

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 462**  
**93RD GENERAL ASSEMBLY**

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Reported from the Committee on Utilities April 20, 2005, with recommendation that the House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 462 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

1848L.04C

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**AN ACT**

To repeal section 393.145, RSMo, and to enact in lieu thereof two new sections relating to receivership of certain sewer and water corporations, with an emergency clause.

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

Section A. Section 393.145, RSMo, is repealed and two new sections enacted in lieu  
2 thereof, to be known as sections 393.145 and 393.146, to read as follows:

393.145. 1. If, **after hearing**, the commission [shall determine] **determines** that any  
2 sewer or water corporation [having one thousand or fewer customers] **that regularly provides**  
3 **service to eight thousand or fewer customer connections** is unable or unwilling to provide  
4 safe and adequate service [or], has been actually or effectively abandoned by its owners, or has  
5 defaulted on a bond, note or loan issued or guaranteed by any department, office, commission,  
6 board, authority or other unit of state government, the commission may petition the circuit court  
7 for an order attaching the assets of the utility and placing the utility under the control and  
8 responsibility of a receiver. **The venue of such cases shall, at the option of the commission,**  
9 **be in the circuit court of Cole County or in the circuit court of the county in which the**  
10 **utility company has its principal place of business.**

11 2. **If the commission orders its general counsel to petition the circuit court for the**  
12 **appointment of a receiver under subsection 1 of this section, it may in the same order**

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.

13 **appoint an interim receiver for the sewer or water corporation. The interim receiver shall**  
14 **have the authority generally granted to a receiver under subsection 6 of this section, except**  
15 **that the commission cannot authorize the interim receiver to transfer by sale or liquidate**  
16 **the assets of the utility. The interim receiver shall be compensated in an amount to be**  
17 **determined by the commission. The interim receiver shall serve until a judgment on a**  
18 **petition for writ of review of the commission's order, if any, is final and unappealable, and**  
19 **until the circuit court thereafter determines under subsection 5 of this section whether to**  
20 **grant the commission's petition for appointment of receiver.**

21 **3. When the commission files its petition for appointment of receiver in the circuit**  
22 **court, it shall attach to its petition an official copy of its determination under subsection**  
23 **1 of this section. The commission shall not file such action until its determination under**  
24 **subsection 1 of this section is final and unappealable.**

25 **4.** The summons and petition for an order attaching the assets of the utility and  
26 appointing a receiver shall be served as in other civil cases at least five days before the return  
27 date of the summons. In addition to attempted personal service, upon request of the commission,  
28 the judge before whom the proceeding is commenced shall make an order directing that the  
29 officer or other person empowered to execute the summons shall also serve the same by securely  
30 affixing a copy of the summons and petition in a conspicuous place on the utility system in  
31 question at least ten days before the return date of the summons, and by also mailing a copy of  
32 the summons and petition to the defendant at its last known address by ordinary mail and by  
33 certified mail, return receipt requested, deliver to addressee only, at least ten days before the  
34 return date. If the officer or other person empowered to execute the summons makes return that  
35 personal service cannot be obtained on the defendant, and if proof be made by affidavit of the  
36 posting and of the mailing of a copy of the summons and petition, the judge shall, at the request  
37 of the commission, proceed to hear the case as if there had been personal service, and judgment  
38 shall be rendered and proceedings had as in other cases. If the commission does not request  
39 service of the original summons by posting and mailing, and if the officer or other person  
40 empowered to execute the summons makes return that personal service cannot be obtained on  
41 the defendant, the commission may request the issuance of an alias summons and service of the  
42 same by posting and mailing in the time and manner provided in this subsection. Upon proof  
43 by affidavit of the posting and of the mailing of a copy of the alias summons and the petition, the  
44 judge shall proceed to hear the case as if there had been personal service, and judgment shall be  
45 rendered and proceedings had as in other cases.

46 [3.] **5.** The court [shall], after hearing [determine whether to], **may** grant the  
47 **commission's petition for appointment of a receiver.** Where the defendant is in default, the  
48 court shall mail to the defendant at its last known address by certified mail with a request for

49 return receipt and with directions to deliver to the addressee only, a notice informing the  
50 defendant of the judgment and the date it was entered. A receiver appointed pursuant to this  
51 section shall be a responsible person, partnership, or corporation knowledgeable in the operation  
52 of utilities.

