

SENATE SUBSTITUTE  
FOR  
SENATE BILL NO. 44  
AN ACT

To repeal section 393.358, RSMo, and to enact in lieu thereof five new sections relating to water and sewer infrastructure.

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

Section A. Section 393.358, RSMo, is repealed and five  
2 new sections enacted in lieu thereof, to be known as sections  
3 393.358, 393.1500, 393.1503, 393.1506, and 393.1509, to read as  
4 follows:

393.358. 1. For purposes of this section, the  
2 following terms shall mean:

3 (1) "Commission", the Missouri public service  
4 commission established under section 386.040;

5 (2) "Water corporation", a corporation with more than  
6 one thousand Missouri customers that otherwise meets the  
7 definition of "water corporation" in section 386.020.

8 2. Water corporations shall develop a qualification  
9 process open to all contractors seeking to provide  
10 construction and construction-related services for planned  
11 infrastructure projects on the water corporation's  
12 distribution system. The water corporation shall specify  
13 qualification requirements and goals for contractors seeking  
14 to perform such work, including but not limited to  
15 experience, performance criteria, safety record and  
16 policies, technical expertise, scheduling needs and  
17 available resources, supplier diversity and insurance  
18 requirements. Contractors that meet the qualification  
19 requirements shall be eligible to participate in a  
20 competitive bidding process for providing construction and

21 construction-related services for planned infrastructure  
22 projects on the water corporation's distribution system, and  
23 the contractor making the lowest and best bid shall be  
24 awarded such contract. For contractors not qualifying  
25 through the competitive bid process, the water corporation,  
26 upon request from the contractor, shall provide information  
27 from the process in which the contractor can be informed as  
28 to how to be better positioned to qualify for such bid  
29 opportunities in the future. Nothing in this section shall  
30 be construed as requiring any water corporation to use third  
31 parties instead of its own employees to perform such work,  
32 to use the contractor qualification or competitive bidding  
33 process in the case of an emergency project, or to terminate  
34 any existing contract with a contractor prior to its  
35 expiration.

36 3. Within thirty days after August 28, 2018, and with  
37 the filing of a general rate proceeding initiated by the  
38 water corporation, the water corporation shall file a  
39 statement with the commission confirming it has established  
40 a qualification process meeting the requirements of this  
41 section and that such process is used for no less than [ten]  
42 twenty percent of the corporation's external expenditures  
43 for planned infrastructure projects on the water  
44 corporation's distribution system. The commission shall  
45 have the authority to verify the statements to ensure  
46 compliance with this section.

47 4. By December 31, 2020, the commission shall submit a  
48 report to the general assembly on the effects of this  
49 section, including water corporation compliance, the costs  
50 of performing planned infrastructure projects prior to the  
51 implementation of this section compared to after the  
52 implementation of this section, and any other information

53 regarding the process established under this section that  
54 the commission deems necessary.

393.1500. Sections 393.1500 to 393.1509 shall be known  
2 and may be cited as the "Missouri Water and Sewer  
3 Infrastructure Act".

393.1503. As used in sections 393.1500 to 393.1509,  
2 the following terms shall mean:

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

5 (a) The water or sewer corporation's pretax weighted  
6 cost of capital multiplied by the net original cost of  
7 eligible infrastructure system projects, including  
8 recognition of accumulated deferred income taxes and  
9 accumulated depreciation associated with eligible  
10 infrastructure system projects which are included in the  
11 petition to establish or change a WSIRA, plus accumulated  
12 deferred income taxes and accumulated depreciation  
13 associated with any eligible infrastructure system projects  
14 in a currently effective WSIRA implemented pursuant to  
15 sections 393.1506 and 393.1509;

16 (b) The state, federal, and local income or excise  
17 taxes applicable to such revenues;

18 (c) The depreciation expense applicable to the  
19 eligible infrastructure system project less annual  
20 depreciation expense associated with any related facility  
21 retirements; and

22 (d) The property taxes applicable to the eligible  
23 infrastructure that will be due within twelve months of the  
24 filing of a request to implement a water and sewer  
25 infrastructure rate adjustment pursuant to sections 393.1506  
26 and 393.1509, less any property taxes associated with any  
27 related facility retirements;

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

30           (3) "Eligible infrastructure system projects", water  
31 or sewer utility plant projects that:

