

SECOND REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 1493

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES EMERY (Sponsor), DONNELLY, BOUGH, WILSON (130),  
GEORGE AND MILLER (Co-sponsors).

Read 1st time February 16, 2004, and copies ordered printed.

Read 2nd time February 17, 2004 and referred to the Committee on Communications, Energy and Technology February 26, 2004.

Reported from the Committee on Communications, Energy and Technology March 11, 2004, with recommendation that the bill Do  
Pass by Consent.

Perfectured by Consent March 29, 2004.

STEPHEN S. DAVIS, Chief Clerk

4021L.01P

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### AN ACT

To repeal sections 247.172 and 394.312, RSMo, and to enact in lieu thereof two new sections relating to electric territorial agreements.

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

Section A. Sections 247.172 and 394.312, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 247.172 and 394.312, to read as follows:

247.172. 1. Competition to sell and distribute water, as between and among public water  
2 supply districts, water corporations subject to public service commission jurisdiction, and  
3 municipally owned utilities may be displaced by written territorial agreements, but only to the  
4 extent hereinafter provided for in this section.

5 2. Such territorial agreements shall specifically designate the boundaries of the water  
6 service area of each water supplier subject to the agreement, any and all powers granted to a  
7 public water supply district by a municipality, pursuant to the agreement, to operate within the  
8 corporate boundaries of that municipality, notwithstanding the provisions of sections 247.010  
9 to 247.670 to the contrary, and any and all powers granted to a municipally owned utility,  
10 pursuant to the agreement, to operate in areas beyond the corporate municipal boundaries of its  
11 municipality.

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

12           **3.** Where the parties cannot agree **upon the boundaries of the water service areas that**  
13 **are not set forth in the agreement**, they may, by mutual consent of all parties involved, petition  
14 the public service commission to designate the boundaries of the water service areas to be served  
15 by each party and such designations by the commission shall be binding on all such parties.  
16 Petitions shall be made pursuant to the rules and regulations of the commission governing  
17 applications for certificates of public convenience and necessity and the commission shall [be  
18 required to] hold evidentiary hearings on all petitions so received, **except that in those instances**  
19 **where the matter is resolved by a stipulation and agreement submitted to the commission**  
20 **by all the parties such hearings may be waived by agreement of the parties.** The  
21 commission shall base its final determination **regarding such petitions** upon a finding that the  
22 commission's designation of water service areas is in the public interest.

23           [3.] **4.** Before becoming effective, all territorial agreements entered into under the  
24 provisions of this section, including any subsequent amendments to such agreements, or the  
25 transfer or assignment of the agreement or any rights or obligations of any party to an agreement,  
26 shall receive the approval of the public service commission by report and order. Applications  
27 for commission approval shall be made and notice of such filing shall be given to other water  
28 suppliers pursuant to the rules and regulations of the commission governing applications for  
29 certificates of public convenience and necessity. Unless otherwise ordered by the commission  
30 for good cause shown, the commission shall rule on such applications not later than one hundred  
31 twenty days after the application is properly filed with the secretary of the commission.

32           [4.] **5.** The commission shall hold evidentiary hearings to determine whether such  
33 territorial agreements should be approved or disapproved, **except that in those instances where**  
34 **the matter is resolved by a stipulation and agreement submitted to the commission by all**  
35 **the parties such hearings may be waived by agreement of the parties.** The commission may  
36 approve the application if it [shall after hearing determine] **determines** that approval of the  
37 territorial agreement in total is not detrimental to the public interest. Review of commission  
38 decisions under this section shall be governed by the provisions of sections 386.500 to 386.550,  
39 RSMo.

40           [5.] **6.** Commission approval of any territorial agreement entered into under the  
41 provisions of this section shall in no way affect or diminish the rights and duties of any water  
42 supplier not a party to the agreement to provide service within the boundaries designated in such  
43 territorial agreement. In the event any water corporation which is not a party to the territorial  
44 agreement and which is subject to the jurisdiction, control and regulation of the commission  
45 under chapters 386, RSMo, and 393, RSMo, has sought or hereafter seeks authorization from the  
46 commission to sell and distribute water or construct, operate and maintain water supply facilities  
47 within the boundaries designated in any such territorial agreement, the commission, in making

48 its determination regarding such requested authority, shall give no consideration or weight to the  
49 existence of any such territorial agreement, and any actual rendition of retail water supply  
50 services by any of the parties to such territorial agreement will not preclude the commission from  
51 granting the requested authority.

