

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 383

AN ACT

To repeal sections 88.770 and 393.320, RSMo, and to enact in lieu thereof two new sections relating to the sale of utilities.

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

Section A. Sections 88.770 and 393.320, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 88.770 and 393.320, to read as follows:

88.770. 1. The board of aldermen may provide for and regulate the lighting of streets and the erection of lamp posts, poles and lights therefor, and may make contracts with any person, association or corporation, either private or municipal, for the lighting of the streets and other public places of the city with gas, electricity or otherwise, except that each initial contract shall be ratified by a majority of the voters of the city voting on the question and any renewal contract or extension shall be subject to voter approval of the majority of the voters voting on the question, pursuant to the provisions of section 88.251. The board of aldermen may erect, maintain and operate gas works, electric light works, or light works of any other kind or name, and to erect lamp posts, electric light poles, or any other apparatus or appliances necessary to light the streets, avenues, alleys or other public places, and to supply private

lights for the use of the inhabitants of the city and its suburbs, and may regulate the same, and may prescribe and regulate the rates to be paid by the consumers thereof, and may acquire by purchase, donation or condemnation suitable grounds within or without the city upon which to erect such works and the right-of-way to and from such works, and also the right-of-way for laying gas pipes, electric wires under or above the grounds, and erecting posts and poles and such other apparatus and appliances as may be necessary for the efficient operation of such works. The board of aldermen may, in its discretion, grant the right to any person, persons or corporation, to erect such works and lay the pipe, wires, and erect the posts, poles and other necessary apparatus and appliances therefor, upon such terms as may be prescribed by ordinance. Such rights shall not extend for a longer time than twenty years, but may be renewed for another period or periods not to exceed twenty years per period. Every initial grant shall be approved by a majority of the voters of the municipality voting on the question, and each renewal or extension of such rights shall be subject to voter approval of the majority of the voters voting on the question, pursuant to the provisions of section 88.251. Nothing herein contained shall be so construed as to prevent the board of aldermen from contracting with any person, persons or corporation for furnishing the city with gas or electric lights in cities where franchises have already been granted, and where gas or electric light plants already exist, without a vote of the people, except that the board of aldermen may sell, convey, encumber, lease, abolish or otherwise dispose of any public

utilities owned by the city including electric light systems, electric distribution systems or transmission lines, or any part of the electric light systems, electric or other heat systems, electric or other power systems, electric or other railways, gas plants, telephone systems, telegraph systems, transportation systems of any kind, waterworks, equipments and all public utilities not herein enumerated and everything acquired therefor, after first having passed an ordinance setting forth the terms of the sale, conveyance or encumbrance and when ratified by two-thirds of the voters voting on the question, except for the sale of a water or wastewater system, or the sale of a gas plant, which shall be authorized by a simple majority vote of the voters voting on the question. In the event of the proposed sale of a water or wastewater system, or a gas plant, the board of alderman shall hold a public meeting on such proposed sale at least thirty days prior to the vote. The municipality in question shall notify its customers of the informational meeting through radio, television, newspaper, regular mail, electronic mail, or any combination of notification methods to most effectively notify customers at least fifteen days prior to the informational meeting. In advance of putting a proposed water or wastewater system sale, or the sale of a gas plant, before the voters, the board of aldermen may seek an appraisal as set forth in subsection 2 of this section. The board may also seek and provide additional reasonable analyses to inform voters of such sale, including but not limited to, the impact of such sale on all city funds and revenues, other city services, and annexation. Nothing in this section shall be so construed as to discourage

the board of aldermen from seeking multiple bids when considering the disposal of a utility by sale.

2. Upon a decision of the board of aldermen to seek an appraisal in subsection 1 of this section, the board may utilize the appraisal process as set forth in subdivisions (1) and (2) of this subsection, or, for the sale of a water or wastewater system, the board may utilize the process as set forth in subsections 3 and 4 of section 393.320. Subdivisions (3) through (6) of this subsection shall apply only if an appraisal process is chosen and carried out.

(1) The board of aldermen shall determine the fair market value of the utility system upon obtaining two appraisals of the system's fair market value. One appraisal shall be obtained from an independent appraiser selected by the board of aldermen, and the other appraisal shall be obtained from an independent appraiser approved by the potential buyer. The board of aldermen may pay for its appraisal, or may negotiate with the potential buyer to pay for the board's appraisal. The potential buyer shall pay for its appraisal and is granted no authority to influence or control the selection and direction of the board-selected appraiser. Both appraisals shall be conducted in conformance with the Uniform Standards of Professional Appraisal Practice.