32           (a) Replace or extend the useful life of existing  
33 infrastructure;

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

35           (c) Do not include projects intended solely for  
36 customer growth; and

37           (d) The costs of which were not recovered in the water  
38 or sewer corporation's base rates in its most recent general  
39 rate case;

40           (4) "Sewer corporation", the same as defined in  
41 section 386.020;

42           (5) "Water and sewer infrastructure rate adjustment"  
43 or "WSIRA", a separate line item rate on a customer's water  
44 or sewer bill designed to recover the appropriate pretax  
45 revenues associated with eligible infrastructure system  
46 projects implemented pursuant to sections 393.1500 to  
47 393.1509;

48           (6) "Water corporation", the same as defined in  
49 section 386.020;

50           (7) "Water or sewer utility plant projects", shall  
51 consist of the following:

52           (a) Replacement of or cleaning and relining of  
53 existing water and sewer pipes, and associated valves,  
54 hydrants, meters, service lines, laterals, sewer taps,  
55 curbstops, and manholes;

56           (b) Replacement of lead mains, lead goosenecks and  
57 lead service lines, and associated valves and meters;

58           (c) Replacement of booster station and lift station  
59 pumps, with equipment of similar capacity and operation, as  
60 well as related pipes, valves, and meters; and

61 (d) Facilities relocations required due to  
62 construction or improvement of a highway, road, street,  
63 public way, or other public work by or on behalf of the  
64 United States, this state, a political subdivision of this  
65 state, or another entity having the power of eminent domain;  
66 provided that the costs related to such projects have not  
67 been reimbursed to the water or sewer corporation;

68 (e) Replacement of water and wastewater treatment  
69 mechanical equipment with equipment of similar capacity and  
70 operation, including well and intake pumps, transfer pumps,  
71 high service or discharge pumps, and metering pumps;

72 (f) Replacement of Supervisory Control and Data  
73 Acquisition System (SCADA) components necessary for the  
74 operation and monitoring of remote installations including  
75 radio and cellular communication equipment, and programmable  
76 logic controllers;

77 (8) "WSIRA revenues", revenues produced through  
78 implementation of a WSIRA pursuant to sections 393.1500 to  
79 393.1509, exclusive of revenues from all other rates and  
80 charges.

393.1506. 1. Notwithstanding any provisions of  
2 chapter 386 and this chapter to the contrary, a water or  
3 sewer corporation that provides water or sewer service to  
4 more than eight thousand customer connections may file a  
5 petition and proposed rate schedules with the commission to  
6 establish or change a WSIRA that will provide for the  
7 recovery of the appropriate pretax revenues associated with  
8 the eligible infrastructure system projects, less the  
9 appropriate pretax revenues associated with any retired  
10 utility plant that is being replaced by the eligible  
11 infrastructure system projects. The WSIRA shall not produce  
12 revenues in excess of fifteen percent of the water or sewer  
13 corporation's base revenue requirement approved by the

14 commission in the water or sewer corporation's most recent  
15 general rate proceeding; provided, however, that neither  
16 WSIRA revenues attributable to replacement of customer-owned  
17 lead service lines, nor any reconciliation amounts described  
18 in subdivision (2) of subsection 5 of section 393.1509,  
19 shall count toward the program cap. The WSIRA and any  
20 future changes thereto shall be calculated and implemented  
21 in accordance with the provisions of sections 393.1503 to  
22 393.1509. WSIRA revenues shall be subject to refund based  
23 upon a finding and order of the commission, to the extent  
24 provided in subsections 5 and 8 of section 393.1509.

25 2. The commission shall not approve a WSIRA for a  
26 water or sewer corporation that has not had a general rate  
27 proceeding decided or dismissed by issuance of a commission  
28 order within the past three years of the filing of a  
29 petition pursuant to this section, unless the water or sewer  
30 corporation has filed for or is the subject of a new general  
31 rate proceeding.

32 3. In no event shall a water or sewer corporation  
33 collect a WSIRA for a period exceeding three years unless  
34 the water or sewer corporation has filed for or is the  
35 subject of a pending general rate proceeding; provided that  
36 the WSIRA may be collected until the effective date of new  
37 rate schedules established as a result of the new general  
38 rate proceeding, or until the subject general rate  
39 proceeding is otherwise decided or dismissed by issuance of  
40 a commission order without new rates being established.

