

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Substitute for Senate Bill No. 141, Page 1, Section
2 67.309, Line 6, by inserting after all of said section and line the following:

3
4 "91.025. 1. As used in this section, the following terms mean:

5 (1) "Municipally owned or operated electric power system", a system for the distribution of
6 electrical power and energy to the inhabitants of a municipality which is owned and operated by the
7 municipality itself, whether operated under authority pursuant to this chapter or under a charter form
8 of government;

9 (2) "Permanent service", electrical service provided through facilities which have been
10 permanently installed on a structure and which are designed to provide electric service for the
11 structure's anticipated needs for the indefinite future, as contrasted with facilities installed
12 temporarily to provide electrical service during construction. Service provided temporarily shall be
13 at the risk of the electrical supplier and shall not be determinative of the rights of the provider or
14 recipient of permanent service;

15 (3) "Structure" or "structures", an agricultural, residential, commercial, industrial or other
16 building or a mechanical installation, machinery or apparatus at which retail electric energy is being
17 delivered through a metering device which is located on or adjacent to the structure and connected
18 to the lines of an electrical corporation, rural electric cooperative, municipally owned or operated
19 electric power system, or joint municipal utility commission. Such terms shall include any
20 contiguous or adjacent additions to or expansions of a particular structure. Nothing in this section
21 shall be construed to confer any right on an electric supplier to serve new structures on a particular
22 tract of land because it was serving an existing structure on that tract.

23 2. Once a municipally owned or operated electrical system, or its predecessor in interest,
24 lawfully commences supplying retail electric energy to a structure through permanent service
25 facilities, it shall have the right to continue serving such structure, and other suppliers of electrical
26 energy shall not have the right to provide service to the structure except as might be otherwise
27 permitted in the context of municipal annexation, pursuant to section 386.800 or pursuant to a
28 territorial agreement approved under section 394.312. The public service commission, upon
29 application made by a customer, may order a change of suppliers on the basis that it is in the public
30 interest for a reason other than a rate differential, and the commission is hereby given jurisdiction
31 over municipally owned or operated electric systems to accomplish the purpose of this section. The
32 commission's jurisdiction under this section is limited to public interest determinations and excludes
33 questions as to the lawfulness of the provision of service, such questions being reserved to courts of
34 competent jurisdiction. Except as provided in this section, nothing in this section shall be construed
35 as otherwise conferring upon the commission jurisdiction over the service, rates, financing,
36 accounting or management of any such municipally owned or operated electrical system, and

Action Taken _____ Date _____

nothing in this section, section 393.106, and section 394.315 shall affect the rights, privileges or duties of any municipality to form or operate municipally owned or operated electrical systems. Nothing in this section shall be construed to make lawful any provision of service which was unlawful prior to July 11, 1991. Nothing in this section shall be construed to make unlawful the continued lawful provision of service to any structure which may have had a different supplier in the past, if such a change in supplier was lawful at the time it occurred.

3. Notwithstanding the provisions of this section and sections 393.106, 394.080, and 394.315 to the contrary, in the event that a retail electric supplier is providing service to a structure located within a city, town, or village that has ceased to be a rural area, and such structure is demolished and replaced by a new structure, such retail electric service supplier may provide permanent service to the new structure upon the request of the owner of the new structure.

386.800. 1. No municipally owned electric utility may provide electric energy at retail to any structure located outside the municipality's corporate boundaries after July 11, 1991, unless:

(1) The structure was lawfully receiving permanent service from the municipally owned electric utility prior to July 11, 1991; ~~[or]~~

(2) The service is provided pursuant to an approved territorial agreement under section 394.312;

(3) The service is provided pursuant to lawful municipal annexation and subject to the provisions of this section; or

