

**BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI**

**AFFIDAVIT OF DALE W. JOHANSEN**

STATE OF MISSOURI     )  
                                      ) SS         CASE NO. SA-2007-0105  
COUNTY OF COLE        )

COMES NOW Dale W. Johansen, being of lawful age, and on his oath states the following: (1) that he is the Manager of the Missouri Public Service Commission's Water & Sewer Department; (2) that he participated in the Staff's investigation of the application that is the subject of the instant case; (3) that he was responsible for the preparation of the Staff's *Official Case File Memorandum* ("Case File Memo") that is included in the following appendix; (4) that he has knowledge of the matters set forth in the Staff's Case File Memo; and (5) that the matters set forth in the Staff's Case File Memo are true and correct to the best of his knowledge, information and belief.

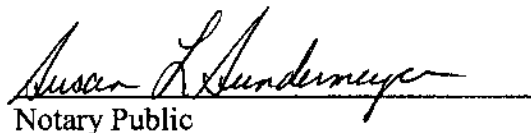


Dale W. Johansen – Manager  
Water & Sewer Department  
Utility Operations Division

Subscribed and sworn to before me this 9<sup>th</sup> day of November 2006.



SUSAN L. SUNDERMEYER  
My Commission Expires  
September 21, 2010  
Callaway County  
Commission #06942086

  
Notary Public

# APPENDIX A

## STAFF MEMORANDUM & ATTACHMENTS

CASE NO. SA-2007-0105

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## Official Case File Memorandum

## **MEMORANDUM**

TO: Missouri Public Service Commission Official Case File  
Case No. SA-2007-0105 - - - L.W. Sewer Corporation

FROM: Dale Johansen – Project Coordinator  
Manager – Water & Sewer Department  
Jim Merciel – Water & Sewer Department

<u>/s/ <b>Dale W. Johansen</b></u>	<u><b>11/09/06</b></u>
Project Coordinator	Date

<u>/s/ <b>Robert V. Franson</b></u>	<u><b>11/09/06</b></u>
General Counsel's Office	Date

SUBJECT: Staff's Preliminary Recommendation Regarding the Application of L.W. Sewer Corporation to Reorganize and Convert to a Nonprofit Sewer Company

DATE: November 9, 2005

### **BACKGROUND**

On September 18, 2006, L.W. Sewer Corporation ("LWS" or "Company") filed an application with the Commission through which it is seeking the Commission's authority to reorganize and convert to a nonprofit sewer company. According to information in the Secretary of State's ("SOS") business entity data base, LWS is a general business domestic corporation that was issued a Certificate of Organization by the SOS on June 29, 1971, and that is currently in good standing with the SOS. According to the Commission's records, the Commission issued LWS a certificate of convenience and necessity in Case No. 17,314 effective November 8, 1972.

From an operations perspective, LWS has historically provided service to customers in and around an area known as the Lake Wauwanoka development in Jefferson County. LWS currently provides service to approximately 195 customers, all of which are residential customers and many of which are part-time "seasonal" customers.

### **STAFF'S INVESTIGATION**

The Staff's investigation for this case included a review of the following: (a) the Company's Application; (b) the proposed Articles of Conversion, Amendment and Acceptance ("proposed conversion articles"), which was referenced in the Application as Appendix B and a copy of which is attached hereto as Attachment 1; (c) LWS's original articles of incorporation, a copy of which is attached hereto as Attachment 2; (d) the statutory provisions applicable to nonprofit sewer companies, a copy of which is attached hereto as Attachment 3; (e) LWS's compliance status with regard to the submission of its Commission annual reports and the payment of its Commission assessments; and (f) the Company's compliance status with regard to the requirements of the Department of Natural Resources ("DNR").

### **STAFF'S FINDINGS AND CONCLUSIONS**

With regard to the proposed conversion articles, the Staff has concluded that these articles adequately address the changes needed to LWS's original articles of incorporation to effectuate the Company's conversion to a nonprofit sewer company. However, the Staff notes that neither the proposed conversion articles nor the necessary shareholder consents have been executed.

With regard to the statutory provisions pertaining to the organization and operation of nonprofit sewer companies, the Staff notes that LWS's Application did not include the proposed by-laws under which the proposed nonprofit sewer company would operate. As a result, the Staff has concluded that it cannot determine whether the proposed nonprofit sewer company will be operating in compliance with the statutory provisions applicable to nonprofit sewer companies. In particular, the Staff believes it needs to be able to determine whether the provisions of Sections 393.839, 393.843, 393.845 and 393.849 will be met.

With regard to LWS's compliance regarding the submission of its Commission annual reports and the payment of its Commission assessments, the Staff reviewed information maintained by the Commission's Budget & Fiscal Services Department and Data Center, and information retained in the Commission's electronic filing and information system. Based on its review of the available information, the Staff notes that LWS has historically been and is now current on the submission of its annual reports and the payment of its assessments.

With regard to LWS's compliance with the requirements of the DNR, the Staff has contacted appropriate personnel at the DNR, but has not yet heard back from them as to whether the Company currently has any outstanding compliance issues. The information obtained from the DNR will be included in the forthcoming Staff filing referenced at the end of this memorandum.

Lastly, the Staff notes that LWS currently has no other matters pending before the Commission, and that approval of the Application in this case would thus not affect any other matter before the Commission with regard to the Company.

