

FIRST REGULAR SESSION

SENATE BILL NO. 400

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAXWELL.

Read 1st time February 3, 1999, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S0927.021

AN ACT

To repeal sections 386.025, 393.295, 393.705, 393.710, 393.715, 393.725, 393.730, 393.760 and 393.770, RSMo 1994, and sections 247.030 and 247.040, RSMo Supp. 1998, relating to water and sewer service, and to enact in lieu thereof eleven new sections relating to the same subject.

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

Section A. Sections 386.025, 393.295, 393.705, 393.710, 393.715, 393.725, 393.730, 393.760 and 393.770, RSMo 1994, and sections 247.030 and 247.040, RSMo Supp. 1998, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 247.030, 247.040, 386.025, 393.295, 393.705, 393.710, 393.715, 393.725, 393.730, 393.760 and 393.770, to read as follows:

247.030. **1.** Territory that may be included in a district sought to be incorporated **or enlarged** may be wholly within one or in more than one county, may take in school districts or parts thereof, and cities that do not have a waterworks system **or cities whose governing body has by a majority vote requested that the city or part thereof be included within the boundaries of a public water supply district.** For the purpose of this section, "city" means any city, town or village. The territory, however, shall be contiguous, and proceedings to incorporate shall be in the circuit court of the county in which the largest acreage is located. No two districts shall overlap[; but,].

2. Any two or more [adjacent] **contiguous** districts **or any city and a contiguous district** may, if there are no outstanding general obligation bonds **relating to drinking water supply projects** in either [district] **entity**, by a majority vote of the [board] **governing body** of each [district] **entity**, provide for [acreage] **territory** located in one [district which is not being served by that district] **entity** to be annexed and served by the [district] **entity** contiguous to the annexed territory. Notice of the proposed annexation shall be filed with the circuit court that

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

originally issued the decree of incorporation for [the district which would lose the] **a district which is detaching** territory through the proposed annexation **or with the circuit court that originally issued the decree of incorporation for a district which is including a city or part thereof through the proposed annexation.** The court shall set a date for a hearing on the proposed annexation and shall cause notice to be published in the same manner as for the filing of the original petition for incorporation; except that publication of notice shall not be required if a majority of the landowners in the territory proposed to be annexed consent in writing, and if notice of the hearing is posted in three public places within the territory proposed to be annexed at least seven days before the date of the hearing. If publication of the notice is not required pursuant to this section, the court shall only approve the proposed annexation if there is sworn testimony by at least five landowners in the area of the proposed annexation, or a majority of the landowners, if there are fewer than ten landowners in the area. If the court, after the hearing, finds that the proposed annexation would not be in the public interest, it shall order that the annexation not be allowed. If the court finds the proposed annexation to be in the public interest, it shall approve the annexation and the territory shall be detached from the one [district] **entity** and annexed to the other. After the annexation is approved, the circuit court in **which** each district **involved in the proceedings was incorporated** shall amend the decree of incorporation for each district to reflect the change in the boundaries as a result of the annexation and to redivide each district into five subdistricts, fixing their boundary lines so that each of the five subdistricts have approximately the same area. A certified copy of the amended decree showing the boundary change and the new subdistricts shall be filed in the office of the recorder of deeds and in the office of the county clerk in each county having territory in the district and in the office of the secretary of state of the state of Missouri.

3. The boundaries of any district may be extended or enlarged from time to time upon the filing, with the clerk of the circuit court having jurisdiction, of a petition by either:

(1) The board of directors of the district and five or more voters within the territory proposed to be annexed by the district; or

(2) A majority of the landowners within the territory proposed to be annexed to the district.

