

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 767

AN ACT

To repeal sections 204.569, 247.200, 393.358, and 394.120, RSMo, and to enact in lieu thereof eleven new sections relating to utilities.

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

Section A. Sections 204.569, 247.200, 393.358, and 394.120, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 67.309, 204.569, 247.200, 247.285, 386.895, 393.358, 393.1500, 393.1503, 393.1506, 393.1509, and 394.120, to read as follows:

67.309. No political subdivision of this state, including any referenced in section 386.020, shall adopt an ordinance, resolution, regulation, code, or policy that prohibits, or has the effect of prohibiting, the connection or reconnection of a utility service based upon the type or source of energy to be delivered to an individual customer. Nothing in this section shall limit the ability of a political subdivision to choose utility services for properties owned by such political subdivision.

204.569. When an unincorporated sewer subdistrict of a common sewer district has been formed pursuant to sections 204.565 to 204.573, the board of trustees of the common sewer district shall have the same powers with regard to the subdistrict as for the common sewer district as a whole, plus the following additional powers:

(1) To enter into agreements to accept, take title to, or otherwise acquire, and to operate such sewers, sewer systems, treatment and disposal facilities, and other property, both real and personal, of the political

subdivisions included in the subdistrict as the board determines to be in the interest of the common sewer district to acquire or operate, according to such terms and conditions as the board finds reasonable, provided that such authority shall be in addition to the powers of the board of trustees pursuant to section 204.340;

(2) To provide for the construction, extension, improvement, and operation of such sewers, sewer systems, and treatment and disposal facilities, as the board determines necessary for the preservation of public health and maintenance of sanitary conditions in the subdistrict;

(3) For the purpose of meeting the costs of activities undertaken pursuant to the authority granted in this section, to issue bonds in anticipation of revenues of the subdistrict in the same manner as set out in sections 204.360 to 204.450, for other bonds of the common sewer district. Issuance of such bonds for the subdistrict shall require the assent only of four-sevenths of the voters of the subdistrict voting on the question[, and] except that, as an alternative to such a vote, if the subdistrict is a part of a common sewer district located in whole or in part in any county of the first classification without a charter form of government adjacent to a county of the first classification with a charter form of government and a population of at least six hundred thousand and not more than seven hundred fifty thousand, bonds may be issued for such subdistrict if the question receives the written assent of three-quarters of the customers of the subdistrict in a manner consistent with section 204.370, where "customer", as used in this subdivision, means any political subdivision within the subdistrict that has a service or user agreement with the common sewer district. The principal and interest of such bonds shall be payable only from the revenues of the

subdistrict and not from any revenues of the common sewer district as a whole;

(4) To charge the costs of the common sewer district for operation and maintenance attributable to the subdistrict, plus a proportionate share of the common sewer district's costs of administration to revenues of the subdistrict and to consider such costs in determining reasonable charges to impose within the subdistrict under section 204.440;

(5) With prior concurrence of the subdistrict's advisory board, to provide for the treatment and disposal of sewage from the subdistrict in or by means of facilities of the common sewer district not located within the subdistrict, in which case the board of trustees shall also have authority to charge a proportionate share of the costs of the common sewer district for operation and maintenance to revenues of the subdistrict and to consider such costs in determining reasonable charges to impose within the subdistrict under section 204.440.

247.200. 1. The district shall have the right to lay its mains in public highways, roads, streets and alleys included in the district, but the same shall be done under reasonable rules and regulations of governmental bodies having jurisdiction of such public places. This shall apply to maintenance and repair jobs. In the construction of ditches, laying of mains, filling of ditches after mains are laid, connection of service pipes and repairing of lines, due regard must be taken of the rights of the public in its use of thoroughfares and the equal rights of other utilities thereto.

2. No district shall require a secondary deposit from commercial property owners. For the purposes of this subsection, a commercial property is a property that is

zoned for commercial use by the zoning authority that has jurisdiction over the property.