53 [4.] **6.** The receiver shall give bond, and have the same powers and be subject to all the  
54 provisions, as far as they may be applicable, enjoined upon a receiver appointed by virtue of the  
55 law providing for suits by attachment. The receiver shall operate the utility so as to preserve the  
56 assets of the utility and to serve the best interests of its customers. The receiver shall be  
57 compensated from the assets of the utility in an amount to be determined by the court **with the**  
58 **assistance of the commission staff. Any receiver or interim receiver appointed under this**  
59 **section shall be immune from personal liability for any civil damages arising from acts**  
60 **performed in his or her official capacity for actions for which the receiver or interim**  
61 **receiver would not otherwise be liable except for his or her affiliation with the utility. This**  
62 **immunity shall not, however, apply to intentional conduct, wanton or willful conduct, or**  
63 **gross negligence. Nothing in this subsection shall be construed to create or abolish an**  
64 **immunity in favor of the utility itself.**

65 [5.] **7.** Control of and responsibility for the utility shall remain in the receiver until the  
66 utility can, in the best interests of its customers, be returned to the owners. [If] **However, if the**  
67 **commission or another interested party petitions and** the court determines, after hearing, that  
68 control of and responsibility for the utility should not, in the best interests of its customers, be  
69 returned to the owners, [the receiver shall proceed to] **the court shall direct the receiver to**  
70 **transfer by sale or** liquidate the assets of the utility in the manner provided by law.

71 [6.] **8.** The appointment of a receiver **or an interim receiver** shall be in addition to any  
72 other remedies provided by law.

73 **9. Notwithstanding the requirement of section 386.600, RSMo, to the contrary,**  
74 **penalties for violations of the public service commission law or related commission**  
75 **regulations that are collected from a sewer or water corporation that has been placed in**  
76 **receivership under the provisions of this section or for which the commission has appointed**  
77 **an interim receiver under the provisions of this section may, upon the order of the court**  
78 **that imposed the penalties, be used to support the operation of the subject small sewer or**  
79 **water corporation while it is under the control of the receiver.**

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

2 (1) "Capable public utility", a public utility that regularly provides the same type  
3 of service as a small water corporation or a small sewer corporation to more than eight  
4 thousand customer connections, that is not an affiliate of a small water corporation or a  
5 small sewer corporation, and that provides safe and adequate service;

6           (2) "Department", the department of natural resources;

7           (3) "Small sewer corporation", a public utility that regularly provides sewer service  
8 to eight thousand or fewer customer connections;

9           (4) "Small water corporation", a public utility that regularly provides water service  
10 to eight thousand or fewer customer connections.

11           2. The commission may order a capable public utility to acquire a small water or  
12 sewer corporation if, after providing notice and an opportunity to be heard, the  
13 commission determines:

14           (1) That the small water or sewer corporation is in violation of statutory or  
15 regulatory standards that affect the safety and adequacy of the service provided by the  
16 small water or sewer corporation, including but not limited to the public service  
17 commission law, the federal clean water law, the federal Safe Drinking Water Act, as  
18 amended, and the regulations adopted under these laws; or

19           (2) That the small water or sewer corporation has failed to comply, within a  
20 reasonable period of time, with any order of the department or the commission concerning  
21 the safety and adequacy of service, including but not limited to the availability of water,  
22 the potability of water, the palatability of water, the provision of water at adequate volume  
23 and pressure, the prevention of discharge of untreated or inadequately treated sewage to  
24 the waters of the state, and the prevention of environmental damage; or

25           (3) That it is not reasonable to expect that the small water or sewer corporation will  
26 furnish and maintain safe and adequate service and facilities in the future; and

27           (4) That the commission has considered alternatives to acquisition in accordance  
28 with subsection 3 of this section and has determined that they are impractical or not  
29 economically feasible; and

30           (5) That the acquiring capable public utility is financially, managerially, and  
31 technically capable of acquiring and operating the small water or sewer corporation in  
32 compliance with applicable statutory and regulatory standards.

33           3. Except when there is an imminent threat of serious harm to life or property,  
34 before the commission may order the acquisition of a small water or sewer corporation in  
35 accordance with subsection 2 of this section, the commission shall discuss alternatives to  
36 acquisition with the small water or sewer corporation and shall give such small water or  
37 sewer corporation thirty days to investigate alternatives to acquisition, including:

38           (1) The reorganization of the small water or sewer corporation under new  
39 management;

40           (2) The entering of a contract with another public utility or a management or  
41 service company to operate the small water or sewer corporation;

42           **(3) The merger of the small water or sewer corporation with one or more other**  
43 **public utilities; and**

44           **(4) The acquisition of the small water or sewer corporation by a municipality, a**  
45 **municipal authority, a public water supply district, a public sewer district, or a**  
46 **cooperative.**