If the petition is filed by a majority of the landowners within the territory proposed to be annexed, the publication of notice shall not be required, provided notice is posted in three public places within the territory proposed to be annexed at least seven days before the date of the hearing and provided that there is sworn testimony by at least five landowners in the territory proposed to be annexed, or a majority of the landowners if the total landowners in the area are fewer than ten. Upon the entry of a final order declaring the court's decree of annexation to be final and conclusive, the

court shall modify or rearrange the boundary lines of the subdistricts as may be necessary or advisable. The costs incurred in the enlargement or extension of the district shall be taxed to the district, if the district be enlarged or extended, otherwise against the petitioners; provided, however, that no costs shall be taxed to the directors of the district.

4. Should any voter who owns real estate that abuts upon a district once formed desire to have such real estate incorporated in the district, the voter shall first petition the board of directors thereof for its approval. If such approval be granted, the clerk of the board shall endorse a certificate of the fact of approval by the board upon the petition. The petition so endorsed shall be filed with the clerk of the circuit court in which the district is incorporated. It shall then be the duty of the court to amend the boundaries of such district by a decree incorporating the real estate in the same. A certified copy of this decree including the real estate in the district shall then be filed in the office of the recorder and in the office of the county clerk of the county in which the real estate is located, and in the office of the secretary of state. The costs of this proceeding shall be borne by the petitioning property owner.

247.040. 1. Proceedings for the formation of a public water supply district shall be substantially as follows: a petition in duplicate describing the proposed boundaries of the district sought to be formed, accompanied by a plat of the proposed district, shall be filed with the clerk of the circuit court of the county wherein the proposed district is situate, or with the clerk of the circuit court of the county having the largest acreage proposed to be included in the proposed district, in the event that the proposed district embraces lands in more than one county. Such petition, in addition to such boundary description, shall set forth an estimate of the number of customers of the proposed district, the necessity for the formation of the district, the probable cost of the improvement, an approximation of the assessed valuation of taxable property within the district and such other information as may be useful to the court in determining whether or not the petition should be granted and a decree of incorporation entered. Such petition shall be accompanied by a cash deposit of fifty dollars as an advancement of the costs of the proceeding, and the petition shall be signed by not less than fifty voters within the proposed district and shall pray for the incorporation of the territory therein described into a public water supply district. The petition shall be verified by at least one of the signers thereof.

2. Upon the filing of the petition, the same shall be presented to the circuit court, and such court shall fix a date for a hearing on such petition, as herein provided for. Thereupon the clerk of the court shall give notice of the filing of the petition in some newspaper of general circulation in the county in which the proceedings are pending, and if the district extends into any other county or counties, such notice shall also be published in some newspaper of general circulation in such other county or counties. The notice shall contain a description of the proposed boundary

lines of the district and the general purposes of the petition, and shall set forth the date fixed for the hearing on the petition, which shall not be less than fifteen nor more than twenty-one days after the date of the last publication of the notice and shall be on some regular judicial day of the court wherein the petition is pending. Such notice shall be signed by the clerk of the circuit court and shall be published in three successive issues of a weekly newspaper or in twenty successive issues of a daily newspaper.

3. The court, for good cause shown, may continue the case or the hearing thereon from time to time until final disposition thereof.

4. Exceptions to the formation of a district, or to the boundaries outlined in the petition for the incorporation thereof, may be made by any voter of the proposed district; provided, such exceptions are filed not less than five days prior to the date set for the hearing on the petition. Such exceptions shall specify the grounds upon which the exceptions are being made. If any such exceptions be filed, the court shall take them into consideration in passing upon the petition and shall also consider the evidence in support of the petition and in support of the exceptions made. Should the court find that the petition should be granted but that changes should be made in the boundary lines, it shall make such changes in the boundary lines as set forth in the petition as to the court may seem meet and proper, and thereupon enter its decree of incorporation, with such boundaries as changed.

