

FIRST REGULAR SESSION

HOUSE BILL NO. 613

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HOLSMAN (Sponsor), McNEIL, KIRKTON,
ATKINS AND WALTON GRAY (Co-sponsors).

1472L.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 393.1020, 393.1025, 393.1030, 393.1040, 393.1045, and 393.1050, RSMo, and to enact in lieu thereof nine new sections relating to renewable energy technology.

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

Section A. Sections 393.1020, 393.1025, 393.1030, 393.1040, 393.1045, and 393.1050, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 393.1350, 393.1355, 393.1360, 393.1365, 393.1370, 393.1375, 393.1380, 393.1385, and 393.1390, to read as follows:

393.1350. As used in sections 393.1350 to 393.1390, the following terms mean:

- (1) "Commission", the public service commission;**
- (2) "Compliance period", the period of time described under subdivisions (1) to (4) of subsection 1 of section 393.1355;**
- (3) "Electric utility", an electric utility regulated by the commission under chapter 386 or 393;**
- (4) "Opportunity cost", the difference between the per unit cost of electricity produced from fossil fuels or nuclear power and the cost per unit of electricity produced from renewable energy resources as determined by the commission under section 393.1380;**
- (5) "Renewable energy credit", an instrument used by the commission to measure, track, and verify an amount of energy delivered to Missouri retail customers from renewable energy resources;**
- (6) "Renewable energy generator", a business or residence located in this state that produces its own renewable energy in accordance with the contract provisions allowed**

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 under section 393.1370. A renewable energy generator shall not include a residential
16 customer existing for net metering contracts under section 386.890;

17 (7) "Renewable energy resources", electricity generated from new generation
18 resources beginning operation after August 28, 2009, produced from wind, solar,
19 hydroelectric, plant or animal resources, fuel cells using hydrogen produced by such
20 sources, or any other resources deemed renewable by the commission;

21 (8) "Standard", the requirements established by section 393.1355.

393.1355. 1. Notwithstanding any other provisions of law, electric utilities shall
2 generate or purchase energy from renewable energy resources in accordance with the
3 requirements of section 393.1365 in an amount sufficient to equal or exceed the following
4 percentages of each electric utility's retail electric sales:

5 (1) No less than two percent by January 1, 2013;

6 (2) No less than five percent by January 1, 2017;

7 (3) No less than ten percent by January 1, 2021;

8 (4) No less than fifteen percent for each calendar year thereafter.

9 2. At least ten percent of each portfolio requirement under subsection 1 of this
10 section shall be derived from solar energy.

393.1360. Electric utilities shall comply with all standards set forth in section
2 393.1355; except that any electric corporation as defined by subdivision (15) of section
3 386.020 which, by January 20, 2009, that achieved an amount of renewable energy
4 technology nameplate equal to or greater than fifteen percent of such corporation's total
5 owned fossil-fired generating capacity shall be exempt from all requirements the standard;
6 except that such corporation shall be subject to the ten percent solar energy requirement
7 under subsection 2 of section 393.1355.

393.1365. 1. Electric utilities shall comply with its responsibilities under the
2 standard as follows:

3 (1) Beginning August 28, 2011, the standard may be complied with by the
4 generation or purchase of required energy credits which represent energy delivered to this
5 state; however, the commission shall allow, upon written request, a waiver of the direct
6 delivery of power requirement and instead allow the purchase of renewable energy credits
7 representing power delivered anywhere within the United States;

8 (2) Beginning January 1, 2013, the commission shall allow renewable energy credits
9 to meet the standard if and only if such credits represent energy delivered to this state from
10 anywhere within the United States;

11 (3) Beginning January 1, 2017, the commission shall allow renewable energy credits
12 to meet the standard if and only if such credits represent energy directly produced by an

13 electric utility subject to the standard, or to energy produced as the result of an
14 interconnection or net metering agreement as allowed by sections 386.890 and 393.1370.

15 2. The commission shall allow a twenty-five percent enhancement in the amount
16 of renewable energy credits produced from the interconnection agreements between
17 electric utilities and renewable energy generators located in this state under section
18 393.1370 or for new generation of renewable energy under the net metering provisions for
19 residential consumers under section 386.890. The commission shall also allow a twenty-five
20 percent enhancement in the amount of renewable energy credits for renewable energy that
21 is produced by an electric utility located in this state so long as such credits are not
22 purchased or transferred between electric utilities located in this state or in any other state.

23 3. An electric utility shall pay penalties of at least twice the average market value
24 of renewable energy credits for the compliance period for failure to meet the standard.
25 Any such monetary fine shall be distributed to the public schools under section 7, article
26 IX of the Constitution of Missouri.