### **STAFF'S RECOMMENDATION**

Based upon the above, the Staff recommends that the Commission issue an order that:

1. Directs LWS to file executed copies of the Articles of Conversion, Amendment and Acceptance and the related shareholder consent; and
2. Directs LWS to file the proposed by-laws under which the proposed nonprofit sewer company will be operating.

Subsequent to LWS's filing of the above-referenced documents, the Staff will review those documents and will then file its recommendation regarding the Commission's granting of the authority requested in the Company's Application. As noted above, this subsequent filing will include the information obtained from the DNR regarding the status of Company's compliance with the DNR's requirements.

## Memo Attachment 1

Proposed Articles of Conversion, Amendment and Acceptance

**DRAFT**

**ARTICLES OF CONVERSION, AMENDMENT  
AND ACCEPTANCE**

The undersigned, for the purpose of (i) converting L.W. SEWER CORPORATION, a Missouri corporation formed for the purpose of conducting a general sewer business (the "**Original Corporation**") into a Missouri nonprofit sewer company (the "**Nonprofit Sewer Company**"), (ii) amending the Articles of Incorporation of the Original Corporation to comply with the requirements of Section 355.020 and Section 393.825 of the Missouri Revised Statutes, and (iii) accepting Chapter 355 of the Missouri Revised Statutes, hereby executes these Articles of Conversion, Amendment and Acceptance pursuant to Sections 393.825 to 393.861 and Section 393.175 of the Missouri Revised Statutes:

**Article One**

The name of the Original Corporation prior to its conversion into a nonprofit sewer company as effectuated hereby is:

**L.W. SEWER CORPORATION**

**Article Two**

The address of the principal office of the Original Corporation, which shall be the principal office of the Nonprofit Sewer Company, is: **P.O. Box 2249, Hillsboro, Missouri 63050.**

**Article Three**

The date of filing of the Articles of Incorporation of the Original Corporation is: **June 29, 1971.**

**Article Four**

The Original Corporation was organized under Chapter 351 of the Missouri Revised Statutes.

**Article Five**

The Original Corporation, upon its conversion into the Nonprofit Sewer Company as effectuated hereby shall assume the name:

**L.W. SEWER COMPANY**

Article One of the Articles of Incorporation is hereby amended to reflect such name.

### **Article Six**

The Original Corporation elects to become a nonprofit, membership corporation subject to Sections 393.825 to 393.861 and Section 393.175.

### **Article Seven**

Article Three of the Articles of Incorporation are hereby amended to provide that upon conversion of the Original Corporation into the Nonprofit Sewer Company as effectuated hereby (i) the Nonprofit Sewer Company shall not be authorized to issue any shares of stock, (ii) the sole shareholder of the Original Corporation shall no longer have any right, title or interest in the Nonprofit Sewer Company and (iii) the shares of stock in the Original Corporation shall be cancelled and extinguished. The sole shareholder of the Original Corporation shall surrender all certificates representing its shares of stock to the Nonprofit Sewer Company and such certificates shall be cancelled. Each person that has agreed to receive wastewater disposal and wastewater treatment services from the Nonprofit Sewer Company shall become a member of the Nonprofit Sewer Company. Article Four of the Articles of Incorporation are hereby amended to provide that the provisions of such Article are "Intentionally Omitted."

### **Article Eight**

Article Six of the Articles of Incorporation is amended to provide that the number of directors to constitute the board of directors of the Nonprofit Sewer Company is seven (7). The persons constituting the Board of Directors of the Original Corporation as of the date hereof shall constitute the initial Board of Directors of the Nonprofit Sewer Company whose names and addresses are:

E. Clyde Pratt  
21 Arrow Point  
Hillsboro, MO 63050

Doug Dieckman  
58 North Lake Drive  
Hillsboro, MO 63050

John Douglas  
124 North Lake Drive  
Hillsboro, MO 63050

Jim Luther  
5 North Lake Drive  
Hillsboro, MO 63050

Christie McKenna  
82 South Lake Drive  
Hillsboro, MO 63050

John Ossenfort  
1158 Deborah Drive  
Arnold, MO 63010

Leo Koch, Sr.  
54 North Lake Drive  
Hillsboro, MO 63050

Such persons shall hold office until the next following annual meeting of the members of the Nonprofit Sewer Company or until their successors shall have been elected and qualified.



### **Article Nine**

Article Eight of the Articles of Incorporation is amended to provide that the Nonprofit Sewer Company is formed for the purpose of supplying wastewater disposal and treatment services in the state of Missouri.

### **Article Eleven**

The Nonprofit Sewer Company will operate under Chapter 355 of the Missouri Revised Statutes and hereby accepts Chapter 355 of the Missouri Revised Statutes and for all purposes will be deemed a corporation organized under such Chapter.

### **Article Twelve**

Attached as **Exhibit A** hereto is a copy of the resolutions adopted by shareholder written consent authorizing these Articles of Conversion, Amendment and Acceptance that were duly recommended by the Board of Directors of the Original Corporation and approved by a consent in writing of the sole stockholder of the Original Corporation. The Original Corporation's sole shareholder adopted such resolutions on August \_\_\_, 2006. The total number of shares entitled to vote on such resolutions was one hundred (100). The number of shares consenting to such resolutions is one hundred (100).