41 4. Except as provided in this subsection, in no event  
42 shall a water or sewer corporation collect a WSIRA if also  
43 collecting revenues from a commission approved  
44 infrastructure system replacement surcharge as provided in  
45 sections 393.1000 to 393.1006. In the event a water or  
46 sewer corporation is collecting infrastructure system

47 replacement surcharge revenues under sections 393.1000 to  
48 393.1006, that was approved prior to August 28, 2021, when  
49 the initial WSIRA is filed, the approved infrastructure  
50 system replacement surcharge revenues shall be included in  
51 the new WSIRA filing.

393.1509. 1. (1) At the time that a water or sewer  
2 corporation files a petition with the commission seeking to  
3 establish or change a WSIRA, it shall submit proposed WSIRA  
4 rate schedules and supporting documentation regarding the  
5 calculation of the proposed WSIRA with the petition and  
6 shall serve the office of the public counsel with a copy of  
7 its petition, its proposed WSIRA rate schedules, and its  
8 supporting documentation.

9 (2) Upon the filing of a petition and any associated  
10 WSIRA rate schedules, seeking to establish or change a  
11 WSIRA, the commission shall publish notice of the filing.

12 (3) Three months prior to a water or sewer corporation  
13 filing a petition to establish a WSIRA, it shall also file  
14 with the commission a five-year capital expenditure plan  
15 unless such a plan has already been submitted during the  
16 current calendar year. Thereafter, the water or sewer  
17 commission shall annually file with the commission a five-  
18 year capital expenditure plan by January thirty-first of  
19 each year the corporation is collecting revenues through a  
20 WSIRA.

21 2. (1) When a petition, along with any associated  
22 proposed rate schedules, is filed pursuant to the provisions  
23 of sections 393.1503 to 393.1509, the commission shall  
24 conduct an examination of the proposed WSIRA.

25 (2) The staff of the commission may examine  
26 information of the water or sewer corporation to confirm  
27 that the underlying costs are in accordance with the  
28 provisions of sections 393.1503 to 393.1509, and to confirm

29 proper calculation of the proposed WSIRA, and may submit a  
30 report regarding its examination to the commission not later  
31 than ninety days after the petition is filed. No other  
32 revenue requirement or ratemaking issues shall be examined  
33 in consideration of the petition or associated proposed  
34 WSIRA rate schedules filed pursuant to the provisions of  
35 sections 393.1503 to 393.1509.

36 (3) The commission may hold a hearing on the petition  
37 and any associated WSIRA rate schedule and shall issue an  
38 order to become effective not later than one hundred eighty  
39 days after the petition is filed.

40 (4) If the commission finds that a petition complies  
41 with the requirements of sections 393.1503 to 393.1509, the  
42 commission shall enter an order authorizing the water or  
43 sewer corporation to implement a WSIRA that is sufficient to  
44 recover appropriate pretax revenues, as determined by the  
45 commission pursuant to the provisions of sections 393.1503  
46 to 393.1509.

47 3. A water or sewer corporation may effectuate a  
48 change in its WSIRA pursuant to this section no more often  
49 than two times in every twelve-month period.

50 4. In determining the appropriate pretax revenues, the  
51 commission shall consider only the following factors:

52 (1) The current state, federal, and local income or  
53 excise tax rates, including any income tax deductions and  
54 net operating loss carryforwards associated with the  
55 eligible infrastructure system projects;

56 (2) The water or sewer corporation's actual regulatory  
57 capital structure as determined during the most recent  
58 general rate proceeding of the water or sewer corporation;

59 (3) The actual cost rates for the water or sewer  
60 corporation's debt and preferred stock as determined during



61 the most recent general rate proceeding of the water or  
62 sewer corporation;

63 (4) The water or sewer corporation's cost of common  
64 equity as determined during the most recent general rate  
65 proceeding of the water or sewer corporation;

66 (5) The current property tax rate or rates applicable  
67 to the eligible infrastructure system projects;

68 (6) The current depreciation rates applicable to the  
69 eligible infrastructure system projects;

70 (7) In the event information described in subdivisions  
71 (2), (3), and (4) of this subsection is unavailable and the  
72 commission is not provided with such information on an  
73 agreed-upon basis, the commission shall utilize the overall  
74 pretax weighted average cost of capital last authorized for  
75 the water or sewer corporation in a general rate proceeding  
76 regarding a WSIRA or an infrastructure system replacement  
77 surcharge under sections 393.1000 to 393.1006.