27 4. The commission shall waive the monetary fines authorized by subsection 3 of this
28 section if it determines that events outside the reasonable control of the electric utility
29 caused a failure to meet the standard or that the maximum cap on the standard set in
30 section 393.1375 has been reached.

 393.1370. 1. An electric utility may meet its respective obligations under the
2 standard by entering into an interconnection agreement with renewable energy generators
3 approved by the commission.

4 2. Electric utilities shall make available to an approved renewable energy generator
5 a standard cumulative rebate offer in the following form:

6 (1) Three dollars per watt for generating up to twenty-five kilowatts of power;

7 (2) Two dollars per watt for generating twenty-five to fifty kilowatts of power; and

8 (3) One dollar per watt for generating more than fifty, but less than one hundred
9 kilowatts, of power.

10 3. An electric utility shall make loans to approved renewable energy generators for
11 the construction of renewable interconnection projects and fully recover the cost of such
12 loans as provided in the standard cap section 393.1375.

13 4. Electric utilities may have a return of equity for such agreements. The
14 commission may specify such return by rule.

15 5. The term limitation of an interconnection agreement between a renewable energy
16 generator and an electric utility shall not extend beyond ten years.

17 6. All electric utilities shall provide the commission with a form copy of the
18 interconnection agreements used, and the commission may ensure that all contracts are

19 nondiscriminatory and offer the same compensation to all equivalent classes of renewable
20 energy generators under the requirements of this section.

21 **7. Upon the expiration of a ten-year interconnection agreement, an electric utility**
22 **and a renewable energy generator shall be relieved of all obligations under this section**
23 **regarding interconnection agreements, and may enter into and make such agreements as**
24 **allowed by general law, except that an electric utility shall not order the disconnection of**
25 **an existing interconnection system without a good faith reason for so acting including, but**
26 **not limited to, an excessive price request for power generated by a renewable energy**
27 **generator on or after January 1, 2021, or for reasons of public health or safety approved**
28 **by the commission.**

393.1375. 1. Notwithstanding any other provision of law, the requirements of the
2 **standard shall be null and void upon a determination by the commission that the cost**
3 **recovery limits of subsection 2 of this section have been exceeded.**

4 **2. In order to recover costs for compliance with the standard, electric utilities may**
5 **increase their final retail sales rates to end-user consumers by no more than one percent**
6 **per year. The commission shall not allow an overall increase of more than two billion**
7 **dollars in the aggregate amount of final retail sales rates to end-user consumers in order**
8 **to achieve compliance with the standard.**

9 **3. Notwithstanding any other provision of law, the commission shall not approve**
10 **future rate increases for purposes of compliance with the standard once fifteen percent or**
11 **three hundred million dollars, whichever is less, of the total aggregate retail sales to end-**
12 **user consumers is reached by the following class of end-user, large industrial consumers:**

13 **(1) The consumer has one or more accounts that has a demand of five thousand**
14 **kilowatts or more;**

15 **(2) The consumer operates an interstate pipeline pumping station, regardless of**
16 **size; or**

17 **(3) The consumer otherwise meets the requirements of section 393.1075.**

18 **4. Notwithstanding any other provision of law, the commission shall apply the cost**
19 **cap proportionately among the electric utilities based on a ratio of the electric utilities'**
20 **annual retail sales to end-user consumers by such utilities to the total annual retail sales**
21 **to end-user consumers by all electric utilities.**

22 **5. The commission shall waive the standard requirement for the requisite electric**
23 **utilities if it acts under subsection 3 or 4 of this section.**

24 **6. Notwithstanding any other provision of law, the requirements of the standard**
25 **shall be null and void upon a ruling or order of the commission that the renewable energy**
26 **credit purchase process, the cost recovery process, or the interstate connection agreement**

27 process for renewable energy generators, or any combination thereof, has resulted in an
28 increase in retail electric rates paid by end-user consumers that is unreasonable and
29 unjust. When making a decision under this subsection, the commission may consider:

30 (1) The benefits of renewable energy in preventing negative externalities;

31 (2) The time frame for reduction of renewable energy sources to parity with the
32 current least cost fossil fuel and nuclear options; and

33 (3) Other factors including but not limited to the benefits of fixed priced electricity
34 resulting from renewable energy sources.

393.1380. 1. Full cost recovery for compliance with the standard shall be allowed
2 with regard to any reasonable expenditures made to purchase renewable energy credits,
3 with regard to all costs associated with the production of renewable energy by electric
4 utilities, and with regard to all costs associated with the interconnection agreements
5 allowed under section 393.1370.

6 2. When awarding renewable energy credits the commission may consider potential
7 savings from the use of renewable energy in its opportunity cost calculations including but
8 not limited to the following:

9 (1) Avoided energy;

10 (2) Avoided capital investments including, but not limited to, environmental retrofit
11 technology and investments in new nonrenewable energy resource generation;

12 (3) The benefits of fixed priced electricity resulting from renewable energy sources;
13 and

14 (4) Any other factors deemed relevant by the commission.

