

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

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HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 2120

AN ACT

To repeal sections 393.1009, 393.1012, and 393.1015, RSMo, and to enact in lieu thereof eight new sections relating to safety of utility infrastructure.

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

1 Section A. Sections 393.1009, 393.1012, and 393.1015, RSMo,
2 are repealed and eight new sections enacted in lieu thereof, to
3 be known as sections 393.1009, 393.1012, 393.1015, 640.141,
4 640.142, 640.144, 640.145, and 701.200, to read as follows:

5 393.1009. As used in sections 393.1009 to 393.1015, the
6 following terms mean:

7 (1) "Appropriate pretax revenues", the revenues necessary
8 to produce net operating income equal to:

9 (a) The gas corporation's weighted cost of capital
10 multiplied by the net original cost of eligible infrastructure
11 system replacements, including recognition of accumulated
12 deferred income taxes and accumulated depreciation associated
13 with eligible infrastructure system replacements which are
14 included in a currently effective ISRS; and

1 (b) Recover state, federal, and local income or excise
2 taxes applicable to such income; and

3 (c) Recover all other ISRS costs;

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

5 (3) "Eligible infrastructure system replacements", gas
6 utility plant projects that:

7 (a) Do not increase revenues by directly connecting the
8 infrastructure replacement to new customers;

9 (b) Are in service and used and useful;

10 (c) Were not included in the gas corporation's rate base in
11 its most recent general rate case; and

12 (d) Replace or extend the useful life of an existing
13 infrastructure;

14 (4) "Gas corporation", every corporation, company,
15 association, joint stock company or association, partnership and
16 person, their lessees, trustees or receivers appointed by any
17 court whatsoever, owning, operating, controlling, or managing any
18 gas plant operating for public use under privilege, license, or
19 franchise now or hereafter granted by the state or any political
20 subdivision, county, or municipality thereof as defined in
21 section 386.020;

22 (5) "Gas utility plant projects" [~~may~~] shall consist only
23 of the following:

24 (a) Mains, valves, service lines, regulator stations,
25 vaults, and other pipeline system components installed to comply
26 with state or federal safety requirements as replacements for
27 existing facilities that have worn out or are in deteriorated
28 condition or that can no longer be installed under currently

1 applicable safety requirements or any cast iron or steel
2 facilities including any connected or associated facilities that,
3 regardless of their material, age, or condition, are replaced as
4 part of a qualifying replacement project in a manner that adds no
5 incremental cost to a project compared to tying into or reusing
6 existing facilities;

7 (b) Main relining projects, service line insertion
8 projects, joint encapsulation projects, and other similar
9 projects extending the useful life or enhancing the integrity of
10 pipeline system components undertaken to comply with state or
11 federal safety requirements; and

12 (c) Facilities relocations required due to construction or
13 improvement of a highway, road, street, public way, or other
14 public work by or on behalf of the United States, this state, a
15 political subdivision of this state, or another entity having the
16 power of eminent domain provided that the costs related to such
17 projects have not been reimbursed to the gas corporation;

18 (6) "ISRS", infrastructure system replacement surcharge;

19 (7) "ISRS costs", depreciation expense and property taxes
20 that will be due within twelve months of the ISRS filing
21 associated with eligible system replacements less annual
22 depreciation expenses and property taxes associated with any
23 related facility retirements;

24 (8) "ISRS revenues", revenues produced through an ISRS
25 exclusive of revenues from all other rates and charges.

26 393.1012. 1. Notwithstanding any provisions of chapter 386
27 and this chapter to the contrary, beginning August 28, 2003, a
28 gas corporation providing gas service may file a petition and

1 proposed rate schedules with the commission to establish or
2 change ISRS rate schedules that will allow for the adjustment of
3 the gas corporation's rates and charges to provide for the
4 recovery of costs for eligible infrastructure system
5 replacements. The commission may not approve an ISRS to the
6 extent it would produce total annualized ISRS revenues below the
7 lesser of one million dollars or one-half of one percent of the
8 gas corporation's base revenue level approved by the commission
9 in the gas corporation's most recent general rate proceeding.
10 The commission may not approve an ISRS to the extent it would
11 produce total annualized ISRS revenues exceeding ten percent of
12 the gas corporation's base revenue level approved by the
13 commission in the gas corporation's most recent general rate
14 proceeding. An ISRS and any future changes thereto shall be
15 calculated and implemented in accordance with the provisions of
16 sections 393.1009 to 393.1015. ISRS revenues shall be subject to
17 a refund based upon a finding and order of the commission to the
18 extent provided in subsections 5 and 8 of section [393.1009]
19 393.1015.

