

HOUSE BILL NO. 2196

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SCHAD (Sponsor), PARSON, JONES (117), BRUNS,
FISHER (125), COOPER, FRANZ, RUZICKA, POLLOCK AND WELLS (Co-sponsors).

4982L.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 393, RSMo, by adding thereto one new section relating to water and sewer services.

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

Section A. Chapter 393, RSMo, is amended by adding thereto one new section, to be
2 known as section 393.320, to read as follows:

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

2 **(1) "Actual pretax earnings", the average daily sum of the revenues and expenses,**
3 **exclusive of income taxes, of the small utility recorded in the large public utility's**
4 **accounting books over a time period beginning on the date of the large public utility's**
5 **acquisition of the small utility and extending through the next rate case's test year end**
6 **date, updated filing date, or true-up date, whichever is latest, multiplied by the number of**
7 **days in the time period beginning with the acquisition date and extending through the**
8 **operation of law date of the next rate case;**

9 **(2) "Authorized pretax earnings", the pretax earnings calculated utilizing the**
10 **following:**

11 **(a) The average of:**

12 **a. The large public utility's rate base in the small utility recorded at the date of the**
13 **large public utility's acquisition of the small utility;**

14 **b. The large public utility's estimated rate base in the small utility as of the**
15 **operation of law date of the next rate case. The estimated rate base shall include**
16 **adjustments for new investments, retirements, depreciation, and deferred taxes;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 17 (b) The large public utility's actual regulatory capital structure;
- 18 (c) The large public utility's actual cost rates for debt and preferred stock;
- 19 (d) The large public utility's cost of common equity and effective income tax rate,
20 as determined in the prior rate case. In the event that either or both the equity cost and/or
21 effective income tax rate from the prior rate case is not available and either cannot
22 otherwise be agreed to by parties to the next rate case, reference shall be made to the
23 testimony submitted during the prior rate case and an average recommended cost of
24 common equity and/or effective income tax rate based upon the various recommendations
25 contained in such testimony shall be used in lieu thereof; and
- 26 (e) The actual property tax rate for the small utility acquired by the large public
27 utility;
- 28 (3) "District", a service area of a large public utility whose customers are subject
29 to the same rate tariff;
- 30 (4) "Large public utility", a public utility that regularly provides water service or
31 sewer service to more than eight thousand customer connections and that provides safe and
32 adequate service but shall not include a sewer district established under Section 30(a),
33 Article VI of the Missouri Constitution, sewer districts established under the provisions of
34 chapter 204, 249, or 250, public water supply districts established under the provisions of
35 chapter 247, or municipalities that own water or sewer systems;
- 36 (5) "Next rate case", a large public utility's general rate case with a test year end
37 date, updated filing date, or true-up date, whichever is latest, occurring immediately after
38 the date of the large public utility's acquisition of a small utility;
- 39 (6) "Prior rate case", a large public utility's general rate case with an operation of
40 law date occurring immediately prior to the date of the large public utility's acquisition of
41 a small utility;
- 42 (7) "Small utility", a public utility that regularly provides water service or sewer
43 service to eight thousand or fewer customer connections; a water district established under
44 the provisions of chapter 247 that regularly provides water or sewer service to eight
45 thousand or fewer customer connections; a sewer district established under the provisions
46 of chapter 204, 249, or 250 that regularly provides sewer service to eight thousand or fewer
47 customer connections; or a water system or sewer system owned by a municipality that
48 regularly provides water service or sewer service to eight thousand or fewer customer
49 connections; and all other entities that regularly provide water service or sewer service to
50 eight thousand or fewer customer connections;
- 51 (8) "Utility service source", the small utility or large public utility from which the
52 customer receives its utility service type;

53 **(9) "Utility service type", water utility service or wastewater utility service or water**
54 **and wastewater utility service.**

55 **2. Whenever a small utility determines to sell or otherwise dispose of its water**
56 **system or sewer system to a large public utility, the small utility shall by ordinance,**
57 **resolution, or appropriate board action authorize the appraisal of the water system or**
58 **sewer system and designate the time that the appraisal is due.**

59 **3. (1) The appraisal shall be performed by three residents of Missouri appointed**
60 **to serve as appraisers. One appraiser shall be appointed by the small utility, one appraiser**
61 **shall be appointed by the large public utility, and the third appraiser shall be appointed**
62 **by the two appraisers so appointed. At least one of the appraisers shall be a disinterested**
63 **person who is an engineer licensed under chapter 327, at least one of the appraisers shall**
64 **be a disinterested person who is an appraiser licensed under chapter 339, and the third**
65 **appraiser shall be a disinterested person who is either an engineer licensed under chapter**
66 **327 or an appraiser licensed under chapter 339.**

67 **(2) The appraisers shall:**

68 **(a) Be sworn to determine the fair market value of the water system or sewer**
69 **system by establishing the amount for which the water system or sewer system would be**
70 **sold in a voluntary transaction between a buyer and seller under no obligation to buy or**
71 **sell; and**

72 **(b) Return their appraisal, in writing, to the small utility and large public utility**
73 **within the time fixed by the ordinance or resolution authorizing the appraisal.**

74 **(3) If all three appraisers cannot agree as to the appraised value, the appraisal,**
75 **when signed by two of the appraisers, constitutes a good and valid appraisal.**

76 **4. After the return of the appraisal by the appraisers, either the small utility or the**
77 **large public utility may decline to proceed with the sale or disposition of the water system**
78 **or sewer system. If the small utility is a municipality required to submit the proposed sale**
79 **or disposition to public vote, the vote shall be conducted as required by law.**

80 **5. The lesser of the purchase price and the appraised value, together with the**
81 **transaction, closing, and transition costs incurred by the large public utility, shall**
82 **constitute the ratemaking rate base for the small utility as acquired by and incorporated**
83 **into the ratemaking rate base of the district designated by the acquiring large public**
84 **utility.**

85 **6. Upon the date of acquisition, the small utility shall, for ratemaking purposes,**
86 **become part of the district designated by the acquiring large public utility.**

87 **7. From the date of acquisition until the date that new rates are effective in the**
88 **acquiring large public utility's next rate case, the customers of the acquired small utility**

89 shall pay the then existing rates of the district designated by the acquiring large public
90 utility. For each customer of the small utility with potable water usage values that cannot
91 be reasonably obtained, a value of five thousand gallons per month shall be assigned. Such
92 rates shall not be deemed to violate the provisions of chapter 386 or section 393.130.

93 **8. In the acquiring large public utility's next rate case, the small utility and the**
94 **district designated by the acquiring large public utility and their costs of service shall be**
95 **combined under the same rate tariff. Such rate tariff shall be based on allocation of the**
96 **large public utility's and small utility's combined costs of service and rate design without**
97 **distinction among customers on the basis of utility service source or type. Such rate tariff**
98 **shall not be deemed to violate the provisions of chapter 386 or section 393.130.**

99 **9. The actual pretax earnings and authorized pretax earnings difference shall be**
100 **recorded as a regulatory asset or liability included in the rate base of the large public**
101 **utility and amortized over a period not to exceed three years.**

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