15 3. The renewable energy credits generated from the least cost option shall not count
16 against the cost cap.

393.1385. Beginning January 1, 2012, each electric utility shall submit a compliance
2 plan to the commission regarding its plans to comply with the standard and other
3 requirements set forth in sections 393.1350 to 393.1390. Such plans shall be public
4 documents and may be made available to the general public on a website determined by
5 the commission.

393.1390. 1. The commission shall have plenary and general power to promulgate
2 rules in accordance with sections 393.1350 to 393.1390. This power shall include but not
3 be limited to the following:

4 (1) Authority to specifically define economic criteria and terms in its estimation of
5 the costs and benefits of renewable energy;

6 (2) Authority to estimate and regulate compliance with the energy standard
7 requirements;

8 **(3) Authority to regulate interconnection agreements and solar energy rebates;**

9 **(4) Authority to regulate the cost recovery process as it applies to renewable energy**
10 **used to meet the standard;**

11 **(5) Authority to specify the content of the compliance plan; and**

12 **(6) General authority to promulgate rules implementing any of the provisions of**
13 **sections 393.1350 to 393.1390.**

14 **2. The commission shall promulgate rules to implement the provisions of sections**
15 **393.1350 to 393.1390. Any rule or portion of a rule, as that term is defined in section**
16 **536.010, that is created under the authority delegated in this section shall become effective**
17 **only if it complies with and is subject to all of the provisions of chapter 536 and, if**
18 **applicable, section 536.028. This section and chapter 536 are nonseverable and if any of**
19 **the powers vested with the general assembly under chapter 536 to review, to delay the**
20 **effective date, or to disapprove and annul a rule are subsequently held unconstitutional,**
21 **then the grant of rulemaking authority and any rule proposed or adopted after August 28,**
22 **2011, shall be invalid and void.**

23 **3. The commission is hereby granted jurisdiction over all disputes arising among**
24 **or between any of the following entities:**

25 **(1) Electric utilities;**

26 **(2) The commission;**

27 **(3) Renewable energy generators; and**

28 **(4) Other parties with contractual agreements or other legal interests related to or**
29 **relying upon sections 393.1350 to 393.1390.**

30 **4. The commission shall specify an adjudicatory procedure for all such claims and**
31 **may, in its discretion, use rate case rules and procedures as a guide for promulgating such**
32 **rules and procedures. Such procedures shall be in accordance with the timely resolution**
33 **of all matters in accordance with due process of law.**

34 **5. Upon a final judgment of the commission, any party may appeal first to a state**
35 **circuit court of appropriate jurisdiction, and thereafter to any state appellate court as**
36 **allowed by general law and the rules of civil procedure.**

37 **6. The commission shall lack jurisdiction over predominantly federal claims which**
38 **may be brought at any time in a federal court of appropriate jurisdiction.**

39 [393.1020. Sections 393.1025 and 393.1030 shall be known as the
40 "Renewable Energy Standard".]

41

42 [393.1025. As used in sections 393.1020 to 393.1030, the following
43 terms mean:

44 (1) "Commission", the public service commission;

- 45 (2) "Department", the department of natural resources;
46 (3) "Electric utility", any electrical corporation as defined by section
47 386.020;
48 (4) "Renewable energy credit" or "REC", a tradeable certificate of proof
49 that one megawatt-hour of electricity has been generated from renewable energy
50 sources; and
51 (5) "Renewable energy resources", electric energy produced from wind,
52 solar thermal sources, photovoltaic cells and panels, dedicated crops grown for
53 energy production, cellulosic agricultural residues, plant residues, methane from
54 landfills, from agricultural operations, or from wastewater treatment, thermal
55 depolymerization or pyrolysis for converting waste material to energy, clean and
56 untreated wood such as pallets, hydropower (not including pumped storage) that
57 does not require a new diversion or impoundment of water and that has a
58 nameplate rating of ten megawatts or less, fuel cells using hydrogen produced by
59 one of the above-named renewable energy sources, and other sources of energy
60 not including nuclear that become available after November 4, 2008, and are
61 certified as renewable by rule by the department.]

62
63 [393.1030. 1. The commission shall, in consultation with the
64 department, prescribe by rule a portfolio requirement for all electric utilities to
65 generate or purchase electricity generated from renewable energy resources.
66 Such portfolio requirement shall provide that electricity from renewable energy
67 resources shall constitute the following portions of each electric utility's sales:

- 68 (1) No less than two percent for calendar years 2011 through 2013;
69 (2) No less than five percent for calendar years 2014 through 2017;
70 (3) No less than ten percent for calendar years 2018 through 2020; and
71 (4) No less than fifteen percent in each calendar year beginning in 2021.