5. Should the court find that it would not be to the public interest to form such a district, the petition shall be dismissed at the costs of the petitioners. If, however, the court should find in favor of the formation of such district, the court shall enter its decree of incorporation, setting forth the boundaries of the proposed district as determined by the court pursuant to the aforesaid hearing. The decree of incorporation shall also divide the district into five subdistricts and shall fix their boundary lines, all of which subdistricts shall have approximately the same area and shall be numbered. The decree shall further contain an appointment of one voter from each of such subdistricts, to constitute the first board of directors of the district. No two members of such board so appointed or hereafter elected or appointed shall reside in the same subdistrict, except as provided in section 247.060. If no qualified person who lives in the subdistrict is willing to serve on the board, the court may appoint, or the voters may elect, an otherwise qualified person who lives in the district but not in the subdistrict. The court shall designate two of such directors so appointed to serve for a term of two years and one to serve for a term of one year. And the directors thus appointed by the court shall serve for the terms thus designated and until their successors shall have been appointed or elected as herein provided. The decree shall further designate the name and number of the district by which it shall hereafter be officially known.

6. The decree of incorporation shall not become final and conclusive until it shall have been submitted to the voters residing within the boundaries described in such decree and until it shall have been assented to by a majority of the voters as provided in subsection [10] 9 of this

section or by two-thirds of the voters of the district voting on the proposition. The decree shall provide for the submission of the question and shall fix the date thereof. The returns shall be certified by the judges and clerks of election to the circuit court having jurisdiction in the case and the court shall thereupon enter its order canvassing the returns and declaring the result of such election.

7. If, upon canvass and declaration, it is found and determined that the question shall have been assented to by a majority of two-thirds of the voters of the district voting on such proposition, then the court shall, in such order declaring the result of the election, enter a further order declaring the decree of incorporation to be final and conclusive. In the event, however, that the court should find that the question had not been assented to by the majority above required, the court shall enter a further order declaring such decree of incorporation to be void and of no effect. No appeal shall lie from any such decree of incorporation nor from any of the aforesaid orders. In the event that the court declares the decree of incorporation to be final, as herein provided for, the clerk of the circuit court shall file certified copies of such decree of incorporation and of such final order with the secretary of state of the state of Missouri, and with the recorder of deeds of the county or counties in which the district is situate and with the clerk of the county commission of the county or counties in which the district is situate.

8. [The boundaries of any district thus formed may be extended or enlarged from time to time upon the filing, with the clerk of the circuit court having jurisdiction, of a petition by either:

(1) The board of directors of the district and five or more voters within the territory proposed to be annexed by the district; or

(2) A majority of the landowners within the territory proposed to be annexed to the district. Thereupon the same proceedings shall be had as are herein provided in the case of the filing of a petition for the organization of the district, except that if the petition is filed by a majority of the landowners within the territory proposed to be annexed, the publication of notice shall not be required, provided notice is posted in three public places within the territory proposed to be annexed at least seven days before the date of the hearing and provided that there is sworn testimony by at least five landowners in the territory proposed to be annexed, or a majority of the landowners if the total landowners in the area are fewer than ten. And upon the entry of a final order declaring the court's decree of annexation to be final and conclusive, the court shall modify or rearrange the boundary lines of the subdistricts as may be necessary or advisable.

9.] The costs incurred in the formation[, enlargement or extension] of the district shall be taxed to the district, if the district be incorporated[, enlarged or extended,] otherwise against the petitioners[; provided, however, that no costs shall be taxed to the directors of the district; provided further, should any voter who owns real estate that abuts upon a district once formed desire to have such real estate incorporated in the district, the voter shall first petition the board of directors thereof for its approval. If such approval be granted, the clerk of the board shall

endorse a certificate of the fact of approval by the board upon the petition. The petition so endorsed shall be filed with the clerk of the circuit court in which the district is incorporated. It shall then be the duty of the court to amend the boundaries of such district by a decree incorporating the real estate in the same. A certified copy of this decree including the real estate in the district shall then be filed in the office of the recorder and in the office of the county clerk of the county in which the real estate is located, and in the office of the secretary of state. The costs of this proceeding shall be borne by the petitioning property owner].