20 2. The commission shall not approve an ISRS for any gas
21 corporation that has not had a general rate proceeding decided or
22 dismissed by issuance of a commission order within the past three
23 years, unless the gas corporation has filed for or is the subject
24 of a new general rate proceeding.

25 3. In no event shall a gas corporation collect an ISRS for
26 a period exceeding three years unless the gas corporation has
27 filed for or is the subject of a new general rate proceeding;
28 provided that the ISRS may be collected until the effective date

1 of new rate schedules established as a result of the new general
2 rate proceeding, or until the subject general rate proceeding is
3 otherwise decided or dismissed by issuance of a commission order
4 without new rates being established.

5 4. In order for a gas corporation to file a petition with
6 the commission to establish or change an ISRS, such corporation
7 shall, by July 1, 2021, develop and file with the commission a
8 pre-qualification process for contractors seeking to participate
9 in competitive bidding to install ISRS-eligible gas utility plant
10 projects. Under the pre-qualification process, the gas
11 corporation may specify certain eligibility requirements
12 typically accepted by the industry, including but not limited to,
13 experience, performance criteria, safety policies, and insurance
14 or indemnification requirements to be met by any contractor
15 seeking to participate in competitive bidding to install ISRS-
16 eligible gas utility plant projects. Contractors that meet the
17 pre-qualification criteria set by the gas corporation shall be
18 eligible to participate in the competitive bidding process for
19 installing ISRS-eligible gas utility plant projects, with the
20 winning bid awarded to the contractor making the overall lowest
21 and best bid, as defined in subsection 2 of section 34.010. The
22 gas corporation shall file, by January 1, 2022, a verified
23 statement with the commission confirming that it has in place a
24 pre-qualification process for the competitive bidding of ISRS-
25 eligible gas utility plant projects, and that such process
26 conforms with the requirements of this section. The commission
27 shall have the authority to verify the statement to ensure
28 compliance with this section. After January 1, 2022, the gas

1 corporation shall submit with each petition filing to establish
2 or change an ISRS a verified statement confirming that it is
3 using a competitive bidding process for no less than twenty-five
4 percent of the combined external installation expenditures made
5 by the gas corporation's operating units in Missouri for
6 installing ISRS-eligible gas utility plant projects, and that
7 such process conforms with the requirements set forth in this
8 section. The commission shall have the authority to verify the
9 statement to ensure compliance with this section. Nothing in
10 this section shall be construed as requiring any gas corporation
11 to use a pre-qualified contractor or competitive bidding process
12 in the case of an emergency project, or to terminate any existing
13 contract with a contractor prior to its expiration; provided
14 however, that the use of any preexisting contract for the
15 installation of ISRS-eligible gas utility plant projects shall
16 not qualify as fulfilling the twenty-five percent requirement set
17 forth in this section beyond December 31, 2022. For contractors
18 not qualifying through the competitive bid process, the gas
19 corporation, upon request from the contractor, shall provide
20 information from the process in which the contractor can be
21 informed as to how to be better positioned to qualify for such
22 bid opportunities in the future.

23 5. By December 31, 2023, and annually thereafter, the
24 commission shall submit a report to the general assembly on the
25 effects of subsection 4 of this section, including gas
26 corporation compliance, potential legislative action regarding
27 subsection 4 of this section, the costs of installing ISRS-
28 eligible gas utility plant projects prior to the implementation

1 of subsection 4 of this section compared to after the
2 implementation of subsection 4 of this section, and any other
3 information regarding the processes established under subsection
4 4 of this section that the commission deems necessary.

5 393.1015. 1. (1) At the time that a gas corporation files
6 a petition with the commission seeking to establish or change an
7 ISRS, it shall submit proposed ISRS rate schedules and its
8 supporting documentation regarding the calculation of the
9 proposed ISRS with the petition, and shall serve the office of
10 the public counsel with a copy of its petition, its proposed rate
11 schedules, and its supporting documentation.