47           **4. When the commission determines that there is an imminent threat of serious**  
48 **harm to life or property, the commission may appoint an interim receiver prior to the**  
49 **opportunity for hearing, provided that the commission shall provide opportunity for**  
50 **hearing as soon as practicable after the issuance of such order.**

51           **5. In making a determination under subsection 2 of this section, the commission**  
52 **shall consider:**

53           **(1) The financial, managerial, and technical ability of the small water or sewer**  
54 **corporation;**

55           **(2) The financial, managerial, and technical ability of all proximate public utilities**  
56 **that provide the same type of service and constitute an alternative to acquisition;**

57           **(3) The expenditures that are needed to improve the facilities of the small water or**  
58 **sewer corporation to assure compliance with applicable statutory and regulatory standards**  
59 **concerning the adequacy, efficiency, safety, and reasonableness of utility service, and to**  
60 **sufficiently provide safe and adequate service to the customers of the small water or sewer**  
61 **corporation;**

62           **(4) The potential for expansion of the certificated service area of the small water**  
63 **or sewer corporation; and**

64           **(5) The opinion and advice, if any, of the department as to what steps may be**  
65 **necessary to assure compliance with applicable statutory or regulatory standards**  
66 **concerning the safety and adequacy of utility service.**

67           **6. Subsequent to the determination required under subsection 2 of this section, the**  
68 **commission shall issue an order for the acquisition of a small water or sewer corporation**  
69 **by a capable public utility. Such order shall include granting a certificate of public**  
70 **convenience and necessity to the acquiring capable public utility for the small water or**  
71 **sewer corporation's established service area.**

72           **7. The price for the acquisition of a small water or sewer corporation shall be**  
73 **determined by agreement between the small water or sewer corporation and the acquiring**  
74 **capable public utility, subject to a determination by the commission that the price is**  
75 **reasonable. If the small water or sewer corporation and the acquiring capable public**  
76 **utility are unable to agree on the acquisition price, or the commission disapproves the**  
77 **acquisition price to which the utilities agreed, the commission shall issue an order directing**

78 the acquiring capable public utility to acquire the small water or sewer corporation at an  
79 acquisition price that is equal to the ratemaking rate base as determined by the commission  
80 after notice and hearing, or providing that the acquiring capable public utility will not be  
81 allowed to earn a rate of return on the portion of the purchase price that is in excess of the  
82 ratemaking rate base determined by the commission after notice and hearing. The burden  
83 of establishing the ratemaking rate base shall be upon the small water or sewer  
84 corporation.

85 **8. Any capable public utility that is ordered by the commission to acquire a small**  
86 **water or sewer corporation shall, within thirty days after acquisition, submit a plan,**  
87 **including a timetable, for bringing the small water or sewer corporation into compliance**  
88 **with applicable statutory and regulatory standards to the commission for approval. The**  
89 **capable public utility shall also provide a copy of the plan to the department and such**  
90 **other state or local agency as the commission may direct. The commission shall give the**  
91 **department adequate opportunity to comment on the plan and shall consider any**  
92 **comments submitted by the department and shall expeditiously decide whether to approve**  
93 **the plan.**

94 **9. Upon the acquisition of a small water or sewer corporation by a capable public**  
95 **utility, and approval by the commission of a plan for improvements submitted under**  
96 **subsection 8 of this section, the acquiring capable public utility shall not be liable for any**  
97 **damages if the cause of those damages is proximately related to violations of applicable**  
98 **statutes or regulations by the small water or sewer corporation and the acquiring capable**  
99 **public utility remains in compliance with the plan for improvements submitted under**  
100 **subsection 8 of this section. This subsection shall not apply:**

101 **(1) Beyond the end of the timetable in the plan for improvements;**

102 **(2) Whenever the acquiring capable public utility is not in compliance with the plan**  
103 **for improvements; or**

104 **(3) If, within sixty days after receipt of notice of the proposed plan for**  
105 **improvements, the department submitted written objections to the commission and those**  
106 **objections have not subsequently been withdrawn.**

107 **10. Upon approval by the commission of a plan for improvements submitted under**  
108 **subsection 8 of this section, and the acquisition of a small water or sewer corporation by**  
109 **a capable public utility, the acquiring capable utility shall not be subject to any**  
110 **enforcement actions by state or local agencies that had notice of the plan, if the basis of**  
111 **such enforcement action is proximately related to violations of applicable statutes or**  
112 **regulations by the small water or sewer corporation. This subsection shall not apply:**

113 **(1) Beyond the end of the timetable in the plan for improvements;**

114 (2) Whenever the acquiring capable public utility is not in compliance with the plan  
115 for improvements;

116 (3) If, within sixty days of having received notice of the proposed plan for  
117 improvements, the department submitted written objections to the commission and those  
118 objections have not subsequently been withdrawn; or

119 (4) To emergency interim actions of the commission or the department, including  
120 but not limited to the ordering of boil-water advisories or other water supply warnings, of  
121 emergency treatment, or of temporary alternate supplies of water or sewer services.