[10.] 9. If petitioners seeking formation of a public water supply district specify in their petition that the district to be organized shall be organized without authority to issue general obligation bonds, then the decrees relating to the formation of the district shall recite that the district shall not have authority to issue general obligation bonds and the vote required for such a decree of incorporation to become final and conclusive shall be a simple majority of the voters of the district voting on such proposition.

386.025. Any joint municipal utility commission established by contract for the purpose of owning, operating, controlling or managing all or part of any [water,] gas or electric light works, heating or power plants, or gas or electrical production, distribution or transmission facilities shall be considered a [water corporation,] gas corporation or electrical corporation, as the case may be, as those terms are defined in this chapter.

393.295. All provisions of chapters 386 and 393, RSMo, concerning court proceedings and the jurisdiction, supervision, powers and duties of the public service commission with reference to [water corporations,] gas corporations and electrical corporations, including, but not limiting by enumeration those provisions concerning supervision, investigations, complaints, hearings, reports, approval of certificates of franchises, granting of certificates, approval of issues of stocks, bonds, notes and other evidence of indebtedness, keeping of accounts, fixing of just and reasonable rates, which shall be based on costs associated with any property of such corporations, shall be and are hereby made fully applicable to any joint municipal utility commission which owns, operates, controls or manages all or part of any [water,] gas or electric light works, heating or power plants, electrical energy resources or gas or electrical production, distribution or transmission facilities in this state. Nothing contained herein, however, shall affect the rights, privileges or duties of existing corporations pursuant to this chapter, including the construction of facilities within an existing certificated area.

393.705. As used in sections 393.700 to 393.770 and sections 386.025, RSMo, and 393.295, the following terms shall, unless the context clearly indicates otherwise, have the following meanings:

(1) "Bond" or "bonds", any bonds, interim certificates, notes, debentures or other obligations of a commission issued pursuant to sections 393.700 to 393.770 and sections 386.025, RSMo, and 393.295;

(2) "Commission", any joint municipal utility commission established by a joint contract under sections 393.700 to 393.770 and sections 386.025, RSMo, and 393.295;

(3) "Contracting municipality", each municipality which is a party to a joint contract establishing a commission under sections 393.700 to 393.770 and sections 386.025, RSMo, and 393.295, [or] a water supply district formed under the provisions of chapter 247, RSMo, **or a sewer district formed pursuant to the provisions of chapter 204, RSMo, or chapter 249, RSMo;**

(4) "Joint contract", the contract entered into among or by and between two or more contracting municipalities [or], between municipalities and public water supply districts, **or between municipalities and sewer districts** for the purpose of establishing a commission;

(5) "Person", a natural person, cooperative or private corporation, association, firm, partnership, or business trust of any nature whatsoever, organized and existing under the laws of any state or of the United States and any municipality or other municipal corporation, governmental unit, or public corporation created under the laws of this state or the United States, and any person, board, or other body declared by the laws of any state or the United States to be a department, agency or instrumentality thereof;

(6) "Project", the purchasing, construction, extending or improving of any revenue producing water, **sewage**, gas or electric light works, heating or power plants, including all real and personal property of any nature whatsoever to be used in connection therewith, together with all parts thereof and appurtenances thereto, used or useful in the generation, production, transmission, distribution excluding retail sales, purchase, sale, exchange, **transport and treatment of sewage** or interchange of water, **sewage**, electric power and energy, or any interest therein or right to capacity thereof and the acquisition of fuel of any kind for any such purposes.

393.710. 1. Municipalities [and], public water supply districts, **and sewer districts** may, by joint contract, establish a separate governmental entity to be known as a joint municipal utility commission, to effect the joint development of water, **sewer**, gas, or electric light works, heating and power plants, or production, distribution and transmission of electric power and energy in whole or in part for the benefit of the inhabitants of such municipalities.

