality, or sewer district**
30 **established under the provisions of chapter 249 or 250, or sections**
31 **204.250 to 204.470, or any sewer district created and organized under**
32 **constitutional authority shall terminate service for nonpayment of a**
33 **delinquent sewer bill owed to such sewer provider either directly or by**
34 **contracting with any water corporation, any municipality providing**
35 **water, or any water district established under chapter 247.**

393.016. [1. Notwithstanding any other provision of law, any municipality
2 providing water, or any water district established under chapter 247, which in
3 this section shall sometimes be designated as a water provider, shall upon
4 request of any municipality providing sewer service or public sewer district
5 established under chapter 249 or 250, or sections 204.250 to 204.470, or any
6 sewer district created and organized under constitutional authority, which in this
7 section shall sometimes be designated as a sewer provider, contract with such
8 sewer provider to terminate water services to any water user of such water
9 provider for nonpayment of a delinquent sewer bill owed to such sewer provider.

10 2. Any water provider, or independent contractor acting for a water
11 provider, acting under a contract with a sewer provider under this section shall
12 be exempt from all civil liability whatsoever arising from or related to
13 termination of water services pursuant to any such contract.

14 3. In the event that any water provider and any sewer provider are unable
15 to reach an agreement as provided in this section within six months of the receipt

16 of such request by the water provider, then the sewer provider making the
17 written request may file with the circuit court in which such water provider was
18 incorporated, or if such water provider was not incorporated by a circuit court,
19 then with a circuit court having jurisdiction of the water provider, a petition
20 requesting that three commissioners be selected to draft such an agreement.

21 4. Any agreement drafted by the commissioners or entered into under this
22 section shall contain the following provisions:

23 (1) The rules and regulations or ordinances of the sewer provider shall
24 provide that the number of days of delinquency required before water service is
25 discontinued for failure to pay for sewage service shall be equal to the number of
26 days of delinquency required before water service is discontinued for failure to
27 pay for water service under the rules and regulations of the water provider;

28 (2) The water provider shall not be required to discontinue water service
29 to the sewer user for failure to pay the charges or rental due therefor unless the
30 sewer provider shall first give a written notice to the water provider to do
31 so. Such notice shall include the due date, amount of the delinquent bill, and all
32 penalties and interest thereon. When payment of such amount is received by the
33 sewer provider, upon written notice thereof to the water provider, the water
34 provider shall restore water service to the water and sewer user, provided the
35 water bill of such user owed to the water provider is not delinquent;

36 (3) The sewer provider shall at all times keep in force a general
37 comprehensive public liability and property damage policy issued by a company
38 authorized to do business in Missouri with policy limits equal to or in excess of
39 those set forth in section 537.610 shall include the water provider and any
40 independent contractor who performs such agreement under contract with the
41 water provider thereon as an additional insured, and shall furnish the water
42 provider and such independent contractor a certificate of insurance evidencing
43 such insurance is in effect. If at any time it fails to do so and furnish such
44 certificate of insurance to the water provider and such independent contractor,
45 the water provider and such independent contractor may cease to make water
46 service terminations until such requirement is satisfied;

47 (4) The agreement shall provide that any loss of revenue incurred by the
48 water provider as a result of discontinuing water service because of the failure
49 of any sewage user to pay the charges or rental therefor shall be paid to the water
50 provider by the sewer provider. Such amounts include, but are not limited to,
51 loss of revenue by the water provider caused by disconnection of water service for

52 a sewer bill delinquency when the water bill is not delinquent;

53 (5) When a water provider is collecting delinquent amounts for both the
54 water and sewer service, all delinquent payments due to both the water and
55 sewer provider shall be received by the water provider before water service is
56 restored. If for any reason water service is never restored, any amount collected
57 for delinquent accounts due both water and sewer provider shall be divided
58 between the water provider and the sewer provider so that each receives the same
59 percentage of the amount owed to it;

60 (6) The agreement shall provide that in the event the water provider or
61 any independent contractor who performs such agreement under contract with the
62 water provider incurs attorney fees or other costs not covered by insurance as a
63 result of any claim, litigation, or threatened litigation against the water provider
64 or independent contractor which exceeds the limits of insurance coverage
65 provided to the water provider or independent contractor by the sewer provider
66 as stated in this section, the sewer provider shall reimburse such amounts to the
67 water provider or independent contractor;

68 (7) The agreement shall contain a provision providing that the expense
69 and cost of the water provider shall be recalculated annually and that the amount
70 due it during the subsequent year shall be increased or decreased according to
71 any change occurring in the costs and expenses; alternatively, upon agreement
72 of the parties to the agreement, the agreement may provide for annual increases
73 or decreases based upon the percentage of increase or decrease in the National
74 Consumer Price Index for All Urban Consumers, unadjusted for seasonal
75 variation, as published by the United States Department of Labor for the most
76 recent date prior to the annual anniversary date of the execution of the
77 agreement;