72 At least two percent of each portfolio requirement shall be derived from solar
73 energy. The portfolio requirements shall apply to all power sold to Missouri
74 consumers whether such power is self-generated or purchased from another
75 source in or outside of this state. A utility may comply with the standard in
76 whole or in part by purchasing RECs. Each kilowatt-hour of eligible energy
77 generated in Missouri shall count as 1.25 kilowatt-hours for purposes of
78 compliance.

79 2. The commission, in consultation with the department and within one
80 year of November 4, 2008, shall select a program for tracking and verifying the
81 trading of renewable energy credits. An unused credit may exist for up to three
82 years from the date of its creation. A credit may be used only once to comply
83 with sections 393.1020 to 393.1030 and may not also be used to satisfy any
84 similar nonfederal requirement. An electric utility may not use a credit derived
85 from a green pricing program. Certificates from net-metered sources shall
86 initially be owned by the customer-generator. The commission, except where the

87 department is specified, shall make whatever rules are necessary to enforce the
88 renewable energy standard. Such rules shall include:

89 (1) A maximum average retail rate increase of one percent determined
90 by estimating and comparing the electric utility's cost of compliance with
91 least-cost renewable generation and the cost of continuing to generate or purchase
92 electricity from entirely nonrenewable sources, taking into proper account future
93 environmental regulatory risk including the risk of greenhouse gas regulation;

94 (2) Penalties of at least twice the average market value of renewable
95 energy credits for the compliance period for failure to meet the targets of
96 subsection 1. An electric utility will be excused if it proves to the commission
97 that failure was due to events beyond its reasonable control that could not have
98 been reasonably mitigated, or that the maximum average retail rate increase has
99 been reached. Penalties shall not be recovered from customers. Amounts
100 forfeited under this section shall be remitted to the department to purchase
101 renewable energy credits needed for compliance. Any excess forfeited revenues
102 shall be used by the department's energy center solely for renewable energy and
103 energy efficiency projects;

104 (3) Provisions for an annual report to be filed by each electric utility in
105 a format sufficient to document its progress in meeting the targets;

106 (4) Provision for recovery outside the context of a regular rate case of
107 prudently incurred costs and the pass-through of benefits to customers of any
108 savings achieved by an electrical corporation in meeting the requirements of this
109 section.

110 3. Each electric utility shall make available to its retail customers a
111 standard rebate offer of at least two dollars per installed watt for new or expanded
112 solar electric systems sited on customers' premises, up to a maximum of
113 twenty-five kilowatts per system, that become operational after 2009.

114 4. The department shall, in consultation with the commission, establish
115 by rule a certification process for electricity generated from renewable resources
116 and used to fulfill the requirements of subsection 1 of this section. Certification
117 criteria for renewable energy generation shall be determined by factors that
118 include fuel type, technology, and the environmental impacts of the generating
119 facility. Renewable energy facilities shall not cause undue adverse air, water, or
120 land use impacts, including impacts associated with the gathering of generation
121 feedstocks. If any amount of fossil fuel is used with renewable energy resources,
122 only the portion of electrical output attributable to renewable energy resources
123 shall be used to fulfill the portfolio requirements.

124 5. In carrying out the provisions of this section, the commission and the
125 department shall include methane generated from the anaerobic digestion of farm
126 animal waste and thermal depolymerization or pyrolysis for converting waste
127 material to energy as renewable energy resources for purposes of this section.]
128

2 [393.1040. In addition to the renewable energy objectives set forth in
3 sections 393.1025, 393.1030, and 393.1035, it is also the policy of this state to
4 encourage electrical corporations to develop and administer energy efficiency
5 initiatives that reduce the annual growth in energy consumption and the need to
6 build additional electric generation capacity.]

2 [393.1045. Any renewable mandate required by law shall not raise the
3 retail rates charged to the customers of electric retail suppliers by an average of
4 more than one percent in any year, and all the costs associated with any such
5 renewable mandate shall be recoverable in the retail rates charged by the electric
6 supplier. Solar rebates shall be included in the one percent rate cap provided for
7 in this section.]

2 [393.1050. Notwithstanding any other provision of law, any electrical
3 corporation as defined by subdivision 15 of section 386.020 which, by January
4 20, 2009, achieves an amount of eligible renewable energy technology nameplate
5 capacity equal to or greater than fifteen percent of such corporation's total owned
6 fossil-fired generating capacity, shall be exempt thereafter from a requirement to
7 pay any installation subsidy, fee, or rebate to its customers that install their own
8 solar electric energy system and shall be exempt from meeting any mandated
9 solar renewable energy standard requirements. Any disputes or denial of
10 exemptions under this section may be reviewable by the circuit court of Cole
County as prescribed by law.]