*[Remainder of Page Intentionally Left Blank]*

These Articles of Conversion, Amendment and Acceptance have been executed and acknowledged in duplicate on behalf of the Original Corporation by the undersigned President on August \_\_\_, 2006.

L.W. SEWER CORPORATION

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E. Clyde Pratt  
President

I, Constance Hargis, Secretary of the Original Corporation, hereby certify that E. Clyde Pratt is, and has been through and including the date hereof, the duly elected, qualified and acting President of the Original Corporation and that the signature appearing above is his genuine signature and that I have affixed the corporate seal of the Original Corporation to these Articles of Conversion below.

IN WITNESS WHEREOF, I have hereunto signed my name.

Dated: August \_\_\_, 2006

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Name: Constance Hargis  
Title: Secretary

[Corporate Seal]

STATE OF MISSOURI )  
 ) ss.  
COUNTY OF \_\_\_\_\_)

E. Clyde Pratt, President

Notary Public in and for said County and State

(Print notary's name here)

**EXHIBIT A**

**SHAREHOLDER CONSENT**

## Memo Attachment 2

LWS's Original Articles of Incorporation



*State of Missouri . . . Office of Secretary of State*

JAMES C. KIRKPATRICK, Secretary of State

**Articles of Incorporation**

(To be submitted in duplicate by an attorney)

HONORABLE JAMES C. KIRKPATRICK  
SECRETARY OF STATE  
STATE OF MISSOURI  
JEFFERSON CITY, MO. 65101

The undersigned natural person(s) of the age of twenty-one years or more for the purpose of forming a corporation under The General and Business Corporation Law of Missouri adopt the following Articles of Incorporation:

**ARTICLE ONE**

The name of the corporation is: L.W. SEWER CORPORATION

**ARTICLE TWO**

The address, including street and number, if any, of the corporation's initial registered office in this state is: R.A. Wegmann, Post Office Box 127, Hillsboro, Mo.

and the name of its initial agent at such address is: \_\_\_\_\_

P.O. Box 127, Hillsboro, Mo. 63050

**ARTICLE THREE**

The aggregate number, class and par value, if any, of shares which the corporation shall have authority to issue shall be:

**10,000 Shares Common Stock, at \$10 Par Value per share**

The preferences, qualifications, limitations, restrictions, and the special or relative rights, including convertible rights, if any, in respect of the shares of each class are as follows:

**None. Other than as may be prescribed by the general and business corporation law of Missouri.**

#### ARTICLE FOUR

The number and class of shares to be issued before the corporation shall commence business, the consideration to be paid therefor and the capital with which the corporation will commence business are as follows:

No. of Shares	Class	Consideration to be paid	Par Value (or for shares without par value, share amount of consideration paid which will be capital)
100	Common	\$1,000	\$1,000

The corporation will not commence business until consideration of the value of at least Five Hundred Dollars has been received for the issuance of shares.

#### ARTICLE FIVE

The name and place of residence of each incorporator is as follows:

Name	Street	City
Lester M. Heckman	424 Mark Drive,	Kirkwood, Mo., 63122
Aloys J. Ricklin	6335 Pernod,	St. Louis, Mo., 63139

#### ARTICLE SIX

The number of directors to constitute the board of directors is Five (5)

#### ARTICLE SEVEN

The duration of the corporation is Perpetual

ARTICLE EIGHT

The corporation is formed for the following purposes:

To conduct a general sewer company business and in connection therewith to acquire, purchase, own, lease, rent, hold, and in all manners control all appliances, fixtures and facilities necessary to the conduct of a sewer business and operation, inclusive of all lands, mains, laterals, pipes, service lines, treatment facilities, lift stations, lagoons, mechanical treatment facilities, and the like. To establish and maintain in connection with said sewer business, a general office and office staff and to equip, manage, control and maintain same, and in connection therewith to acquire by purchase, lease or otherwise, such ancillary premises and facilities as are necessary. To establish sewer rates, inclusive of monthly charges for sewer services as rendered, inclusive of the establishment of new facility connection, tap on and user charges, inclusive of the establishment of such further and additional rates, regulations, surcharges, surrates, and the like as may be necessary. To acquire by purchase or lease any existing sewer facilities, inclusive of all mains, pipes, stations, lift stations, and treatment facilities now owned or operated by Lake Wauwanoka, Inc. To apply to, approach or otherwise make application to all regulatory authorities of the State of Missouri and of the Federal Government for such regulatory or business permits as by law may be deemed necessary and in connection therewith to establish all tariffs, rates and the like and to publish same, all in accordance with the rules and regulations of such regulatory authorities and to do every act as may be required by law or regulation of said regulatory authorities for the conduct of a general sewer business. To borrow monies as may be necessary for the conduct of a general sewer business and to issue such promissory notes, bonds or other evidences of indebtedness as may be necessary. To borrow funds and to pledge as security for the repayment of same, such assets, fixtures and facilities as necessary. To do each and every act necessary to carry on a general sewer business within and without the confines of an area of land and subdivision known as Lake Wauwanoka, Inc.; to service with sewer facilities and furnish same to such parcels of real property as are located within and without said subdivision and to the owners thereof and to have all power and authority to do all acts necessary and essential to the accomplishment of the aforesaid purposes not inconsistent with law.