3. If a water meter has been removed from a property or if services to a property have been discontinued, no future charges shall be made to the customer for service to that property. Any charges made after service is discontinued or the water meter is removed shall be credited to the customer and applied toward any future charges to such customer by the district.

247.285. 1. No metropolitan water supply district shall require a secondary deposit from commercial property owners. For the purposes of this subsection, a commercial property is a property that is zoned for commercial use by the zoning authority that has jurisdiction over the property.

2. If a water meter has been removed from a property or if services to a property have been discontinued, no future charges shall be made to the customer for service to that property. Any charges made after service is discontinued or the water meter is removed shall be credited to the customer and applied toward any future charges to such customer by the metropolitan water supply district.

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

(1) "Biogas", a mixture of carbon dioxide and hydrocarbons, primarily methane gas, released from the biological decomposition of organic materials;

(2) "Biomass", has the meaning given the term "qualified biomass" in section 142.028;

(3) "Gas corporation", the same as defined in section 386.020;

(4) "Qualified investment", any capital investment in renewable natural gas infrastructure incurred by a gas

corporation for the purpose of providing natural gas service under a renewable natural gas program;

(5) "Renewable energy sources", hydroelectric, geothermal, solar photovoltaic, wind, tidal, wave, biomass, or biogas energy sources;

(6) "Renewable natural gas", any of the following products processed to meet pipeline quality standards or transportation fuel grade requirements:

(a) Biogas that is upgraded to meet natural gas pipeline quality standards such that it may blend with, or substitute for, geologic natural gas;

(b) Hydrogen gas; or

(c) Methane gas derived from any combination of:

a. Biogas;

b. Hydrogen gas or carbon oxides derived from renewable energy sources; or

c. Waste carbon dioxide;

(7) "Renewable natural gas infrastructure", all equipment and facilities for the production, processing, pipeline interconnection, and distribution of renewable natural gas to be furnished to Missouri customers.

2. The commission shall adopt rules for gas corporations to offer a voluntary renewable natural gas program. Rules adopted by the commission under this section shall include:

(1) Rules for reporting requirements; and

(2) Rules for establishing a process for gas corporations to fully recover incurred costs that are prudent, just, and reasonable associated with a renewable natural gas program. Such recovery shall not be permitted until the project is operational.

3. A filing by a gas corporation pursuant to the renewable natural gas program created in subsection 2 of this section shall include, but is not limited to:

(1) A proposal to procure a total volume of renewable natural gas over a specific period; and

(2) Identification of the qualified investments that the gas corporation may make in renewable natural gas infrastructure.

4. A gas corporation may from time to time revise the filing submitted to the commission under this section.

5. Any costs incurred by a gas corporation for a qualified investment that are prudent, just, and reasonable may be recovered by means of an automatic rate adjustment clause.

6. When a gas corporation makes a qualified investment in the production of renewable natural gas, the costs associated with such qualified investment shall include the cost of capital established by the commission in the gas corporation's most recent general rate case.

7. Rules adopted by the commission under this section shall not prohibit an affiliate of a gas corporation from making a capital investment in a biogas production project if the affiliate is not a public utility as defined in section 386.020.

8. The public service commission may promulgate rules to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to

delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2021, shall be invalid and void.

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

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

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

2. Water corporations shall develop a qualification process open to all contractors seeking to provide construction and construction-related services for planned infrastructure projects on the water corporation's distribution system. The water corporation shall specify qualification requirements and goals for contractors seeking to perform such work, including but not limited to experience, performance criteria, safety record and policies, technical expertise, scheduling needs and available resources, supplier diversity and insurance requirements. Contractors that meet the qualification requirements shall be eligible to participate in a competitive bidding process for providing construction and construction-related services for planned infrastructure projects on the water corporation's distribution system, and the contractor making the lowest and best bid shall be awarded such contract. For contractors not qualifying through the competitive bid process, the water corporation, upon request from the contractor, shall provide information from the process in which the contractor can be informed as to how to be better positioned to qualify for such bid opportunities in the future. Nothing in this section shall

be construed as requiring any water corporation to use third parties instead of its own employees to perform such work, to use the contractor qualification or competitive bidding process in the case of an emergency project, or to terminate any existing contract with a contractor prior to its expiration.