(4) The structure is located in an area which was previously served by an electrical corporation regulated under chapter 386, and chapter 393, and the electrical corporation's authorized service territory was contiguous to or inclusive of the municipality's previous corporate boundaries, and the electrical corporation's ownership or operating rights within the area were acquired in total by the municipally owned electrical system prior to July 11, 1991. In the event that a municipally owned electric utility in a city with a population of more than one hundred twenty-five thousand located in a county of the first class not having a charter form of government and not adjacent to any other county of the first class desires to serve customers beyond the authorized service territory in an area which was previously served by an electrical corporation regulated under the provisions of chapter 386, and chapter 393, as provided in this subdivision, in the absence of an approved territorial agreement under section 394.312, the municipally owned utility shall apply to the public service commission for an order assigning nonexclusive service territories and concurrently shall provide written notice of the application to other electric service suppliers with electric facilities located in or within one mile outside of the boundaries of the proposed expanded service territory. The proposed service area shall be contiguous to the authorized service territory which was previously served by an electrical corporation regulated under the provisions of chapter 386, and chapter 393, as a condition precedent to the granting of the application. The commission shall have one hundred twenty days from the date of application to grant or deny the requested order. The commission, after a hearing, may grant the order upon a finding that granting of the applicant's request is not detrimental to the public interest. In granting the applicant's request the commission shall give due regard to territories previously granted to or served by other electric service suppliers and the wasteful duplication of electric service facilities.

2. Any municipally owned electric utility may extend, pursuant to lawful annexation, its electric service territory to include ~~[any structure located within a newly annexed area which has not received permanent service from another supplier within ninety days prior to the effective date of the annexation]~~ areas where another electric supplier currently is not providing permanent service to a structure. If a rural electric cooperative has existing electric service facilities with adequate and necessary service capability located in or within one mile outside the boundaries of the area proposed to be annexed, a majority of the existing developers, landowners, or prospective electric customers in the area proposed to be annexed may, anytime within forty five days prior to the

effective date of the annexation, submit a written request to the governing body of the annexing municipality to invoke mandatory good faith negotiations under section 394.312 to determine which electric service supplier is best suited to serve all or portions of the newly annexed area. In such negotiations the following factors shall be considered, at a minimum:

- (1) The preference of landowners and prospective electric customers;
- (2) The rates, terms and conditions of service of the electric service suppliers;
- (3) The economic impact on the electric service suppliers;
- (4) Each electric service supplier's operational ability to serve all or portions of the annexed area within three years of the date the annexation becomes effective;
- (5) Avoiding the wasteful duplication of electric facilities;
- (6) Minimizing unnecessary encumbrances on the property and landscape within the area to be annexed; and
- (7) Preventing the waste of materials and natural resources.

If the municipally owned electric utility and rural electric cooperative are unable to negotiate a territorial agreement pursuant to section 394.312 within forty five days, then they may submit proposals to those submitting the original written request, whose preference shall control, section 394.080 to the contrary notwithstanding, and the governing body of the annexing municipality shall not reject the petition requesting annexation based on such preference. This subsection shall not apply to municipally-owned property in any newly annexed area.

3. In the event an electrical corporation rather than a municipally owned electric utility lawfully is providing electric service in the municipality, all the provisions of subsection 2 shall apply equally as if the electrical corporation were a municipally owned electric utility, except that if the electrical corporation and the rural electric cooperative are unable to negotiate a territorial agreement pursuant to section 394.312 within forty five days, then either electric supplier may file an application with the commission for an order determining which electric supplier should serve, in whole or in part, the area to be annexed. The application shall be made pursuant to the rules and regulations of the commission governing applications for certificates of public convenience and necessity. The commission after the opportunity for hearing shall make its determination after consideration of the factors set forth in subdivisions (1) through (7) of subsection 2 of this section, and section 394.080 to the contrary notwithstanding, may grant its order upon a finding that granting of the applicant's request is not detrimental to the public interest. The commission shall issue its decision by report and order no later than one hundred twenty days from the date of the application unless otherwise ordered by the commission for good cause shown. Review of such commission decisions shall be governed by sections 386.500 to 386.550. If the applicant is a rural electric cooperative, the commission shall charge to the rural electric cooperative the appropriate fees as set forth in subsection 9 of this section.