IN WITNESS WHEREOF, these Articles of Incorporation have been signed this 26th day  
of June, 1971

Late M. H. H. H. H.  
Alay J. Ricken



STATE OF Missouri }  
COUNTY OF Jefferson } ss.

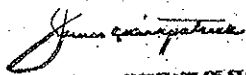
I, Zelma Genrich, a notary public,  
do hereby certify that on the 26th day of June, 1971, personally appeared  
before me, Lester M. Heckman (and Aloys J. Ricklin)  
who being by me first duly sworn, (severally) declared that he is (they are) the person(s) who signed the  
foregoing document as incorporator(s), and that the statements therein contained are true.

  
Zelma Genrich  
Notary Public

My commission expires March 12, 1975.

FILED AND CERTIFICATE OF  
INCORPORATION ISSUED

JUN 29 1971

  
James C. Campbell  
Secretary of State



## STATE of MISSOURI

JAMES C. KIRKPATRICK, Secretary of State

## Corporation Division

## Certificate of Incorporation

WHEREAS, duplicate originals of Articles of Incorporation of **L. W. SEWER CORPORATION**

have been received and filed in the office of the Secretary of State and which Articles, in all respects, comply with the requirements of The General and Business Corporation Law:

NOW, THEREFORE, I, JAMES C. KIRKPATRICK, Secretary of State of the State of Missouri, by virtue of the authority vested in me by law, do hereby certify and declare **L. W. SEWER CORPORATION**

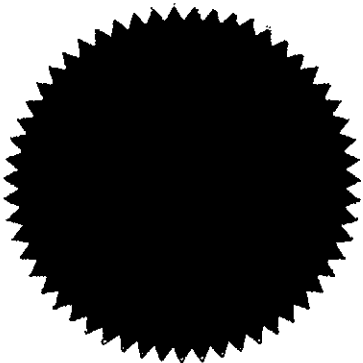
a body corporate, duly organized this day and that it is entitled to all rights and privileges granted corporations organized under The General and Business Corporation Law; that the address of its initial Registered Office in Missouri is **Hillsboro,**

**perpetual**

that its period of existence is **ONE HUNDRED THOUSAND --**; and that the amount of its Authorized Shares is .....Dollars.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the GREAT SEAL of the State of Missouri, at the City of **Jefferson**, this **29th** day of **June**, 19**71**.

*James C. Kirkpatrick*  
Secretary of State



L. W. SEWER CORPORATION

RECEIVED OF: **Eighty-eight dollars and no /100** ..... **\$8.00**  
Dollars, \$.....

For Credit of General Revenue Fund, on Account of Incorporation Tax and Fee.

148763

No. ....

CORP. No. 13

*Dorothy Mae Miller*  
Deputy Collector of Revenue

## Memo Attachment 3

### Statutory Provisions Pertaining to Nonprofit Sewer Companies

**Nonprofit sewer companies, who may organize--articles of incorporation, contents, submission to secretary of state.**

393.825. 1. Nonprofit, membership corporations may be organized under sections 393.825 to 393.861 and section 393.175 only for the purpose of supplying wastewater disposal and treatment services within the state of Missouri. Corporations which become subject to sections 393.825 to 393.861 and section 393.175 in the manner herein provided are herein referred to as "nonprofit sewer companies". Five or more persons may organize a nonprofit sewer company pursuant to sections 393.825 to 393.861 and section 393.175.

2. The articles of incorporation of a nonprofit sewer company shall recite in the caption that they are executed pursuant to sections 393.825 to 393.861 and section 393.175, shall be signed and acknowledged in duplicate by at least five of the incorporators and shall state:

- (1) The name of the company;
- (2) The address of its principal office;
- (3) The names and addresses of the incorporators;
- (4) The number of years the company is to continue, which may be any number including perpetuity;
- (5) The names and addresses of the persons who shall constitute its first board of directors;

(6) Whether the company chooses to operate under the provisions of chapter 347, RSMo, or chapter 355, RSMo; and

(7) Any provisions not inconsistent with sections 393.825 to 393.861 and section 393.175 deemed necessary or advisable for the conduct of its business and affairs. Such articles of incorporation shall be submitted to the secretary of state for filing.

(L. 1997 2d Ex. Sess. H.B. 1 merged with S.B. 3)

Effective 12-23-97

**Conversion of wastewater disposal or treatment corporation to nonprofit sewer company, requirements for conversion--term "articles of incorporation" includes articles of conversion.**

393.827. Any corporation organized under the laws of this state for the purpose of, among others, wastewater disposal, or wastewater treatment, may be converted into a nonprofit sewer company and become subject to sections 393.825 to 393.861 and section 393.175 with the same effect as if originally organized under sections 393.825 to 393.861 and section 393.175 by complying with the following requirements:

(1) The proposition for the conversion of such corporation into a nonprofit sewer company and proposed articles of conversion to give effect thereto shall be first approved by the board of trustees or the board of directors, as the case may be, of such corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to sections 393.825 to 393.861 and section 393.175 and shall state:

(a) The name of the corporation prior to its conversion into a nonprofit sewer company;

(b) The address of the principal office of such corporation;

(c) The date of the filing of the articles of incorporation of such corporation in the office of the secretary of state;

(d) The statute or statutes under which such corporation was organized;

(e) The name assumed by such corporation;

(f) A statement that such corporation elects to become a nonprofit, membership corporation subject to sections 393.825 to 393.861 and section 393.175;

(g) The manner and basis of converting either memberships in or shares of stock of such corporation into memberships therein after completion of the conversion; and

(h) Any provisions not inconsistent with sections 393.825 to 393.861 and section 393.175 deemed necessary or advisable for the conduct of the business and affairs of such corporation.