2. Any joint contract establishing a commission under this section shall specify:

(1) The name and purpose of the commission and the functions or services to be provided by the commission;

(2) The establishment and organization of a governing body of a commission which shall be a board of directors in which all powers of the commission are vested. The joint contract may provide for the creation by the board of an executive committee of the board to which the powers and duties may be delegated as the board shall specify;

(3) The number of directors, the manner of their appointment, terms of office and compensation, if any, and the procedure for filling vacancies on the board. Each contracting

municipality [and], public water supply district, **and sewer district** shall have the power to appoint one member and an alternate to the board of directors and shall be entitled to remove that member and alternate at will;

(4) The manner of selection of the officers of the commission and their duties;

(5) The voting requirements for action by the board, but, unless specifically provided otherwise, a majority of directors shall constitute a quorum and a majority of the quorum shall be necessary for any action taken by the board;

(6) The duties of the board which shall include the obligation to comply or to cause compliance with this section and the laws of the state and, in addition, with each and every term, provision and covenant in the joint contract creating the commission on its part to be kept or performed;

(7) The manner in which additional municipalities [and], public water supply districts, **and sewer districts** may become parties to the joint contract;

(8) The manner of financing the district and of establishing and maintaining a budget and annual audit for the district;

(9) The ownership interests of the contracting municipality electric cooperative associations, municipally owned or public utilities in a project or the manner of determining such ownership interest, which ownership interest shall be subject to any mortgage of a project pursuant to section 393.735;

(10) Provisions for the disposition, division or distribution of any property or assets of the commission on dissolution; and

(11) The term of the joint contract, which may be a definite period or until rescinded or terminated, and the method, if any, by which the joint contract may be rescinded or terminated so long as the commission has no bonds outstanding, unless provision for full payment of such bonds, by escrow or otherwise, has been made pursuant to the terms of the bonds or the resolution, trust indenture or security instrument securing the bonds.

3. A commission shall, if the joint contract so provides, be the successor to any nonprofit corporation, agency, or another entity theretofore organized by the contracting municipalities to provide the same function, service or facility, and the commission shall be entitled to all rights and privileges and shall assume all obligations and liabilities of such other entity under existing contracts to which such other entity is a party.

393.715. 1. The general powers of a commission to the extent provided in section 393.710 herein and subject to the provisions of section 393.765 herein shall include the power to:

(1) Plan, develop, acquire, construct, reconstruct, operate, manage, dispose of, participate in, maintain, repair, extend or improve one or more projects, either exclusively or jointly or by participation with electric cooperative associations, municipally owned or public utilities or acquire any interest in or any rights to capacity of a project, within or outside the state, and act as an

agent, or designate one or more other persons participating in a project to act as its agent, in connection with the planning, acquisition, construction, operation, maintenance, repair, extension or improvement of such project;

(2) Acquire, sell, distribute and process fuels necessary to the production of electric power and energy; provided, however, the commission shall not have the power or authority to erect, own, use or maintain a transmission line which is parallel or generally parallel to another transmission line in place within a distance of two miles, which serves the same general area sought to be served by the commission unless the public service commission finds that it is not feasible to utilize the transmission line which is in place;

(3) [To] Acquire by purchase or lease, construct, install, and operate reservoirs, pipelines, wells, check dams, pumping stations, water purification plants, and other facilities for the production, wholesale distribution, and utilization of water and to own and hold such real and personal property as may be necessary to carry out the purposes of its organization; **provided, however, that a commission shall not sell or distribute water, at retail or wholesale, within the certificated area of a water corporation which is subject to the jurisdiction of the public service commission unless the sale or distribution of water is within the boundaries of a public water supply district or municipality which is a contracting municipality in the commission and the commission has obtained the approval of the public service commission prior to commencing said sale or distribution of water;**

(4) Acquire by purchase or lease, construct, install, and operate lagoons, pipelines, wells, pumping stations, sewage treatment plants and other facilities for the treatment and transportation of sewage and to own and hold such real and personal property as may be necessary to carry out the purposes of its organization;

[(4)] (5) Enter into operating, franchises, exchange, interchange, pooling, wheeling, transmission and other similar agreements with any person;

[(5)] (6) Make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission;

[(6)] (7) Employ agents and employees;