12 (2) Upon the filing of a petition, and any associated rate
13 schedules, seeking to establish or change an ISRS, the commission
14 shall publish notice of the filing.

15 2. (1) When a petition, along with any associated proposed
16 rate schedules, is filed pursuant to the provisions of sections
17 393.1009 to 393.1015, the commission shall conduct an examination
18 of the proposed ISRS.

19 (2) The staff of the commission may examine information of
20 the gas corporation to confirm that the underlying costs are in
21 accordance with the provisions of sections 393.1009 to 393.1015,
22 and to confirm proper calculation of the proposed charge, and may
23 submit a report regarding its examination to the commission not
24 later than [~~sixty~~] ninety days after the petition is filed. No
25 other revenue requirement or ratemaking issues may be examined in
26 consideration of the petition or associated proposed rate
27 schedules filed pursuant to the provisions of sections 393.1009
28 to 393.1015.

1 (3) The commission may hold a hearing on the petition and
2 any associated rate schedules and shall issue an order to become
3 effective not later than one hundred [~~twenty~~] eighty days after
4 the petition is filed.

5 (4) If the commission finds that a petition complies with
6 the requirements of sections 393.1009 to 393.1015, the commission
7 shall enter an order authorizing the corporation to impose an
8 ISRS that is sufficient to recover appropriate pretax revenue, as
9 determined by the commission pursuant to the provisions of
10 sections 393.1009 to 393.1015.

11 3. A gas corporation may effectuate a change in its rate
12 pursuant to the provisions of this section no more often than two
13 times every twelve months.

14 4. In determining the appropriate pretax revenue, the
15 commission shall consider only the following factors:

16 (1) The current state, federal, and local income tax or
17 excise rates;

18 (2) The gas corporation's actual regulatory capital
19 structure as determined during the most recent general rate
20 proceeding of the gas corporation;

21 (3) The actual cost rates for the gas corporation's debt
22 and preferred stock as determined during the most recent general
23 rate proceeding of the gas corporation;

24 (4) The gas corporation's cost of common equity as
25 determined during the most recent general rate proceeding of the
26 gas corporation;

27 (5) The current property tax rate or rates applicable to
28 the eligible infrastructure system replacements;

1 (6) The current depreciation rates applicable to the
2 eligible infrastructure system replacements; and

3 (7) In the event information pursuant to subdivisions (2),
4 (3), and (4) of this subsection is unavailable and the commission
5 is not provided with such information on an agreed-upon basis,
6 the commission shall refer to the testimony submitted during the
7 most recent general rate proceeding of the gas corporation and
8 use, in lieu of any such unavailable information, the recommended
9 capital structure, recommended cost rates for debt and preferred
10 stock, and recommended cost of common equity that would produce
11 the average weighted cost of capital based upon the various
12 recommendations contained in such testimony.

13 5. (1) The monthly ISRS charge may be calculated based on
14 a reasonable estimate of billing units in the period in which the
15 charge will be in effect, which shall be conclusively established
16 by dividing the appropriate pretax revenues by the customer
17 numbers reported by the gas corporation in the annual report it
18 most recently filed with the commission pursuant to subdivision
19 (6) of section 393.140, and then further dividing this quotient
20 by twelve. Provided, however, that the monthly ISRS may vary
21 according to customer class and may be calculated based on
22 customer numbers as determined during the most recent general
23 rate proceeding of the gas corporation so long as the monthly
24 ISRS for each customer class maintains a proportional
25 relationship equivalent to the proportional relationship of the
26 monthly customer charge for each customer class.

27 (2) At the end of each twelve-month calendar period the
28 ISRS is in effect, the gas corporation shall reconcile the

1 differences between the revenues resulting from an ISRS and the
2 appropriate pretax revenues as found by the commission for that
3 period and shall submit the reconciliation and a proposed ISRS
4 adjustment to the commission for approval to recover or refund
5 the difference, as appropriate, through adjustments of an ISRS
6 charge.

7 6. (1) A gas corporation that has implemented an ISRS
8 pursuant to the provisions of sections 393.1009 to 393.1015 shall
9 file revised rate schedules to reset the ISRS to zero when new
10 base rates and charges become effective for the gas corporation
11 following a commission order establishing customer rates in a
12 general rate proceeding that incorporates in the utility's base
13 rates subject to subsections 8 and 9 of this section eligible
14 costs previously reflected in an ISRS.