(2) The proposition for the conversion of such corporation into a nonprofit sewer company and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of such corporation shall then be submitted to a vote of the members or stockholders, as the case may be, of such corporation at any duly held annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of such corporation into a nonprofit sewer company and the proposed articles of conversion, with such amendments thereto as the members or stockholders of such corporation shall choose to make, shall be deemed to be approved upon the affirmative vote of not less than a majority of the members of such corporation, or, if such corporation is a stock corporation, upon the affirmative vote of the holders of not less than a majority of the capital stock of such corporation.

(3) Upon such approval by the members or stockholders of such corporation, articles of conversion in the form approved by such members or stockholders shall be executed and acknowledged in duplicate on behalf of such corporation by its president or vice president and its corporate seal shall be affixed thereto and attested by its secretary. The president or vice president executing such articles of conversion on behalf of such corporation shall also make and annex to each copy thereof an affidavit stating that the provisions of sections 393.825 to 393.861 and section 393.175 with respect to the approval of its trustees or directors and its members or stockholders, of the proposition for the conversion of such corporation into a nonprofit sewer company and such articles of conversion were duly complied with. Such articles of conversion and affidavit shall be submitted to the secretary of state for filing as provided in sections 393.825 to 393.861 and section 393.175. The term "articles of incorporation" as used in sections 393.825 to 393.861 and section 393.175 shall be deemed to include the articles of conversion of a converted corporation.

(L. 1997 2d Ex. Sess. H.B. 1 merged with S.B. 3)

Effective 12-23-97

## **Powers.**

393.829. A nonprofit sewer company shall have power:

- (1) To sue and be sued, in its corporate name;
- (2) To have succession by its corporate name for the period stated in its articles of incorporation or, if no period is stated in its articles of incorporation, to have such succession perpetually;
- (3) To adopt a corporate seal and alter the same at pleasure;

(4) To provide wastewater disposal and wastewater treatment services to its members, to governmental agencies and political subdivisions;

(5) To make loans to persons to whom wastewater disposal or wastewater treatment is or will be supplied by the company for the purpose of, and otherwise to assist such persons in, installing therein plumbing fixtures, appliances, apparatus and equipment of any and all kinds and character, and in connection therewith, to purchase, acquire, lease, sell, distribute, install and repair such plumbing fixtures, appliances, apparatus and equipment, and to accept or otherwise acquire, and to sell, assign, transfer, endorse, pledge, hypothecate and otherwise dispose of notes, bonds and other evidences of indebtedness and any and all types of security therefor;

(6) To make loans to persons to whom wastewater disposal or wastewater treatment is or will be supplied by the company for the purpose of, and otherwise to assist such persons in, constructing, maintaining and operating commercial or industrial plants or facilities;

(7) To construct, purchase, take, receive, lease as lessee, or otherwise acquire, and to own, hold, use, equip, maintain, and operate, and to sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, wastewater provision or collection or treatment systems, plants, lands, buildings, structures, dams, and equipment, and any and all kinds and classes of real or personal property whatsoever, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the company is organized;

(8) To purchase or otherwise acquire, and to own, hold, use and exercise and to sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber, franchises, rights, privileges, licenses, rights-of-way and easements;

(9) To borrow money and otherwise contract indebtedness, and to issue notes, bonds, and other evidences of indebtedness therefor, and to secure the payment thereof by mortgage, pledge, deed of trust, or any other encumbrance upon any or all of its then-owned or after-acquired real or personal property, assets, franchises, revenues or income;

(10) To construct, maintain and operate wastewater distribution and collection and treatment plants and lines along, upon, under and across all public thoroughfares, including without limitation, all roads, highways, streets, alleys, bridges and causeways, and upon, under and across all publicly owned lands;

(11) To exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems;

(12) To conduct its business and exercise any or all of its powers within or without this state;

(13) To adopt, amend and repeal bylaws; and

(14) To do and perform any and all other acts and things, and to have and exercise any and all other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the company is organized.

(L. 1997 2d Ex. Sess. H.B. 1 merged with S.B. 3)

Effective 12-23-97

### **Articles of incorporation, amendment requirements.**

393.831. A company may amend its articles of incorporation by complying with the following requirements:

(1) The proposed amendment shall be first approved by the board of directors and shall then be submitted to a vote of the members at any annual or special meeting thereof, the notice of which shall set forth the proposed amendment. The proposed amendment, with such changes as the members shall choose to make therein, shall be deemed to be approved on the affirmative vote of not less than two-thirds of those members voting thereon at such meeting; and

(2) (a) Upon such approval by the members, articles of amendment shall be executed and acknowledged in duplicate on behalf of the company by its president or vice president and its corporate seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite in the caption that they are executed pursuant to sections 393.825 to 393.861 and section 393.175 and shall state:

a. The name of the company;

b. The address of its principal office;

c. The date of the filing of its articles of incorporation in the office of the secretary of state; and

d. The amendment to its articles of incorporation;

(b) The president or vice president executing such articles of amendment shall also make and annex to each copy thereof an affidavit stating that the provisions of sections 393.825 to 393.861 and section 393.175 were duly complied with;

(c) Such articles of amendment and affidavit shall be submitted to the secretary of state for filing.