(a) Any appraisal obtained pursuant to this subdivision may consider and report the depreciated value of the capital assets to be sold, the estimated loss of future revenues to the utility, including the right to generate surpluses, and the cost of any capital improvements reasonably necessary to provide adequate

service and facilities to the utility's customers.

(b) The appraisal shall include an inventory of the utility's real and personal property, and a statement of net position or balance sheet of the utility, including all assets, liabilities, outstanding revenue, and general obligations used to finance the utility system.

(c) The appraisal shall include a financial information statement of the utility that includes current and projected rate schedules for the next five fiscal years, as well as the five most recent fiscal year revenue statements, if such statements exist, and a projection of the utility's revenue statements for the next five fiscal years.

(2) After considering the appraisals obtained pursuant to subdivision (1) of this subsection, the board of aldermen shall establish the utility's fair market value as the greater of any of the following:

(a) The average of the two appraisals obtained pursuant to subdivision (1) of this subsection;

(b) The depreciated value of the capital assets to be sold;

(c) The amount necessary to retire all of the city's outstanding revenue and general obligations issued for purposes of the utility.

(3) The board of aldermen's determination of a utility's fair market value pursuant to this subsection shall not be dispositive of the utility system's price, which shall be subject to negotiation by the board of aldermen.

(4) The board of aldermen may consider alternatives to disposing of the utility system by sale, including entering into

a finance agreement, purchase agreement, management agreement, or lease agreement with another entity.

(5) (a) The board of aldermen shall make available on its internet site, if such internet site exists, at least forty-five days prior to submitting a proposal for election pursuant to this section, a copy of each item listed in subdivisions (1) to (6) of this subsection. Such information shall also be posted in the building where the board of aldermen has its monthly meetings.

(b) If, at the time of posting information pursuant to paragraph (a) of this subdivision, the board of aldermen has received any offers or appraisals of fair market value from any prospective purchasers of the utility system in connection with a proposal to discontinue the utility and dispose of such utility by sale, then the board of aldermen shall make available on its internet site, if such internet site exists, each offer and appraisal then in existence.

(c) The board of aldermen shall make a good-faith effort to notify each property owner of the city and each ratepayer of the utility of the proposal to dispose of the utility by sale through radio, television, newspaper, regular mail, electronic mail, or any combination of such notification methods. Such notice shall also include instructions for locating a summary of the proposal and a summary of the information described in subdivisions (1) and (2) of this subsection on the board of aldermen's internet site, if such internet site exists. In the event the board of aldermen does not have an internet site, the notice shall inform the recipient that written copies of such information shall be made available at the building where the board of aldermen has

its monthly meetings.

(6) The provisions of this subsection shall only apply to water systems, wastewater systems, and natural gas plants.

3. The ballots shall be substantially in the following form and shall indicate the property, or portion thereof, and whether the same is to be sold, leased or encumbered:

Shall _____ (Indicate the property by stating whether electric distribution system, electric transmission lines or waterworks, etc.) be _____ (Indicate whether sold, leased or encumbered.)?

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

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

(2) "Small water utility", a public utility that regularly provides water service or sewer service to eight thousand or fewer customer connections; a water district established under the provisions of chapter 247 that regularly provides water or sewer service to eight thousand or fewer customer connections; a sewer district established under the provisions of chapter 204, 249, or 250 that regularly provides sewer service to eight

thousand or fewer customer connections; or a water system or sewer system owned by a municipality that regularly provides water service or sewer service to eight thousand or fewer customer connections; and all other entities that regularly provide water service or sewer service to eight thousand or fewer customer connections.

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

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

(2) The appraisers shall:

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

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

(3) If all three appraisers cannot agree as to the

appraised value, the appraisal, when signed by two of the appraisers, constitutes a good and valid appraisal.

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

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

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

(b) The ratemaking rate base of the small water utility as ordered by the public service commission in the small water utility's last previous rate case as adjusted by improvements and depreciation reserve since the previous rate case together with the transaction, closing, and transition costs incurred by the large water public utility unless such transaction, closing, and transition costs are elsewhere recoverable in rates. If the

small water utility and large water public utility proceed with the sale, any past-due fees due to the state from the small water utility or its customers under chapter 640 or 644 shall be resolved prior to the transfer of ownership or the liability for such past-due fees becomes the responsibility of the large water public utility. Such fees shall not be included in the large water public utility's rate base.

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

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

7. Any new permit issued pursuant to chapters 640 and 644, when a small water utility is acquired by a large water public utility, shall include a plan to resolve all outstanding permit compliance issues. After the transfer of ownership, the acquiring large public water utility shall continue providing service to all customers that were served by the small water utility at the time of sale.

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