122 11. If the commission orders the acquisition of a small water or sewer corporation,  
123 the commission shall authorize the acquiring capable public utility to utilize the  
124 commission's small company rate case procedure for establishing the rates to be applicable  
125 to the system being acquired. Such rates may be designed to recover the costs of operating  
126 the acquired system and to recover one hundred per cent of the revenues necessary to  
127 provide a net after-tax return on the ratemaking rate base value of the small water or  
128 sewer corporation's facilities acquired by the capable public utility, and the ratemaking  
129 rate base value of any improvements made to the facilities by the acquiring capable public  
130 utility subsequent to the acquisition, at a rate of return equivalent to one hundred basis  
131 points above the rate of return authorized for the acquiring capable public utility in its last  
132 general rate proceeding. The acquiring capable public utility may utilize the commission's  
133 small company rate case procedure for the purposes stated in this section until such time  
134 that a determination is made on the acquiring utility's next company-wide general rate  
135 increase, but not in excess of three years from the date of the acquisition of the subject  
136 small water or sewer corporation.

137 12. Proceedings under this section may be initiated by complaint filed by the staff  
138 of the commission, the office of the public counsel, the mayor, or the president or chair of  
139 the board of aldermen, or a majority of the council, commission, or other legislative body  
140 of any city, town, village, or county within which the alleged unsafe or inadequate service  
141 is provided, or by not less than twenty-five consumers or purchasers, or prospective  
142 consumers or purchasers, of the utility service provided by a small water or sewer  
143 corporation. The complainant shall have the burden of proving that the acquisition of the  
144 small water or sewer corporation would be in the public interest and in compliance with  
145 the provisions of this section.

146 13. The notice required by subsection 2 of this section, or any other provision of  
147 this section, shall be served upon the small water or sewer corporation affected, the office  
148 of the public counsel, the department, all proximate public utilities providing the same type  
149 of service as the small water or sewer corporation, all proximate municipalities and

150 municipal authorities providing the same type of service as the small water or sewer  
151 corporation, and the municipalities served by the small water or sewer corporation. The  
152 commission shall order the affected small water or sewer corporation to provide notice to  
153 its customers of the initiation of proceedings under this section in the same manner in  
154 which the utility is required to notify its customers of proposed general rate increases.

155 **14. A public utility that would otherwise be a capable public utility except for the**  
156 **fact that it has fewer than eight thousand customer connections may petition the**  
157 **commission to be designated a capable public utility for the purposes of this section**  
158 **regardless of the number of its customer connections and regardless of whether it is**  
159 **proximate to the small water corporation or small water corporation to be acquired. The**  
160 **commission may grant such a petition upon finding that designating the petitioning public**  
161 **utility as a capable public utility is not detrimental to the public interest.**

162 **15. Notwithstanding the requirement of section 386.600, RSMo, to the contrary,**  
163 **penalties for violations of the public service commission law or related commission**  
164 **regulations that have been imposed on a small sewer or water corporation that has been**  
165 **placed in receivership under the provisions of section 393.145 may, upon the order of the**  
166 **court that imposed the penalties, be used to reduce the purchase price paid by a capable**  
167 **public utility for the acquisition of the assets of the subject small sewer or water**  
168 **corporation. In such a case, the commission shall make a corresponding reduction to the**  
169 **ratemaking rate base value of the subject assets for purposes of future ratemaking**  
170 **activities.**

171 **16. The commission shall, no later than the effective date of this section, initiate a**  
172 **rulemaking, pursuant to the provisions of its internal rulemaking procedures, to**  
173 **promulgate rules to carry out the purposes of this section. Any rule or portion of a rule,**  
174 **as that term is defined in section 536.010, RSMo, that is created under the authority**  
175 **delegated in this section shall become effective only if it complies with and is subject to all**  
176 **of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This**  
177 **section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the**  
178 **general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or**  
179 **to disapprove and annul a rule are subsequently held unconstitutional, then the grant of**  
180 **rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be**  
181 **invalid and void.**

Section B. Because immediate action is necessary to bring certain sewer and water  
2 corporations into compliance with applicable statutory and regulatory standards, section A of this  
3 act is deemed necessary for the immediate preservation of the public health, welfare, peace, and  
4 safety, and is hereby declared to be an emergency act within the meaning of the constitution, and



5 section A of this act shall be in full force and effect upon its passage and approval.