(L. 1997 2d Ex. Sess. H.B. 1 merged with S.B. 3)

Effective 12-23-97



### **Principal office, change of, procedure.**

393.833. A company may, upon authorization of a majority of the members at any regular or special meeting, change the location of its principal office by filing a certificate of change of principal office, executed and acknowledged in duplicate by its president or vice president under its seal attested by its secretary, in the office of the secretary of state. Such company shall also, within thirty days after the filing of such certificate of change of principal office, file certified copies of its articles of incorporation and all amendments thereto, if the same are not already on file.

(L. 1997 2d Ex. Sess. H.B. 1 merged with S.B. 3)

Effective 12-23-97

### **Articles of incorporation, amendment, consolidation, merger, conversion or dissolution--filing--duties of secretary of state.**

393.835. 1. Articles of incorporation, amendment, consolidation, merger, conversion, or dissolution, as the case may be, when executed and acknowledged in duplicate and accompanied by such affidavits as may be required by applicable provisions of sections 393.825 to 393.861 and section 393.175, shall be presented to the secretary of state for filing in the records of his office.

2. If the secretary of state shall find that the articles presented conform to the requirements of sections 393.825 to 393.861 and section 393.175, he shall file one copy of the articles so presented in the records of his office and upon such filing the incorporation, amendment, consolidation, merger, conversion, or dissolution provided for therein shall be in effect.

(L. 1997 2d Ex. Sess. H.B. 1 merged with S.B. 3)

Effective 12-23-97

### **Securities law of Missouri not to apply, when.**

393.837. The provisions of the securities law of Missouri shall not apply to any note, bond or other evidence of indebtedness issued by any nonprofit sewer company transacting business in this state pursuant to sections 393.825 to 393.861 and section 393.175 to the United States of America or to any agency or instrumentality thereof, or to any mortgage or deed of trust executed to secure the same. The provisions of such securities law of Missouri shall not apply to the issuance of membership certificates by any nonprofit sewer company.

(L. 1997 2d Ex. Sess. H.B. 1 merged with S.B. 3)

## **Membership--meetings, annual, special--quorum--voting.**

393.839. 1. No person shall become a member of a nonprofit sewer company unless such person shall agree to use services furnished by the company when such shall be available through its facilities. The bylaws of a company may provide that any person, including an incorporator, shall cease to be a member thereof if such person shall fail or refuse to use services made available by the company or if services shall not be made available to such person by the company within a specified time after such person shall have become a member thereof. Membership in the company shall not be transferable, except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations in respect of membership.

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

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

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

5. Except as otherwise provided in sections 393.825 to 393.861 and section 393.175, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than ten nor more than twenty-five days before the date of the meeting.

6. Two percent of the members, present in person or by mail or proxy shall constitute a quorum for the transaction of business at all meetings of the members, unless the bylaws prescribe the presence of a greater percentage of the members for a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

7. Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person, but, if the bylaws so provide, may also be by proxy or by mail, or both. If the bylaws provide for voting by proxy or by mail, they shall also prescribe the conditions under which proxy or mail voting shall be exercised.

(L. 1997 2d Ex. Sess. H.B. 1 merged with S.B. 3)

## **Voting districts may be provided, when, procedure.**

393.841. Notwithstanding any other provision of law, the bylaws may provide that the territory in which a company supplies wastewater services may be divided into two or more voting districts for the purpose of properly distributing its directors over the area in which its members reside. In such case the bylaws shall prescribe the manner in which such voting districts shall function in the election of directors at annual meetings.

(L. 1997 2d Ex. Sess. H.B. 1 merged with S.B. 3)

Effective 12-23-97

## **Board of directors, powers and duties.**

393.843. 1. The business and affairs of a company shall be managed by a board of not less than five directors, each of whom shall be a member of the company. The bylaws shall prescribe the number of directors, their qualifications, other than those provided for in sections 393.825 to 393.861 and section 393.175, the manner of holding meetings of the board of directors and of the election of successors to directors who shall resign, die, or otherwise be incapable of acting. The bylaws may also provide for the removal of directors from office and for the election of their successors. Without approval of the members, directors shall not receive any salaries for their services as directors. The bylaws may, however, provide that a fixed fee and expenses of attendance, if any, may be allowed to each director for attendance at each meeting of the board of directors.

2. The directors of a company named in any articles of incorporation, consolidation, merger or conversion, as the case may be, shall hold office until the next following annual meeting of the members or until their successors shall have been elected and qualified.

3. The bylaws shall provide that the directors shall be divided into three classes, each class to be as nearly equal in number as possible, with the term of office of the directors of the first class to expire at the next succeeding annual meeting and the term of the second class to expire at the second succeeding annual meeting, and the term of the third class to expire at the third succeeding annual meeting. At each annual meeting after such classification a number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the third succeeding annual meeting.

4. A majority of the board of directors shall constitute a quorum.

5. The board of directors may exercise all of the powers of a company except such as are conferred upon the members by sections 393.825 to 393.861 and section 393.175, or its articles of incorporation or bylaws. Nothing in sections 393.825 to 393.861 and section 393.175 shall be deemed to prohibit a nonprofit sewer company from contracting with any other person or entity

for any services needed by the nonprofit sewer company including, but not limited to, management or operations services.