78 (8) All expense and cost incurred by the water provider in performing or
79 carrying out the agreement shall be reimbursed to the water provider by the
80 sewer provider. The reimbursement shall be made monthly, bimonthly, or
81 quarterly. In determining such expense incurred by the water provider, the
82 commissioners shall consider the following items of expense, whether such items
83 will be incurred by the water provider, at the time the agreement is executed or
84 in the future, and if so, the amount of such expense attributable to such
85 agreement at the time such agreement is executed and in the future:

86 (a) All personnel expense including, but not limited to, wages and
87 salaries, employment taxes, retirement benefits, employment benefits, health

88 insurance, and workers' compensation insurance;

89 (b) All expense incurred by payments to independent contractors who
90 perform or carry out the agreement under contract with the water provider;

91 (c) Equipment expenses;

92 (d) Computer and computer program expense;

93 (e) Office space expense;

94 (f) Insurance expense attributable to the agreement between the water
95 provider and the sewer provider, including the additional insurance expense of
96 any independent contractor who performs or carries out the agreement under
97 contract with such water provider;

98 (g) All other expense attributable to the agreement between the water and
99 sewer provider;

100 (9) The agreement shall terminate in twenty years unless a different term
101 is agreed upon by the parties. Upon termination, the parties may agree to an
102 extension thereof, not to exceed an additional twenty years;

103 (10) If ownership of either the sewer system of the sewer provider or the
104 water system of the water provider is transferred to another entity or person, the
105 agreement shall terminate at the time of the transfer, unless the new owner and
106 remaining owner agree otherwise.

107 5. Upon the filing of such petition, the sewer provider shall appoint one
108 commissioner. The water provider shall appoint a commissioner within thirty
109 days of the service of the petition upon it. If the water provider fails to appoint
110 a commissioner within such time period, the court shall appoint a commissioner
111 on behalf of the water provider within forty-five days of service of the petition on
112 the water provider. The two named commissioners shall agree to appoint a third
113 commissioner within thirty days after the appointment of the second
114 commissioner, but in the event that they fail to do so, the court shall appoint a
115 third commissioner within sixty days after the appointment of the second
116 commissioner.

117 6. The commissioners shall draft an agreement between the water
118 provider and sewer provider meeting the requirements established in this
119 section. Before drafting such agreement, the water provider and sewer provider
120 shall be given an opportunity to present evidence and information pertaining to
121 such agreement at a hearing to be held by the commissioners, of which each party
122 shall receive fifteen days' written notice. The hearing may be continued from
123 time to time by the commissioners. The commissioners shall consider all evidence

124 and information submitted to them and prepare such agreement as provided
125 under this section. The agreement shall be submitted to the court within ninety
126 days of the selection or appointment of the last commissioner as provided under
127 this section.

128 7. If the court finds that the agreement is fair, reasonable, and meets the
129 requirements of this section, then the court shall enter its judgment approving
130 the agreement and order it to become effective sixty days after the date of such
131 judgment. If the court finds such agreement is not fair and reasonable or does
132 not meet the requirements of this section, the court shall return it to the
133 commissioners with its reasons for rejecting the agreement. The commissioners
134 shall make the required changes and resubmit the agreement to the court. Upon
135 approval of the agreement by the court, judgment shall be entered approving the
136 agreement and ordering it to become effective sixty days after the date of such
137 judgment. Thereafter, the parties shall abide by such agreement. If either party
138 fails to do so, the other party may file an action to compel compliance. Venue
139 shall be in the court issuing such judgment.

140 8. The judgment and order of the court shall be subject to appeal as
141 provided by law. All costs, including commissioners' compensation, shall be taxed
142 to and paid by the sewer provider requesting an agreement. The court shall
143 determine and order payment of fees of expert witnesses of the water provider by
144 the sewer provider to the water provider.

145 9. The provisions of this section shall not apply to any city not within a
146 county or any county with a charter form of government and with more than one
147 million inhabitants.] **No water corporation, municipality providing water,
148 or any water district established under chapter 247 shall terminate
149 service for nonpayment of a delinquent water bill owed to such water
150 provider either directly or by contracting with any municipality
151 providing sewer service or public sewer district established under
152 chapter 249 or 250, or sections 204.250 to 204.470, or any sewer district
153 created and organized under constitutional authority.**

393.108. [For purposes of this section, the hot weather rule shall mean
2 the period of time from June first to September thirtieth, in which the
3 discontinuance of gas and electric service to all residential users, including all
4 residential tenants of apartment buildings, for nonpayment of bills where gas or
5 electricity is used as the source of cooling or to operate the only cooling
6 equipment at the residence, is prohibited in the following situations:

7 (1) On any day when the National Weather Service local forecast between
8 6:00 a.m. and 9:00 p.m. for the following twenty-four hours predicts that the
9 temperature shall rise above ninety-five degrees Fahrenheit or that the heat
10 index shall rise above one hundred five degrees Fahrenheit;

11 (2) On any day when utility personnel are not available to reconnect
12 utility service during the immediately succeeding day or days and the National
13 Weather Service local forecast between 6:00 a.m. and 9:00 p.m. predicts that the
14 temperature during the period of unavailability shall rise above ninety-five
15 degrees Fahrenheit or that the heat index shall rise above one hundred five
16 degrees Fahrenheit; and

17 (3) In any other applicable situations provided for in rules established and
18 amended by the public service commission.] **No gas corporation or electrical**
19 **corporation shall terminate service for nonpayment of a delinquent gas**
20 **or electric bill owed to such gas corporation or electrical corporation.**

620.010. 1. There is hereby created a "Department of Economic
2 Development" to be headed by a director appointed by the governor, by and with
3 the advice and consent of the senate. All of the general provisions, definitions
4 and powers enumerated in section 1 of the Omnibus State Reorganization Act of
5 1974 shall continue to apply to this department and its divisions, agencies and
6 personnel.

7 2. The powers, duties and functions vested in the public service
8 commission, chapters 386, 387, 388, 389, 390, 392, 393, and others, and the
9 administrative hearing commission, sections 621.015 to 621.198 and others, are
10 transferred by type III transfers to the department of economic development. The
11 director of the department is directed to provide and coordinate staff and
12 equipment services to these agencies in the interest of facilitating the work of the
13 bodies and achieving optimum efficiency in staff services common to all the
14 bodies. Nothing in the Reorganization Act of 1974 shall prevent the chairman of
15 the public service commission from presenting additional budget requests or from
16 explaining or clarifying its budget requests to the governor or general assembly.

17 3. The powers, duties and functions vested in the office of the public
18 counsel are transferred by type III transfer to the department of economic
19 development. [Funding for the general counsel's office shall be by general
20 revenue.]

21 4. The public service commission is authorized to employ such staff as it
22 deems necessary for the functions performed by the general counsel other than

23 those powers, duties and functions relating to representation of the public before
24 the public service commission.

25 5. All the powers, duties and functions vested in the tourism commission,
26 chapter 258 and others, are transferred to the "Division of Tourism", which is
27 hereby created, by type III transfer.

28 6. All the powers, duties and functions of the department of community
29 affairs, chapter 251 and others, not otherwise assigned, are transferred by type
30 I transfer to the department of economic development, and the department of
31 community affairs is abolished. The director of the department of economic
32 development may assume all the duties of the director of community affairs or
33 may establish within the department such subunits and advisory committees as
34 may be required to administer the programs so transferred. The director of the
35 department shall appoint all members of such committees and heads of subunits.

36 7. The state council on the arts, chapter 185 and others, is transferred by
37 type II transfer to the department of economic development, and the members of
38 the council shall be appointed by the director of the department.

39 8. The Missouri housing development commission, chapter 215, is
40 assigned to the department of economic development, but shall remain a
41 governmental instrumentality of the state of Missouri and shall constitute a body
42 corporate and politic.

43 9. All the authority, powers, duties, functions, records, personnel,
44 property, matters pending and other pertinent vestiges of the division of
45 manpower planning of the department of social services are transferred by a type
46 I transfer to the "Division of Workforce Development", which is hereby created,
47 within the department of economic development. The division of manpower
48 planning within the department of social services is abolished. The provisions of
49 section 1 of the Omnibus State Reorganization Act of 1974, Appendix B, relating
50 to the manner and procedures for transfers of state agencies shall apply to the
51 transfers provided in this section.

52 10. All the authority, powers, functions, records, personnel, property,
53 contracts, matters pending and other pertinent vestiges of the division of
54 employment security within the department of labor and industrial relations
55 related to job training and labor exchange that are funded with or based upon
56 Wagner-Peyser funds, and other federal and state workforce development
57 programs administered by the division of employment security are transferred by
58 a type I transfer to the division of workforce development within the department

59 of economic development.

60 11. Any rule or portion of a rule, as that term is defined in section
61 536.010, that is created under the authority delegated in this section shall
62 become effective only if it complies with and is subject to all of the provisions of
63 chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
64 nonseverable and if any of the powers vested with the general assembly pursuant
65 to chapter 536 to review, to delay the effective date, or to disapprove and annul
66 a rule are subsequently held unconstitutional, then the grant of rulemaking
67 authority and any rule proposed or adopted after August 28, 2008, shall be
68 invalid and void.

Unofficial

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Bill

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