~~[3.]~~ 4. When a municipally owned electric utility desires to extend its service territory to include any structure located within a newly annexed area which has received permanent service from another electric service supplier within ninety days prior to the effective date of the annexation, it shall:

(1) Notify by publication in a newspaper of general circulation the record owner of said structure, and notify in writing any affected electric service supplier and the public service commission, within sixty days after the effective date of the annexation its desire to extend its service territory to include said structure; and

(2) Within six months after the effective date of the annexation receive the approval of the municipality's governing body to begin negotiations pursuant to section 394.312 with ~~[any]~~ the affected electric service supplier.

~~[4.]~~ 5. Upon receiving approval from the municipality's governing body pursuant to

subsection 3 of this section, the municipally owned electric utility and the affected electric service supplier shall meet and negotiate in good faith the terms of the territorial agreement and any transfers or acquisitions, including, as an alternative, granting the affected electric service supplier a franchise or authority to continue providing service in the annexed area. In the event that the affected electric service supplier does not provide wholesale electric power to the municipality, if the affected electric service supplier so desires, the parties ~~[shall]~~ may also negotiate, consistent with applicable law, regulations and existing power supply agreements, for power contracts which would provide for the purchase of power by the municipality from the affected electric service supplier for an amount of power equivalent to the loss of any sales to customers receiving permanent service at structures within the annexed areas which are being sought by the municipally owned electric utility. The parties shall have no more than one hundred eighty days from the date of receiving approval from the municipality's governing body within which to conclude their negotiations and file their territorial agreement with the commission for approval under the provisions of section 394.312. The time period for negotiations allowed under this subsection may be extended for a period not to exceed one hundred eighty days by a mutual agreement of the parties and a written request with the public service commission.

~~[5-]~~ 6. For purposes of this section, the term "fair and reasonable compensation" shall mean the following:

(1) The present-day reproduction cost, new, of the properties and facilities serving the annexed areas, less depreciation computed on a straight-line basis; and

(2) An amount equal to the reasonable and prudent cost of detaching the facilities in the annexed areas and the reasonable and prudent cost of constructing any necessary facilities to reintegrate the system of the affected electric service supplier outside the annexed area after detaching the portion to be transferred to the municipally owned electric utility; and

(3) ~~[Four]~~ Two hundred percent of gross revenues less gross receipts taxes received by the affected electric service supplier from the twelve-month period preceding the approval of the municipality's governing body under the provisions of subdivision (2) of subsection ~~[3]~~ 4 of this section, normalized to produce a representative usage from customers at the subject structures in the annexed area; and

(4) Any federal, state and local taxes which may be incurred as a result of the transaction, including the recapture of any deduction or credit; and

(5) Any other costs reasonably incurred by the affected electric supplier in connection with the transaction.

~~[6-]~~ 7. In the event the parties are unable to reach an agreement under subsection ~~[4]~~ 5 of this section, within sixty days after the expiration of the time specified for negotiations, the municipally owned electric utility or the affected electric service supplier may apply to the commission for an order assigning exclusive service territories within the annexed area and a determination of the fair and reasonable compensation amount to be paid to the affected electric service supplier under subsection ~~[5]~~ 6 of this section. Applications shall be made and notice of such filing shall be given to all affected parties pursuant to the rules and regulations of the commission governing applications for certificates of public convenience and necessity. Unless otherwise ordered by the commission for good cause shown, the commission shall rule on such applications not later than one hundred twenty days after the application is properly filed with the secretary of the commission. The commission shall hold evidentiary hearings to assign service territory between the affected electric service suppliers inside the annexed area and to determine the amount of compensation due any affected electric service supplier for the transfer of plant, facilities or associated lost revenues between electric service suppliers in the annexed area. The commission shall make such determinations based on findings of what best serves the public interest and shall issue its decision by report and order. Review of such commission decisions shall be governed by

sections 386.500 to 386.550. The payment of compensation and transfer of title and operation of the facilities shall occur within ninety days after the order and any appeal therefrom becomes final unless the order provides otherwise.