(L. 1997 2d Ex. Sess. H.B. 1 merged with S.B. 3)

Effective 12-23-97

### **Officers, annual election, removal from office--employees and agents.**

393.845. The officers of a nonprofit sewer company shall consist of a president, vice president, secretary and treasurer, who shall be elected annually. No person shall continue to hold the offices of president or vice president after he shall have ceased to be a director. The offices of secretary and of treasurer may be held by the same person and need not be a member of the board of directors. The board of directors may also elect or appoint such other officers, agents, or employees as it shall deem necessary or advisable and shall prescribe the powers and duties thereof. Any officer may be removed from office and his successor elected in the manner prescribed in the bylaws.

(L. 1997 2d Ex. Sess. H.B. 1 merged with S.B. 3)

Effective 12-23-97

### **Department of natural resources, jurisdiction, supervision, powers and duties--public service commission jurisdiction, limitations.**

393.847. 1. Every nonprofit sewer company constructing, maintaining and operating its wastewater lines and treatment facilities shall construct, maintain and operate such lines and facilities in conformity with the rules and regulations relating to the manner and methods of construction, maintenance and operation and as to safety of the public with other lines and facilities now or hereafter from time to time prescribed by the department of natural resources for the construction, maintenance and operation of such lines or systems. The jurisdiction, supervision, powers and duties of the department of natural resources shall extend to every such nonprofit sewer company and every nonprofit sewer company shall be supervised and regulated by the department of natural resources to the same extent and in the same manner as any other nonprofit corporation engaged in whole or in part in the collection or treatment of wastewater.

2. The public service commission shall not have jurisdiction over the construction, maintenance or operation of the wastewater facilities, service, rates, financing, accounting or management of any nonprofit sewer company.

(L. 1997 2d Ex. Sess. H.B. 1 merged with S.B. 3, A.L. 2002 S.B. 984 & 985)

**Excess revenues.**

393.849. Revenues of a nonprofit sewer company for any fiscal year in excess of the amount thereof necessary:

- (1) To defray expenses of the company and of the operation and maintenance of its facilities during such fiscal year;
- (2) To pay interest and principal obligations of the company coming due in such fiscal year;
- (3) To finance, or to provide a reserve for the financing of, the construction or acquisition by the company of additional facilities to the extent determined by the board of directors;
- (4) To provide a reasonable reserve for working capital;
- (5) To provide a reserve for the payment of indebtedness of the company maturing more than one year after the date of the incurrence of such indebtedness in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following fiscal year; and
- (6) To provide a fund for education in the effective use of services made available by the company;

shall, unless otherwise determined by a vote of the members, be distributed by the company to its members as patronage refunds prorated in accordance with the patronage of the company by the respective members paid for during such fiscal year.

(L. 1997 2d Ex. Sess. H.B. 1 merged with S.B. 3)

Effective 12-23-97

**Prepayment of debt not prohibited.**

393.851. Nothing herein contained shall be construed to prohibit the payment by a company of all or any part of its indebtedness prior to the date when the same shall become due.

(L. 1997 2d Ex. Sess. H.B. 1 merged with S.B. 3)

Effective 12-23-97

**Voluntary dissolution, articles, contents, submission to secretary of state.**

393.853. 1. A nonprofit sewer company which has not commenced business may dissolve voluntarily by delivering to the secretary of state articles of dissolution, executed and acknowledged in duplicate on behalf of the company by a majority of the incorporators, which shall state:

- (1) The name of the nonprofit sewer company;
- (2) The address of its principal office;
- (3) The date of its incorporation;
- (4) That the company has not commenced business;
- (5) That the amount, if any, actually paid in on account of membership fees, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto and that all easements shall have been released to the grantors;
- (6) That no debt of the company remains unpaid; and
- (7) That a majority of the incorporators elect that the company be dissolved.

2. Such articles of dissolution shall be submitted to the secretary of state for filing.

(L. 1997 2d Ex. Sess. H.B. 1 merged with S.B. 3)

Effective 12-23-97

### **Voluntary dissolution, procedure for winding up affairs.**

393.855. A nonprofit sewer company which has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

- (1) The board of directors shall first recommend that the company be dissolved voluntarily and thereafter the proposition that the company be dissolved shall be submitted to the members of the company at any annual or special meeting, the notice of which shall set forth such proposition. The proposed voluntary dissolution shall be deemed to be approved upon the affirmative vote of not less than a majority of the members;
- (2) Upon such approval, a certificate of election to dissolve, herein designated the "certificate", shall be executed and acknowledged in duplicate on behalf of the company by its president or vice president, and its corporate seal shall be affixed thereto and attested by its secretary. The certificate shall state:
  - (a) The name of the nonprofit sewer company;

(b) The address of its principal office;

(c) The names and addresses of its directors; and

(d) The total number of members of the company and the number of members who voted for and against the voluntary dissolution of the company.