15 (2) Upon the inclusion in a gas corporation's base rates
16 subject to subsections 8 and 9 of this section of eligible costs
17 previously reflected in an ISRS, the gas corporation shall
18 immediately thereafter reconcile any previously unreconciled ISRS
19 revenues as necessary to ensure that revenues resulting from the
20 ISRS match as closely as possible the appropriate pretax revenues
21 as found by the commission for that period.

22 7. A gas corporation's filing of a petition or change to an
23 ISRS pursuant to the provisions of sections 393.1009 to 393.1015
24 shall not be considered a request for a general increase in the
25 gas corporation's base rates and charges.

26 8. Commission approval of a petition, and any associated
27 rate schedules, to establish or change an ISRS pursuant to the
28 provisions of sections 393.1009 to 393.1015 shall in no way be

1 binding upon the commission in determining the ratemaking
2 treatment to be applied to eligible infrastructure system
3 replacements during a subsequent general rate proceeding when the
4 commission may undertake to review the prudence of such costs.
5 In the event the commission disallows, during a subsequent
6 general rate proceeding, recovery of costs associated with
7 eligible infrastructure system replacements previously included
8 in an ISRS, the gas corporation shall offset its ISRS in the
9 future as necessary to recognize and account for any such
10 overcollections.

11 9. Nothing in this section shall be construed as limiting
12 the authority of the commission to review and consider
13 infrastructure system replacement costs along with other costs
14 during any general rate proceeding of any gas corporation.

15 10. Nothing contained in sections 393.1009 to 393.1015
16 shall be construed to impair in any way the authority of the
17 commission to review the reasonableness of the rates or charges
18 of a gas corporation, including review of the prudence of
19 eligible infrastructure system replacements made by a gas
20 corporation, pursuant to the provisions of section 386.390.

21 11. The commission shall have authority to promulgate rules
22 for the implementation of sections 393.1009 to 393.1015, but only
23 to the extent such rules are consistent with, and do not delay
24 the implementation of, the provisions of sections 393.1009 to
25 393.1015. Any rule or portion of a rule, as that term is defined
26 in section 536.010, that is created under the authority delegated
27 in this section shall become effective only if it complies with
28 and is subject to all of the provisions of chapter 536 and, if

1 applicable, section 536.028. This section and chapter 536 are
2 nonseverable and if any of the powers vested with the general
3 assembly pursuant to chapter 536 to review, to delay the
4 effective date, or to disapprove and annul a rule are
5 subsequently held unconstitutional, then the grant of rulemaking
6 authority and any rule proposed or adopted after August 28, 2003,
7 shall be invalid and void.

8 12. If a gas corporation's ISRS includes unlawful and
9 unreasonable charges as determined in a final court ruling and
10 from which no appeal is taken, the commission shall issue an
11 order to refund those amounts, and the gas corporation shall
12 refund every current customer of the gas corporation who paid
13 such charges before the gas corporation may file for a new ISRS.
14 Customers who are no longer serviced by the gas corporation but
15 who paid such charges may apply to the gas corporation for a
16 refund within two years of the ruling.

17 13. The provisions of sections 393.1009 to 393.1015 shall
18 expire on August 28, 2029.

19 640.141. Sections 640.141 to 640.145 shall be known as the
20 "Water Safety and Security Act". For the purposes of these
21 sections, the term "community water system" shall mean a public
22 water system as defined in section 640.102 that serves at least
23 fifteen service connections and is operated on a year-round basis
24 or regularly serves at least twenty-five residents on a year-
25 round basis.

26 640.142. 1. Within twelve months of the effective date of
27 this section, each community water system shall create a plan
28 that establishes policies and procedures for identifying and

1 mitigating cyber risk. The plan shall include risk assessments
2 and implementation of appropriate controls to mitigate identified
3 cyber risks.

4 2. Community water systems that do not use an internet-
5 connected control system are exempt from the provisions of this
6 section.

7 3. The provisions of this section shall not apply to any
8 state parks, cities with a population of more than thirty
9 thousand inhabitants, a county with a charter form of government
10 and with more than six hundred thousand but fewer than seven
11 hundred thousand inhabitants, a county with a charter form of
12 government and with more than nine hundred fifty thousand
13 inhabitants, or a public service commission regulated utility
14 with more than thirty thousand customers.