[(7)] (8) Contract with any person, within or outside the state, for the construction of any project or for any interest therein or any right to capacity thereof, without advertising for bids, preparing final plans and specifications in advance of construction, or securing performance and payment of bonds, except to the extent and on such terms as its board of directors shall determine. Any contract entered into pursuant to this subdivision shall contain a provision that the requirements of sections 290.210 to 290.340, RSMo, shall apply;

[(8)] (9) Purchase, sell, exchange, transmit, **treat, dispose** or distribute water, **sewage**, gas, heat or electric power and energy, or any by-product resulting therefrom, within and outside the state, in such amounts as it shall determine to be necessary and appropriate to make the most

effective use of its powers and to meet its responsibilities, and to enter into agreements with any person with respect to such purchase, sale, exchange, **treatment, disposal** or transmission, on such terms and for such period of time as its board of directors shall determine. A commission may not sell or distribute water, gas, heat or power and energy, **or sell sewage service** at retail to ultimate customers outside the boundary limits of its contracting municipalities except pursuant to subsection 2 of this section;

[(9)] **(10)** Acquire, own, hold, use, lease, as lessor or lessee, sell or otherwise dispose of, mortgage, pledge, or grant a security interest in any real or personal property, commodity or service or interest therein;

[(10)] **(11)** Exercise the powers of eminent domain for public use as provided in chapter 523, RSMo, except that the power of eminent domain shall not be exercised against any electric cooperative association, municipally owned or public utility;

[(11)] **(12)** Incur debts, liabilities or obligations including the issuance of bonds pursuant to the authority granted in section 27 of article VI of the Missouri Constitution;

[(12)] **(13)** Sue and be sued in its own name;

[(13)] **(14)** Have and use a corporate seal;

[(14)] **(15)** Fix, maintain and revise fees, rates, rents and charges for functions, services, facilities or commodities provided by the commission;

[(15)] **(16)** Make, and from time to time, amend and repeal, bylaws, rules and regulations not inconsistent with this section to carry into effect the powers and purposes of the commission;

[(16)] **(17)** Notwithstanding the provisions of any other law, invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, including the proceeds from the sale of any bonds, in such obligations, securities and other investments as the commission deems proper;

[(17)] **(18)** Join organizations, membership in which is deemed by the board of directors to be beneficial to accomplishment of the commission's purposes;

[(18)] **(19)** Exercise any other powers which are deemed necessary and convenient by the commission to effectuate the purposes of the commission; and

[(19)] **(20)** Do and perform any acts and things authorized by this section under, through or by means of an agent or by contracts with any person.

2. When a municipality purchases a privately owned water utility and a commission is created pursuant to sections 393.700 to 393.770, the commission may continue to serve those locations previously receiving water from the private utility even though the location receives such service outside the geographical area of the municipalities forming the commission. New water service may be provided in such areas if the site to receive such service is located within one-fourth of a mile from a site serviced by the privately owned water utility.

393.725. 1. Bonds issued pursuant to sections 393.700 to 393.770 by a commission shall

be payable, as to the principal and interest, solely from the net revenues derived by the commission from the operation of the commission's project or projects, after providing for the costs of operation and maintenance of the commission's project or projects, or from any other funds made available to the commission from sources other than from proceeds of taxation.

2. Each bond issued pursuant to the provisions of sections 393.700 to 393.770 shall contain a statement that such bond is not an indebtedness of the state, or of any political subdivision thereof, other than the joint municipal utility commission, or of the contracting municipalities [or], the contracting public water supply districts **or the contracting sewer districts**, but shall be special obligations of the commission only and that neither the faith and credit nor the taxing power of the state or of any political subdivision thereof, or of the contracting municipalities [or], contracting public water supply districts **or contracting sewer districts** is pledged to the payment of or the interest on such bonds. The bonds shall not be deemed to be an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness. Neither the members of the board of directors of a commission nor any person executing the bonds shall be liable personally on the bonds by reason of the lawful issuance thereof.