The president or vice president executing the certificate shall also make and annex thereto an affidavit stating that the provisions of this subdivision and subdivision (1) of this section were duly complied with. Such certificate and affidavit shall be submitted to the secretary of state for filing;

(3) Upon the filing of the certificate and affidavit by the secretary of state, the company shall cease to carry on its business except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed by the secretary of state;

(4) After the filing of the certificate and affidavit by the secretary of state the board of directors shall immediately cause notice of the winding up proceedings to be mailed to each known creditor and claimant and to be published once a week for two successive weeks in a newspaper of general circulation in the county in which the principal office of the company is located;

(5) The board of directors shall become trustees and have full power to wind up and settle the affairs of the company and shall proceed to collect the debts owing to the company, convey and dispose of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities, and do all other things required to liquidate its business and affairs, and after paying or adequately providing for the payment of all its debts, obligations and liabilities, shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each such member during the seven years next preceding the date of such filing of the certificate, or, if the company shall not have been in existence for such period, during the period of its existence; and

(6) (a) When all debts, liabilities and obligations of the company have been paid and discharged or adequate provision shall have been made therefor, and all of the remaining property and assets of the company shall have been distributed to the members pursuant to the provisions of sections 393.825 to 393.861 and section 393.175, the board of directors shall authorize the execution of articles of dissolution which shall thereupon be executed and acknowledged on behalf of the company by its president or vice president, and its corporate seal shall be affixed thereto and attested by its secretary. Such articles of dissolution shall recite in the caption that they are executed pursuant to sections 393.825 to 393.861 and section 393.175 and shall state:

a. The name of the nonprofit sewer company;

b. The address of the principal office of the company;

c. That the company has heretofore delivered to the secretary of state a certificate of election to dissolve and the date on which the certificate was filed by the secretary of state in the records of his office;

d. That all debts, obligations and liabilities of the company have been paid and discharged or that adequate provision has been made therefor;

e. That all the remaining property and assets of the company have been distributed among the members in accordance with the provisions of sections 393.825 to 393.861 and section 393.175; and

f. That there are no actions or suits pending against the company;

(b) The president or vice president executing the articles of dissolution shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with;

(c) Such articles of dissolution and affidavit, accompanied by proof of the publication required in this section, shall be submitted to the secretary of state for filing.

(L. 1997 2d Ex. Sess. H.B. 1 merged with S.B. 3)

Effective 12-23-97

### **Construction of laws relating to nonprofit sewer companies.**

393.857. Sections 393.825 to 393.861 and section 393.175 shall be construed liberally. The enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things. To the extent that sections 393.825 to 393.861 and section 393.175 do\* not speak to an issue, the provisions applicable to mutual benefit not-for-profit corporations or limited liability companies, as the nonprofit sewer company may elect in its articles of incorporation, which are not inconsistent with the provisions of sections 393.825 to 393.861 and section 393.175 shall apply to nonprofit sewer companies.

(L. 1997 2d Ex. Sess. H.B. 1 merged with S.B. 3)

Effective 12-23-97

\*Word "does" appears in original rolls.

### **Private property of members exempt from execution for debts of company.**



393.861. The private property of the members of a nonprofit sewer company shall be exempt from execution for the debts of the company and no member shall be liable or responsible for any debts of the company.

(L. 1997 2d Ex. Sess. H.B. 1 merged with S.B. 3)

Effective 12-23-97

**Designation as sole regional or watershed supplier, application --preferences-- pricing of services.**

393.175. 1. Any entity authorized by law to engage in the business of offering wastewater disposal or treatment services may apply to the department of natural resources to be designated as the sole regional or watershed supplier of such services.

2. The application to be designated as a regional or watershed supplier shall be on a form as developed by the department and shall at a minimum provide the following information:

(1) The region or watershed for which the applicant intends to provide service defined on a meets and bounds basis;

(2) The documents such as contracts, articles of incorporation, limited liability company forms or municipal ordinances which define the applicant's existence, ownership and management;

(3) Information as to the applicant's financial assets including balance sheet income statements for the previous five years or, if less than five years, income statements for the applicant's entire history;

(4) A description of the facilities owned or operated by the applicant;

(5) A business plan describing how and why the proposed region or watershed was selected and the applicant's plans for providing collection and treatment services in the requested area;

(6) A commitment by the applicant to provide area coverage for the entire area covered by the application and the applicant's plan for how to provide such services;

(7) A description of the services to be provided by the applicant to the region or watershed and the prices to be charged by the applicant;

(8) A description of the standards that the applicant will require of other entities that will wish to connect with the applicant's collection and treatment systems.

3. Once a regional or watershed provider of wastewater collection and treatment is approved by the department, no other person or entity may construct or operate collection or treatment facilities within the designated region or watershed without an approved regional or watershed plan, except those already existing persons or entities operating a wastewater collection or treatment facility within the designated region or watershed when the plan was approved.

4. The department of natural resources shall give preference to regional or watershed providers in all of its licensing, permitting, and administration of loan and grant funds functions.

5. In evaluating among competing applicants to be a regional or watershed provider, the department shall give preference to those providers most likely to provide a stable, long-term solution without regard to the type of entity the applicant may be. Joint applications from existing providers of wastewater collection and treatment services within the region or watershed shall be given preference.

6. Pricing of services by regional or watershed providers shall be set by such provider in the same manner the provider sets all other rates and charges and shall be on a nondiscriminatory basis with each user bearing its fair share of the costs of providing service to that user. Private sewer companies shall charge such rates as are approved pursuant to applicable law.

(L. 1997 2d Ex. Sess. H.B. 1 § 1 merged with S.B. 3 § 1)

Effective 12-23-97