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

4. By December 31, 2020, the commission shall submit a report to the general assembly on the effects of this section, including water corporation compliance, the costs of performing planned infrastructure projects prior to the implementation of this section compared to after the implementation of this section, and any other information regarding the process established under this section that the commission deems necessary.

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

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

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

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

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

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

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

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

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

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

(b) Are in service and used and useful;

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

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

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

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

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

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

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

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

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

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

(e) Replacement of water and wastewater treatment mechanical equipment with equipment of similar capacity and

operation, including well and intake pumps, transfer pumps, high service or discharge pumps, and metering pumps;

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

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

393.1506. 1. Notwithstanding any provisions of chapter 386 and this chapter to the contrary, a water or sewer corporation that provides water or sewer service to more than eight thousand customer connections may file a petition and proposed rate schedules with the commission to establish or change a WSIRA that will provide for the recovery of the appropriate pretax revenues associated with the eligible infrastructure system projects, less the appropriate pretax revenues associated with any retired utility plant that is being replaced by the eligible infrastructure system projects. The WSIRA shall not produce revenues in excess of fifteen percent of the water or sewer corporation's base revenue requirement approved by the commission in the water or sewer corporation's most recent general rate proceeding; provided, however, that neither WSIRA revenues attributable to replacement of customer-owned lead service lines, nor any reconciliation amounts described in subdivision (2) of subsection 5 of section 393.1509, shall count toward the program cap. The WSIRA and any future changes thereto shall be calculated and implemented in accordance with the provisions of sections 393.1503 to 393.1509. WSIRA revenues shall be subject to refund based

upon a finding and order of the commission, to the extent provided in subsections 5 and 8 of section 393.1509.

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

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

4. Except as provided in this subsection, in no event shall a water or sewer corporation collect a WSIRA if also collecting revenues from a commission approved infrastructure system replacement surcharge as provided in sections 393.1000 to 393.1006. In no event shall a customer be charged both an infrastructure system replacement surcharge as provided in sections 393.1000 to 393.1006 and a WSIRA. In the event a water or sewer corporation is collecting infrastructure system replacement surcharge revenues under sections 393.1000 to 393.1006, that was approved prior to August 28, 2021, when the initial WSIRA is filed, the approved infrastructure system replacement surcharge revenues shall be included in the new WSIRA filing.

393.1509. 1. (1) At the time that a water or sewer corporation files a petition with the commission seeking to

establish or change a WSIRA, it shall submit proposed WSIRA rate schedules and supporting documentation regarding the calculation of the proposed WSIRA with the petition and shall serve the office of the public counsel with a copy of its petition, its proposed WSIRA rate schedules, and its supporting documentation.

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

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

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

(2) The staff of the commission may examine information of the water or sewer corporation to confirm that the underlying costs are in accordance with the provisions of sections 393.1503 to 393.1509, and to confirm proper calculation of the proposed WSIRA, and may submit a report regarding its examination to the commission not later than ninety days after the petition is filed. No other revenue requirement or ratemaking issues shall be examined in consideration of the petition or associated proposed WSIRA rate schedules filed pursuant to the provisions of sections 393.1503 to 393.1509.

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

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

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

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

(1) The current state, federal, and local income or excise tax rates, including any income tax deductions;

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

(3) The actual cost rates for the water or sewer corporation's debt and preferred stock as determined during the most recent general rate proceeding of the water or sewer corporation;

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

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

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

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

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

(2) At the end of each twelve-month calendar period that a WSIRA is in effect, the water or sewer corporation shall reconcile the differences between the revenues resulting from a WSIRA and the appropriate pretax revenues as found by the commission for that period and shall submit the reconciliation and a proposed WSIRA to the commission for approval to recover or credit the difference, as appropriate, through a WSIRA.