3. A commission, subject to the provisions of section 393.760, may from time to time issue its bonds in such principal amounts as it deems necessary to provide sufficient funds to purchase, construct, extend or improve a project, including the establishment or increase of reserves, interest accrued during construction of such project and for a period not exceeding one year after the completion of construction of such project, and the payment of all other costs or expenses of the commission incident to and necessary or convenient to carry out its corporate purposes and powers.

4. Bonds of a commission shall be authorized by resolution of the board of directors and may be issued under such resolution or under a trust indenture or other security instrument, as authorized by the resolution, in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon, registered or both, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places within or without the state, and be subject to such terms of redemption, with or without premium, as such resolution, trust indenture or other security instrument may provide, and without limitation by the provisions of any other law limiting amounts, maturities or interest rates.

5. The bonds shall be sold at public sale and in the event of a rejection of all bids by the commission, the bonds may be sold at private sale as the commission may provide and at such price or prices as the commission shall determine or for a joint municipal utility commission within a fifteen county area being served with water from a lake constructed by the U.S. Army

Corps of Engineers and located north of the Missouri River, if the commission determines it is in the best interest of the commission, at private sale. The reason or reasons why private sale is in the best interest of the people served shall be set forth in the order or resolution authorizing the private sale. The decision of the commission shall be conclusive.

6. The bonds may be signed by manual or facsimile signatures as determined by resolution of the board. In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such obligations, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officers had remained in office until such delivery.

7. Pending preparation of definitive bonds, a commission may issue temporary bonds which shall be exchanged for the definitive bonds when such bonds shall have been executed and are available for delivery.

8. All bonds issued under the provisions of sections 393.700 to 393.770 shall be negotiable instruments under the provisions of the uniform commercial code of the state.

393.730. 1. The resolution authorizing any issuance of bonds hereunder shall make provision for the payment of the bonds by fixing such rates, fees and charges for water, **sewer**, gas, heat, electric power and energy and all other services sufficient to pay the interest and principal of the bonds when due, to provide for a sinking fund sufficient to retire the bonds, and to provide and maintain reasonable reserves. Such rates, fees and charges shall also be sufficient to pay the costs of operation, improvement and maintenance of the water, **sewer**, gas, heat or electric power facilities.

2. The resolution and trust indenture under which any bonds shall be issued shall constitute a contract with the holders of the bonds, and may contain provisions, among others, as to:

- (1) The terms and provisions of the bonds;
- (2) As provided in section 393.735, the mortgage or pledge of and the grant of a security interest in any real or personal property and all or any part of the revenues from any project or projects or any revenue producing contract or contracts made by the commission with any person to secure the payment of bonds, subject to such agreements with the holders of bonds as may then exist;
- (3) The custody, collection, securing, investment and payment of any revenues, assets, money, funds or property with respect to which the commission may have any rights or interest;
- (4) The purposes to which the proceeds from the sale of any bonds then or thereafter to be issued may be applied, and the pledge of such proceeds to secure the payment of the bonds;
- (5) Limitations on the issuance of any additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;
- (6) The rank or priority of any bonds with respect to any lien or security;

(7) The creation of special funds or moneys to be held in trust or otherwise for operating expenses, payment, or redemption of bonds, reserves or other purposes, and the use and disposition of moneys held in such funds;

(8) The procedure by which the terms of any contract with or for the benefit of the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(9) The definition of the acts or omissions to act which shall constitute a default in the duties of the commission to holders of its bonds, and the rights and remedies of such holders in the event of such default including, if the commission shall so determine, the right to accelerate the due date of the bonds or the right to appoint a receiver or receivers of the property or revenues subject to the lien of the resolution and trust indenture;

(10) Any other or additional agreements with or for the benefit of the holders of bonds or any covenants or restrictions necessary or desirable to safeguard the interests of such holders;

(11) The custody of any of its properties or investments, the safekeeping thereof, the insurance to be carried thereon, and the use and disposition of insurance proceeds;

(12) The vesting in a trustee or trustees, within or outside the state, of such properties, rights, powers, and duties in trust as the commission may determine, or limiting or abrogating the rights of the holders of any bonds to appoint a trustee, or limiting the rights, powers, and duties of such trustee; and

(13) Appointing and providing for the duties and obligations of a paying agent or paying agents or other fiduciaries within or outside the state.