[7-] 8. In reaching its decision under subsection [6] 7 of this section, the commission shall consider the following factors:

(1) Whether the acquisition or transfers sought by the municipally owned electric utility within the annexed area from the affected electric service supplier are, in total, in the public interest, including the preference of the owner of any affected structure, consideration of rate disparities between the competing electric service suppliers, and issues of unjust rate discrimination among customers of a single electric service supplier if the rates to be charged in the annexed areas are lower than those charged to other system customers; and

(2) The fair and reasonable compensation to be paid by the municipally owned electric utility, to the affected electric service supplier with existing system operations within the annexed area, for any proposed acquisitions or transfers; and

(3) Any effect on system operation, including, but not limited to, loss of load and loss of revenue; and

(4) Any other issues upon which the municipally owned electric utility and the affected electric service supplier might otherwise agree, including, but not limited to, the valuation formulas and factors contained in subsections [4,] 5, 6 and [6] 7, of this section, even if the parties could not voluntarily reach an agreement thereon under those subsections.

[8-] 9. The commission is hereby given all necessary jurisdiction over municipally owned electric utilities and rural electric cooperatives to carry out the purposes of this section consistent with other applicable law; provided, however, the commission shall not have jurisdiction to compel the transfer of customers or structures with a connected load greater than one thousand kilowatts. The commission shall by rule set appropriate fees to be charged on a case-by-case basis to municipally owned electric utilities and rural electric cooperatives to cover all necessary costs incurred by the commission in carrying out its duties under this section. Nothing in this section shall be construed as otherwise conferring upon the public service commission jurisdiction over the service, rates, financing, accounting, or management of any rural electric cooperative or municipally-owned electric utility, except as provided in this section.

10. Notwithstanding sections 394.020 and 394.080 to the contrary, a rural electric cooperative may provide electric service within the corporate boundaries of a municipality if such service is provided:

(1) Pursuant to subsections 2 through 9 of this section; and

(2) Such service is conditioned upon the execution of the appropriate territorial and municipal franchise agreements, which may include a nondiscriminatory requirement, consistent with other applicable law, that the rural electric cooperative collect and remit a sales tax based on the amount of electricity sold by the rural electric cooperative within the municipality."; and

Further amend said bill, Page 3, Section 386.895, Line 57, by inserting after all of said section and line the following:

"393.106. 1. As used in this section, the following terms mean:

(1) "Permanent service", electrical service provided through facilities which have been permanently installed on a structure and which are designed to provide electric service for the structure's anticipated needs for the indefinite future, as contrasted with facilities installed temporarily to provide electrical service during construction. Service provided temporarily shall be at the risk of the electrical supplier and shall not be determinative of the rights of the provider or recipient of permanent service;

(2) "Structure" or "structures", an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus at which retail electric energy is being delivered through a metering device which is located on or adjacent to the structure and connected to the lines of an electrical supplier. Such terms shall include any contiguous or adjacent additions to or expansions of a particular structure. Nothing in this section shall be construed to confer any right on an electric supplier to serve new structures on a particular tract of land because it was serving an existing structure on that tract.

2. Once an electrical corporation or joint municipal utility commission, or its predecessor in interest, lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800 and section 394.080, or pursuant to a territorial agreement approved under section 394.312. The public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential. The commission's jurisdiction under this section is limited to public interest determinations and excludes questions as to the lawfulness of the provision of service, such questions being reserved to courts of competent jurisdiction. Except as provided in this section, nothing contained herein shall affect the rights, privileges or duties of existing corporations pursuant to this chapter. Nothing in this section shall be construed to make lawful any provision of service which was unlawful prior to July 11, 1991. Nothing in this section shall be construed to make unlawful the continued lawful provision of service to any structure which may have had a different supplier in the past, if such a change in supplier was lawful at the time it occurred. However, those customers who had cancelled service with their previous supplier or had requested cancellation by May 1, 1991, shall be eligible to change suppliers as per previous procedures. No customer shall be allowed to change electric suppliers by disconnecting service between May 1, 1991, and July 11, 1991.