52 [6.] 7. The commission shall have jurisdiction to entertain and hear complaints involving  
53 any commission-approved territorial agreement. Such complaints shall be brought and  
54 prosecuted in the same manner as other complaints before the commission. [After hearing,] **The**  
55 **commission shall hold an evidentiary hearing regarding such complaints except that in**  
56 **those instances where the matter is resolved by a stipulation and agreement submitted to**  
57 **the commission by all the parties, such hearings may be waived by agreement of the**  
58 **parties.** If the commission determines that [the] a territorial agreement [is not] **that is the**  
59 **subject of a complaint is no longer** in the public interest, it shall have the authority to suspend  
60 or revoke the territorial agreement. If the commission determines that the territorial agreement  
61 is still in the public interest, such territorial agreement shall remain in full force and effect.  
62 [Except as provided in this section, nothing in this section shall be construed as otherwise  
63 conferring upon the commission jurisdiction over the service, rates, financing, accounting, or  
64 management of any public water supply district or municipally owned utility, or to amend,  
65 modify, or otherwise limit the rights of public water supply districts to provide service as  
66 otherwise provided by law.

67 7.] 8. Notwithstanding the provisions of section 386.410, RSMo, the commission shall  
68 by rule set a schedule of fees based upon its costs in reviewing proposed territorial agreements  
69 for approval or disapproval. Responsibility for payment of the fees shall be that of the parties  
70 to the proceeding as ordered by the commission in each case. The fees shall be paid to the  
71 director of revenue who shall remit such payments to the state treasurer. The state treasurer shall  
72 credit such payments to the public service commission fund, or its successor fund, as established  
73 in section 33.571, RSMo. [Nothing in this section shall be construed as otherwise conferring  
74 upon the commission jurisdiction over the service, rates, financing, accounting or management  
75 of any public water supply district or municipally owned utility and except as provided in this  
76 section, nothing shall affect the rights, privileges or duties of public water supply districts, water  
77 corporations subject to public service commission jurisdiction or municipally owned utilities.]

78 **9. Nothing in this section shall be construed as otherwise conferring upon the**  
79 **commission jurisdiction over the service, rates, financing, accounting, or management of**  
80 **any public water supply district or municipality owned utility, or to amend, modify, or**  
81 **otherwise limit the rights of public water supply districts to provide service as otherwise**  
82 **provided by law. Except as provided in this section, nothing shall affect the rights,**

83 **privileges, or duties of public water supply districts, municipally owned utilities, or water**  
84 **corporations subject to public service commission jurisdiction.**

85 **10. Notwithstanding any other provision of this section, the commission may hold**  
86 **a hearing regarding any application, complaint, or petition filed under this section upon**  
87 **its own motion.**

394.312. 1. Competition to provide retail electric service, as between rural electric  
2 cooperatives, electrical corporations and municipally owned utilities may be displaced by written  
3 territorial agreements, but only to the extent hereinafter provided for in this section.

4 2. Such territorial agreements shall specifically designate the boundaries of the electric  
5 service area of each electric service supplier subject to the agreement, any and all powers granted  
6 to a rural electric cooperative by a municipality, pursuant to the agreement, to operate within the  
7 corporate boundaries of that municipality, notwithstanding the provisions of section 394.020 and  
8 of section 394.080 to the contrary, and any and all powers granted to a municipally owned utility,  
9 pursuant to the agreement, to operate in areas beyond the corporate municipal boundaries of its  
10 municipality.

11 3. Where the parties cannot agree **upon the boundaries of the electric service areas**  
12 **that are to be set forth in the agreement**, they may, by mutual consent of all parties involved,  
13 petition the public service commission to designate the boundaries of the electric service areas  
14 to be served by each party, and such designations by the commission shall be binding on all such  
15 parties. Petitions shall be made pursuant to the rules and regulations of the commission  
16 governing applications for certificates of public convenience and necessity [and the commission  
17 shall be required to]. **The commission shall** hold evidentiary hearings on all petitions so  
18 received, **except that in those instances where the matter is resolved by a stipulation and**  
19 **agreement submitted to the commission by all the parties such hearings may be waived by**  
20 **agreement of the parties.** The commission shall base its final determination **regarding such**  
21 **petitions** upon a finding that the commission's designation of electric service areas is in the  
22 public interest.