393.760. 1. The commission shall, in accordance with the provisions of chapter 115, RSMo, order an election to be held whereby the qualified electors in each contracting municipality participating in the project shall approve or disapprove the issuance of the bonds as provided for in the resolution of the commission. The commission may not order such an election until it has engaged and received a report from an independent consulting engineer as defined in section 327.181, RSMo, for the purpose of determining the economic and engineering feasibility of any proposed project the costs of which are to be financed through the issuance of bonds. The report of the consulting engineer shall be provided to and approved by the legislative body and executive of each contracting municipality participating in the project and such report shall be open to public inspection and shall be the subject of a public hearing in each municipality participating in the project. Notice of the time and place of each such hearing shall be published in a daily newspaper of general circulation within each municipality. Interested parties may appear and fully participate in such hearings.

2. The commission shall notify the election authority or authorities responsible for conducting elections within each contracting municipality participating in the project in accordance with chapter 115, RSMo.

3. The question shall be submitted in substantially the following form:

OFFICIAL BALLOT

Should a resolution to approve the issuance of revenue bonds by the joint municipal (water) (**sewer**) (power) (gas) commission in an amount not to exceed \$..... for the purpose of be approved?

Yes

No

If you are in favor of the resolution, place an "X" in the box opposite "Yes". If you are opposed to the question, place an "X" in the box opposite "No".

4. If the resolution to issue the bonds is approved by at least a majority of the qualified electors voting thereon in each of the contracting municipalities participating in the project, the commission shall declare the result of the election and cause the bonds to be issued.

5. The municipalities participating in the project shall bear all expenses associated with the elections in such contracting municipalities.

393.770. 1. The contracting municipalities may provide in the joint contract for payment to the commission of funds for commodities to be procured and services to be rendered by the commission. The contracting municipalities and other persons may enter into purchase agreements with the commission for the purchase, sale, exchange or transmission of water, **sewage service**, gas, heat or any right to capacity or interest in such electric power and energy whereby the purchaser is obligated to make payments in amounts which shall be sufficient to enable the [company] **commission** to meet its expenses, interest and principal payments, whether at maturity or upon sinking fund redemption, for its bonds, reasonable reserves for debt service, operation and maintenance and renewals and replacements and the requirements of any rate covenant with respect to debt service coverage contained in any resolution, trust indenture or other security instrument. Purchase agreements may contain such other terms and conditions as the commission and the purchasers may determine, including provisions whereby the purchaser is obligated to pay for water, **sewage service**, gas, heat or power irrespective of whether water, **sewage service**, gas, heat or energy is produced or delivered to the purchaser or whether any project contemplated by any such agreement is completed, operable or operating, and notwithstanding suspension, interruption, interference, reduction or curtailment of the output of such project. Such agreements may be for a term covering the life of a project or for any other term, or for an indefinite period. The joint contract or a purchase agreement may provide that if one or more of the purchasers default in the payment of its obligations under any such purchase agreement, the remaining purchasers which also have such agreements shall be required to accept and pay for and shall be entitled proportionately to use or otherwise dispose of the water, **sewage service**, gas, heat or energy to be purchased by the defaulting purchaser.

2. The obligations of a municipality under a purchase agreement with a commission or arising out of the default by any other purchaser with respect to such an agreement shall not be

construed to constitute debt of the municipality. To the extent provided in the purchase agreement, such obligations shall constitute special obligations of the municipality, payable solely from the revenues and other moneys derived by the municipality from its municipal utility and shall be treated as expenses of operating a municipal utility.

✓

Unofficial

Bill

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