15 640.144. 1. All community water systems shall be required
16 to create a valve inspection program that includes:

17 (1) Inspection of all valves every ten years;

18 (2) Scheduled repair or replacement of broken valves; and

19 (3) Within five years of the effective date of this
20 section, identification of each shut off valve location using a
21 geographic information system or an alternative physical mapping
22 system that accurately identifies the location of each valve.

23 2. All community water systems shall be required to create
24 a hydrant inspection program that includes:

25 (1) Annual testing of every hydrant in the community water
26 system;

27 (2) Scheduled repair or replacement of broken hydrants;

28 (3) A plan to flush every hydrant and dead-end main;

1 (4) Maintenance of records of inspections, tests, and
2 flushings for six years; and

3 (5) Within five years of the effective date of this section,
4 identification of each hydrant location using a geographic
5 information system or an alternative physical mapping system that
6 accurately identifies the location of each hydrant.

7 3. The provisions of this section shall not apply to any
8 state parks, cities with a population of more than thirty
9 thousand inhabitants, a county with a charter form of government
10 and with more than six hundred thousand but fewer than seven
11 hundred thousand inhabitants, a county with a charter form of
12 government and with more than nine hundred fifty thousand
13 inhabitants, or a public service commission regulated utility
14 with more than thirty thousand customers.

15 640.145. 1. Community water systems shall submit a report
16 upon request of the department of natural resources that shall
17 certify compliance with all regulations regarding:

18 (1) Water quality sampling, testing, and reporting;

19 (2) Hydrant and valve inspections under section 640.144;

20 and

21 (3) Cyber security plans and policies, if required under
22 section 640.142.

23 2. The provisions of this section shall not apply to any
24 state parks, cities with a population of more than thirty
25 thousand inhabitants, a county with a charter form of government
26 and with more than six hundred thousand but fewer than seven
27 hundred thousand inhabitants, a county with a charter form of
28 government and with more than nine hundred fifty thousand

1 inhabitants, or a public service commission regulated utility
2 with more than thirty thousand customers.

3 701.200. 1. Subject to appropriations, each school
4 district, as such term is defined in section 160.011, may test a
5 sample of a source of potable water in a public school building
6 in that district serving students under first grade and
7 constructed before 1996 for lead contamination in accordance with
8 guidance provided by the department of health and senior
9 services. The school district may submit the samples to a
10 department-approved laboratory for analysis for lead and provide
11 the written sampling results to the department within seven days
12 of receipt.

13 2. The department shall develop guidance for schools in
14 collecting and testing first-draw samples of potable water. The
15 department shall develop and make publicly available a list of
16 approved laboratories for lead analysis.

17 3. If any of the samples taken in the building exceed five
18 parts per billion of lead, the school district shall promptly
19 provide individual notification of the sampling results, by
20 written or electronic communication, to the parents or legal
21 guardians of all enrolled students and include the following
22 information: the corresponding sampling location within the
23 building and the U.S. Environmental Protection Agency's website
24 for information about lead in drinking water. If any of the
25 samples taken in the building are at or below five parts per
26 billion, notification may be made as provided in this subsection
27 or by posting on the school's website.

28 4. The department may promulgate rules and regulations

1 necessary to implement the provisions of this section. Any rule
2 or portion of a rule, as that term is defined in section 536.010,
3 that is created under the authority delegated in this section
4 shall become effective only if it complies with and is subject to
5 all of the provisions of chapter 536 and, if applicable, section
6 536.028. This section and chapter 536 are nonseverable and if
7 any of the powers vested with the general assembly pursuant to
8 chapter 536 to review, to delay the effective date, or to
9 disapprove and annul a rule are subsequently held
10 unconstitutional, then the grant of rulemaking authority and any
11 rule proposed or adopted after August 28, 2020, shall be invalid
12 and void.

13 5. As used in this section, the term "source of potable
14 water" shall mean the point at which nonbottled water that may be
15 ingested by children or used for food preparation exits any tap,
16 faucet, drinking fountain, wash basin in a classroom occupied by
17 children or students under first grade, or similar point of use;
18 provided, that all bathroom sinks and wash basins used by
19 janitorial staff are excluded from this definition.