6. (1) A water or sewer corporation that has implemented a WSIRA pursuant to the provisions of sections 393.1503 to 393.1509 shall file revised WSIRA schedules to reset the WSIRA to zero when new base rates and charges become effective for the water or sewer corporation following a commission order establishing customer rates in a general rate proceeding that incorporates in the utility's

base rates, subject to subsections 8 and 9 of this section, eligible costs previously reflected in a WSIRA.

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

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

8. Commission approval of a petition, and any associated rate schedules, to establish or change a WSIRA pursuant to the provisions of sections 393.1503 to 393.1509 shall in no way be binding upon the commission in determining the ratemaking treatment to be applied to eligible infrastructure system projects during a subsequent general rate proceeding when the commission may undertake to review the prudence of such costs. In the event the commission disallows, during a subsequent general rate proceeding, recovery of costs associated with eligible infrastructure system projects previously included in a WSIRA, the water or sewer corporation shall offset its WSIRA in the future as necessary to recognize and account for any such overcollections.

9. Nothing contained in sections 393.1503 to 393.1509 shall be construed to impair in any way the authority of the commission to review the reasonableness of the rates or charges of a water or sewer corporation, including review of

the prudence of eligible infrastructure system replacements made by a water or sewer corporation, pursuant to the provisions of section 386.390.

10. The commission may take into account any change in business risk to the water or sewer corporation resulting from implementation of the WSIRA in setting the corporation's allowed return in a general rate proceeding in addition to any other changes in business risk experienced by the corporation.

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

12. The provisions of sections 393.1500 to 393.1509 shall expire on December 31, 2031.

394.120. 1. No person shall become a member of a cooperative unless such person shall agree to use electric energy furnished by the cooperative when such electric energy shall be available through its facilities. The bylaws of a cooperative may provide that any person, including an incorporator, shall cease to be a member

thereof if he or she shall fail or refuse to use electric energy made available by the cooperative or if electric energy shall not be made available to such person by the cooperative within a specified time after such person shall have become a member thereof. Membership in the cooperative shall not be transferable, except as provided in the bylaws.

The bylaws may prescribe additional qualifications and limitations in respect of membership.

2. An annual meeting of the members shall be held at such time as shall be provided in the bylaws.

3. Special meetings of the members may be called by the board of directors, by any three directors, by not less than ten percent of the members, or by the president.

4. Meetings of members shall be held at such place as may be provided in the bylaws. In the absence of any such provisions, all meetings shall be held in the city or town in which the principal office of the cooperative is located.

5. Except as herein otherwise provided, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than ten nor more than twenty-five days before the date of the meeting.

6. Two percent of the first two thousand members and one percent of the remaining members, present in person, or if the bylaws so provide, participating electronically or by mail, shall constitute a quorum for the transaction of business at all meetings of the members, unless the bylaws prescribe the presence of a greater percentage of the members for a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

7. Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person, but, if the bylaws so provide, may also be by proxy, by electronic means, by mail, or any combination thereof. If the bylaws provide for voting by proxy, by electronic means, or by mail, they shall also prescribe the conditions under which proxy, electronic, or mail voting shall be exercised. In any event, no person shall vote as proxy for more than two members at any meeting of the members.

8. Notwithstanding the provisions of subsections 2 and 7 of this section, the board of directors shall have the power to set the time and place of the annual meeting and also to provide for voting by proxy, electronic means, by mail, or any combination thereof, and to prescribe the conditions under which such voting shall be exercised. The meeting requirement provided in this section may be satisfied through virtual means. The provisions of this subsection shall expire on August 28, 2022.