78 5. (1) A WSIRA shall be calculated based upon the  
79 amount of infrastructure system project costs that are  
80 eligible for recovery during the period in which the WSIRA  
81 will be in effect and upon the applicable tariff rate group  
82 billing determinants utilized in designing the water or  
83 sewer corporation's customer rates in its most recent  
84 general rate proceeding and allocated in a manner consistent  
85 with the rate design methodology utilized to develop the  
86 water or sewer corporation's base rates resulting from its  
87 most recent general rate proceeding.

88 (2) At the end of each twelve-month calendar period  
89 that a WSIRA is in effect, the water or sewer corporation  
90 shall reconcile the differences between the revenues  
91 resulting from a WSIRA and the appropriate pretax revenues  
92 as found by the commission for that period and shall submit  
93 the reconciliation and a proposed WSIRA to the commission

94 for approval to recover or credit the difference, as  
95 appropriate, through a WSIRA.

96 6. (1) A water or sewer corporation that has  
97 implemented a WSIRA pursuant to the provisions of sections  
98 393.1503 to 393.1509 shall file revised WSIRA schedules to  
99 reset the WSIRA to zero when new base rates and charges  
100 become effective for the water or sewer corporation  
101 following a commission order establishing customer rates in  
102 a general rate proceeding that incorporates in the utility's  
103 base rates, subject to subsections 8 and 9 of this section,  
104 eligible costs previously reflected in a WSIRA.

105 (2) Upon the inclusion in a water or sewer  
106 corporation's base rates, subject to subsections 8 and 9 of  
107 this section, of eligible costs previously reflected in a  
108 WSIRA, the water or sewer corporation shall immediately  
109 thereafter reconcile any previously unreconciled WSIRA  
110 revenues as necessary to ensure that revenues resulting from  
111 the WSIRA match as closely as possible the appropriate  
112 pretax revenues as found by the commission for that period.

113 7. A water or sewer corporation's filing of a petition  
114 to establish or change a WSIRA pursuant to the provisions of  
115 sections 393.1503 to 393.1509 shall not be considered a  
116 request for a general increase in the water or sewer  
117 corporation's base rates and charges.

118 8. Commission approval of a petition, and any  
119 associated rate schedules, to establish or change a WSIRA  
120 pursuant to the provisions of sections 393.1503 to 393.1509  
121 shall in no way be binding upon the commission in  
122 determining the ratemaking treatment to be applied to  
123 eligible infrastructure system projects during a subsequent  
124 general rate proceeding when the commission may undertake to  
125 review the prudence of such costs. In the event the  
126 commission disallows, during a subsequent general rate

127 proceeding, recovery of costs associated with eligible  
128 infrastructure system projects previously included in a  
129 WSIRA, the water or sewer corporation shall offset its WSIRA  
130 in the future as necessary to recognize and account for any  
131 such overcollections.

132 9. Nothing contained in sections 393.1503 to 393.1509  
133 shall be construed to impair in any way the authority of the  
134 commission to review the reasonableness of the rates or  
135 charges of a water or sewer corporation, including review of  
136 the prudence of eligible infrastructure system replacements  
137 made by a water or sewer corporation, pursuant to the  
138 provisions of section 386.390.

139 10. The commission shall have authority to promulgate  
140 rules for the implementation of sections 393.1503 to  
141 393.1509, but only to the extent such rules are consistent  
142 with, and do not delay the implementation of, the provisions  
143 of sections 393.1503 to 393.1509. Any rule or portion of a  
144 rule, as that term is defined in section 536.010, that is  
145 created under the authority delegated in this section shall  
146 become effective only if it complies with and is subject to  
147 all of the provisions of chapter 536 and, if applicable,  
148 section 536.028. This section and chapter 536 are  
149 nonseverable and if any of the powers vested with the  
150 general assembly pursuant to chapter 536 to review, to delay  
151 the effective date, or to disapprove and annul a rule are  
152 subsequently held unconstitutional, then the grant of  
153 rulemaking authority and any rule proposed or adopted after  
154 August 28, 2021, shall be invalid and void.