23 [3.] 4. The provisions of sections 386.310, RSMo, and 393.106, RSMo, and sections  
24 394.160 and 394.315 to the contrary notwithstanding, before becoming effective, all territorial  
25 agreements entered into under the provisions of this section, including any subsequent  
26 amendments to such agreements, or the transfer or assignment of the agreement or any rights or  
27 obligations of any party to an agreement, shall receive the approval of the public service  
28 commission by report and order. Applications for commission approval shall be made and notice  
29 of such filing shall be given to other electrical suppliers pursuant to the rules and regulations of  
30 the commission governing applications for certificates of public convenience and necessity.  
31 Unless otherwise ordered by the commission for good cause shown, the commission shall rule

32 on such applications not later than one hundred twenty days after the application is properly filed  
33 with the secretary of the commission.

34 [4.] 5. The commission shall hold evidentiary hearings to determine whether such  
35 territorial agreements should be approved or disapproved, **except that in those instances where**  
36 **the matter is resolved by a stipulation and agreement submitted to the commission by all**  
37 **the parties such hearings may be waived by agreement of the parties.** The commission may  
38 approve the application if it [shall after hearing determine] **determines** that approval of the  
39 territorial agreement in total is not detrimental to the public interest. Review of commission  
40 decisions under this section shall be governed by the provisions of sections 386.500 to 386.550,  
41 RSMo.

42 [5.] 6. Commission approval of any territorial agreement entered into under the  
43 provisions of this section shall in no way affect or diminish the rights and duties of any supplier  
44 not a party to the agreement or of any electrical corporation authorized by law to provide service  
45 within the boundaries designated in such territorial agreement. In the event any electrical  
46 corporation which is not a party to the territorial agreement and which is subject to the  
47 jurisdiction, control and regulation of the commission under chapters 386, RSMo, and 393,  
48 RSMo, has heretofore sought or hereafter seeks authorization from the commission to render  
49 electric service or construct, operate and maintain electric facilities within the boundaries  
50 designated in any such territorial agreement, the commission, in making its determination  
51 regarding such requested authority, shall give no consideration or weight to the existence of any  
52 such territorial agreement and any actual rendition of retail electric service by any of the parties  
53 to such territorial agreement will not preclude the commission from granting the requested  
54 authority.

55 [6.] 7. The commission shall have jurisdiction to entertain and hear complaints involving  
56 any commission-approved territorial agreement. Such complaints shall be brought and  
57 prosecuted in the same manner as other complaints before the commission. [After hearing,] **The**  
58 **commission shall hold an evidentiary hearing regarding such complaints, except that in**  
59 **those instances where the matter is resolved by a stipulation and agreement submitted to**  
60 **the commission by all the parties such hearings may be waived by agreement of the parties.**  
61 If the commission determines that [the] a territorial agreement [is not] **that is the subject of a**  
62 **complaint is no longer** in the public interest, it shall have the authority to suspend or revoke the  
63 territorial agreement. If the commission determines that the territorial agreement is still in the  
64 public interest, such territorial agreement shall remain in full force and effect. Except as  
65 provided in this section, nothing in this section shall be construed as otherwise conferring upon  
66 the commission jurisdiction over the service, rates, financing, accounting, or management of any

67 rural electric cooperative or municipally owned utility, or to amend, modify, or otherwise limit  
68 the rights of electrical suppliers to provide service as otherwise provided by law.

69 [7.] **8.** Notwithstanding the provisions of section 386.410, RSMo, the commission shall  
70 by rule set a schedule of fees based upon its costs in reviewing proposed territorial agreements  
71 for approval or disapproval. Responsibility for payment of the fees shall be that of the parties  
72 to the proceeding as ordered by the commission in each case. The fees shall be paid to the  
73 director of revenue who shall remit such payments to the state treasurer. The state treasurer shall  
74 credit such payments to the public service commission fund, or its successor fund, as established  
75 in section 33.571, RSMo. Nothing in this section shall be construed as otherwise conferring  
76 upon the commission jurisdiction over the service, rates, financing, accounting or management  
77 of any rural electric cooperative or municipally owned utility and except as provided in this  
78 section nothing shall affect the rights, privileges or duties of rural electric cooperatives, electrical  
79 corporations or municipally owned utilities.

80 **9. Notwithstanding any other provision of this section the commission may hold a**  
81 **hearing regarding any application, complaint, or petition filed pursuant to this section**  
82 **upon its own motion.**