

FIRST REGULAR SESSION

# HOUSE BILL NO. 940

## 99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PLOCHER.

1910H.011

D. ADAM CRUMBLISS, Chief Clerk

### AN ACT

To repeal sections 393.1000, 393.1003, and 393.1006, RSMo, and to enact in lieu thereof three new sections relating to the infrastructure system replacement surcharge for water corporations, with an emergency clause.

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

Section A. Sections 393.1000, 393.1003, and 393.1006, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 393.1000, 393.1003, and 393.1006, to read as follows:

393.1000. As used in sections 393.1000 to 393.1006, the following terms mean:

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

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

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

(c) Recover all other ISRS costs;

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

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

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

(b) Are in service and used and useful;

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.

- 15 (c) Do not increase revenues by directly connecting the infrastructure replacement to new  
16 customers; ~~and~~
- 17 (d) Were not included in the water corporation's rate base in its most recent general rate  
18 case; **and**
- 19 (e) **Were prioritized based on criteria including, but not limited to:**
- 20 **a. The frequency and severity of main breaks;**
- 21 **b. The material, condition, or expected life of the pipe;**
- 22 **c. System criticality;**
- 23 **d. Customer impact;**
- 24 **e. Water quality;**
- 25 **f. Adequacy of pressure; and**
- 26 **g. Coordination with local governments;**
- 27 (4) "ISRS", infrastructure system replacement surcharge;
- 28 (5) "ISRS costs", depreciation expenses and property taxes that will be due within twelve  
29 months of the ISRS filing;
- 30 (6) "ISRS revenues", revenues produced through an ISRS, exclusive of revenues from  
31 all other rates and charges;
- 32 (7) "Water corporation", every corporation, company, association, joint stock company  
33 or association, partnership, and person, their lessees, trustees, or receivers appointed by any court  
34 whatsoever, owning, operating, controlling, or managing any plant or property, dam or water  
35 supply, canal, or power station, distributing or selling for distribution, or selling or supplying for  
36 gain any water to more than ten thousand customers;
- 37 (8) "Water utility plant projects" may consist only of the following:
- 38 (a) Mains, and associated valves and hydrants, installed as replacements for existing  
39 facilities that have worn out or are in deteriorated condition;
- 40 (b) Main cleaning and relining projects; and
- 41 (c) Facilities relocations required due to construction or improvement of a highway,  
42 road, street, public way, or other public work by or on behalf of the United States, this state, a  
43 political subdivision of this state, or another entity having the power of eminent domain provided  
44 that the costs related to such projects have not been reimbursed to the water corporation.

393.1003. 1. Notwithstanding any provisions of chapter 386 and this chapter to the  
2 contrary, as of August 28, 2003, a water corporation providing water service in a county with a  
3 charter form of government and with more than one million inhabitants may file a petition and  
4 proposed rate schedules with the commission to establish or change ISRS rate schedules that will  
5 allow for the adjustment of the water corporation's rates and charges to provide for the recovery  
6 of costs for eligible infrastructure system replacements made in such county with a charter form

7 of government and with more than one million inhabitants; provided that an ISRS, on an  
8 annualized basis, must produce ISRS revenues of at least one million dollars but not in excess  
9 of ten percent of the water corporation's base revenue level approved by the commission in the  
10 water corporation's most recent general rate proceeding. An ISRS and any future changes thereto  
11 shall be calculated and implemented in accordance with the provisions of sections 393.1000 to  
12 393.1006. ISRS revenues shall be subject to refund based upon a finding and order of the  
13 commission, to the extent provided in subsections 5 and 8 of section 393.1006. **Once a county  
14 has come under the operation of this statute, a subsequent change in population shall not  
15 remove that county from the operation of this law.**

16 2. The commission shall not approve an ISRS for a water corporation in a county with  
17 a charter form of government and with more than one million inhabitants that has not had a  
18 general rate proceeding decided or dismissed by issuance of a commission order within the past  
19 three years, unless the water corporation has filed for or is the subject of a new general rate  
20 proceeding.

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

393.1006. 1. (1) At the time that a water corporation files a petition with the  
2 commission seeking to establish or change an ISRS, it shall submit proposed ISRS rate schedules  
3 and its supporting documentation regarding the calculation of the proposed ISRS with the  
4 petition, and shall serve the office of the public counsel with a copy of its petition, its proposed  
5 rate schedules and its supporting documentation. **The supporting documentation shall include  
6 a detailed listing of ISRS qualified water utility plant projects and may be subject to an  
7 audit by the commission.**

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

10 2. (1) When a petition, along with any associated proposed rate schedules, is filed  
11 pursuant to the provisions of sections 393.1000 to 393.1006, the commission shall conduct an  
12 examination of the proposed ISRS.

13 (2) The staff of the commission may examine information of the water corporation to  
14 confirm that the underlying costs are in accordance with the provisions of sections 393.1000 to  
15 393.1006, and to confirm proper calculation of the proposed charge, and may submit a report  
16 regarding its examination to the commission not later than sixty days after the petition is filed.

17 No other revenue requirement or ratemaking issues shall be examined in consideration of the  
18 petition or associated proposed rate schedules filed pursuant to the provisions of sections  
19 393.1000 to 393.1006.

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

23 (4) If the commission finds that a petition complies with the requirements of sections  
24 393.1000 to 393.1006, the commission shall enter an order authorizing the water corporation to  
25 impose an ISRS that is sufficient to recover appropriate pretax revenues, as determined by the  
26 commission pursuant to the provisions of sections 393.1000 to 393.1006.

27 3. A water corporation may effectuate a change in its rate pursuant to this section no  
28 more often than two times every twelve months.

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

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

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

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

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

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

40 (6) The current depreciation rates applicable to the eligible infrastructure system  
41 replacements;

42 (7) In the event information called for in subdivisions (2), (3), and (4) is unavailable and  
43 the commission is not provided with such information on an agreed-upon basis, the commission  
44 shall refer to the testimony submitted during the most recent general rate proceeding of the water  
45 corporation and use, in lieu of any such unavailable information, the recommended capital  
46 structure, recommended cost rates for debt and preferred stock, and recommended cost of  
47 common equity that would produce the average weighted cost of capital based upon the various  
48 recommendations contained in such testimony.

49 5. (1) An ISRS shall be calculated based upon the amount of ISRS costs that are eligible  
50 for recovery during the period in which the surcharge will be in effect and upon the applicable  
51 customer class billing determinants utilized in designing the water corporation's customer rates  
52 in its most recent general rate proceeding. The commission shall, however, only allow such

53 surcharges to apply to classes of customers receiving a benefit from the subject water utility plant  
54 projects or shall prorate the surcharge according to the benefit received by each class of  
55 customers; provided that the ISRS shall be applied in a manner consistent with the customer  
56 class cost-of-service study recognized by the commission in the water corporation's most recent  
57 general rate proceeding, if applicable, and with the rate design methodology utilized to develop  
58 the water corporation's rates resulting from its most recent general rate proceeding.

59 (2) At the end of each twelve-month calendar period that an ISRS is in effect, the water  
60 corporation shall reconcile the differences between the revenues resulting from an ISRS and the  
61 appropriate pretax revenues as found by the commission for that period and shall submit the  
62 reconciliation and a proposed ISRS adjustment to the commission for approval to recover or  
63 refund the difference, as appropriate, through adjustment of an ISRS.

64 6. (1) A water corporation that has implemented an ISRS pursuant to the provisions of  
65 sections 393.1000 to 393.1006 shall file revised rate schedules to reset the ISRS to zero when  
66 new base rates and charges become effective for the water corporation following a commission  
67 order establishing customer rates in a general rate proceeding that incorporates in the utility's  
68 base rates subject to subsections 8 and 9 of this section eligible costs previously reflected in an  
69 ISRS.

70 (2) Upon the inclusion in a water corporation's base rates subject to subsections 8 and  
71 9 of this section of eligible costs previously reflected in an ISRS, the water corporation shall  
72 immediately thereafter reconcile any previously unreconciled ISRS revenues as necessary to  
73 ensure that revenues resulting from the ISRS match as closely as possible the appropriate pretax  
74 revenues as found by the commission for that period.

75 7. A water corporation's filing of a petition to establish or change an ISRS pursuant to  
76 the provisions of sections 393.1000 to 393.1006 shall not be considered a request for a general  
77 increase in the water corporation's base rates and charges.

78 8. Commission approval of a petition, and any associated rate schedules, to establish or  
79 change an ISRS pursuant to the provisions of sections 393.1000 to 393.1006 shall in no way be  
80 binding upon the commission in determining the ratemaking treatment to be applied to eligible  
81 infrastructure system replacements during a subsequent general rate proceeding when the  
82 commission may undertake to review the prudence of such costs. In the event the commission  
83 disallows, during a subsequent general rate proceeding, recovery of costs associated with eligible  
84 infrastructure system replacements previously included in an ISRS, the water corporation shall  
85 offset its ISRS in the future as necessary to recognize and account for any such overcollections.

86 9. Nothing contained in sections 393.1000 to 393.1006 shall be construed to impair in  
87 any way the authority of the commission to review the reasonableness of the rates or charges of

88 a water corporation, including review of the prudence of eligible infrastructure system  
89 replacements made by a water corporation, pursuant to the provisions of section 386.390.

90 10. The commission shall have authority to promulgate rules for the implementation of  
91 sections 393.1000 to 393.1006, but only to the extent such rules are consistent with, and do not  
92 delay the implementation of, the provisions of sections 393.1000 to 393.1006. Any rule or  
93 portion of a rule, as that term is defined in section 536.010, that is created under the authority  
94 delegated in this section shall become effective only if it complies with and is subject to all of  
95 the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536  
96 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter  
97 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held  
98 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after  
99 August 28, 2003, shall be invalid and void.

Section B. Because immediate action is necessary to continue the accelerated replacement  
2 of aging water mains under ISRS, the repeal and reenactment of sections 393.1000, 393.1003,  
3 and 393.1006 of section A of this act is deemed necessary for the immediate preservation of the  
4 public health, welfare, peace, and safety, and is hereby declared to be an emergency act within  
5 the meaning of the constitution, and the repeal and reenactment of sections 393.1000, 393.1003,  
6 and 393.1006 of section A of this act shall be in full force and effect upon its passage and  
7 approval.

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