3. Notwithstanding the provisions of this section and sections 91.025, 394.080, and 394.315 to the contrary, in the event that a retail electric supplier is providing service to a structure located within a city, town, or village that has ceased to be a rural area, and such structure is demolished and replaced by a new structure, such retail electric service supplier may provide permanent service to the new structure upon the request of the owner of the new structure."; and

Further amend said bill, Page 5, Section 393.1250, Line 41, by inserting after all of said section and line the following:

"394.020. In this chapter, unless the context otherwise requires,

(1) "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein, and shall include a husband and wife admitted to joint membership;

(2) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof, or any body politic; and

(3) "Rural area" shall be deemed to mean any area of the United States not included within the boundaries of any city, town or village having a population in excess of ~~fifteen~~ sixteen hundred inhabitants, and such term shall be deemed to include both the farm and nonfarm population thereof. The number of inhabitants specified in this subdivision shall be increased by six percent every ten years after each decennial census beginning in 2030."; and

Further amend said bill, Page 7, Section 394.120, Line 38, by inserting after all of said section and line the following:

1
2 "394.315. 1. As used in this section, the following terms mean:

3 (1) "Permanent service", electrical service provided through facilities which have been
4 permanently installed on a structure and which are designed to provide electric service for the
5 structure's anticipated needs for the indefinite future, as contrasted with facilities installed
6 temporarily to provide electrical service during construction. Service provided temporarily shall be
7 at the risk of the electrical supplier and shall not be determinative of the rights of the provider or
8 recipient of permanent service;

9 (2) "Structure" or "structures", an agricultural, residential, commercial, industrial or other
10 building or a mechanical installation, machinery or apparatus at which retail electric energy is being
11 delivered through a metering device which is located on or adjacent to the structure and connected
12 to the lines of an electrical supplier. Such terms shall include any contiguous or adjacent additions
13 to or expansions of a particular structure. Nothing in this section shall be construed to confer any
14 right on ~~[a rural electric cooperative]~~ an electric supplier to serve new structures on a particular tract
15 of land because it was serving an existing structure on that tract.

16 2. Once a rural electric cooperative, or its predecessor in interest, lawfully commences
17 supplying retail electric energy to a structure through permanent service facilities, it shall have the
18 right to continue serving such structure, and other suppliers of electrical energy shall not have the
19 right to provide service to the structure except as might be otherwise permitted in the context of
20 municipal annexation, pursuant to section 386.800 and section 394.080, or pursuant to a territorial
21 agreement approved under section 394.312. The public service commission, upon application made
22 by an affected party, may order a change of suppliers on the basis that it is in the public interest for a
23 reason other than a rate differential, and the commission is hereby given jurisdiction over rural
24 electric cooperatives to accomplish the purpose of this section. The commission's jurisdiction under
25 this section is limited to public interest determinations and excludes questions as to the lawfulness
26 of the provision of service, such questions being reserved to courts of competent jurisdiction.
27 Except as provided herein, nothing in this section shall be construed as otherwise conferring upon
28 the commission jurisdiction over the service, rates, financing, accounting or management of any
29 such cooperative, and except as provided in this section, nothing contained herein shall affect the
30 rights, privileges or duties of existing cooperatives pursuant to this chapter. Nothing in this section
31 shall be construed to make lawful any provision of service which was unlawful prior to July 11,
32 1991. Nothing in this section shall be construed to make unlawful the continued lawful provision of
33 service to any structure which may have had a different supplier in the past, if such a change in
34 supplier was lawful at the time it occurred. However, those customers who had cancelled service
35 with their previous supplier or had requested cancellation by May 1, 1991, shall be eligible to
36 change suppliers as per previous procedures. No customer shall be allowed to change electric
37 suppliers by disconnecting service between May 1, 1991, and July 11, 1991.

38 3. Notwithstanding the provisions of this section and sections 91.025, 393.106, and 394.080
39 to the contrary, in the event that a retail electric supplier is providing service to a structure located
40 within a city, town, or village that has ceased to be a rural area, and such structure is demolished and
41 replaced by a new structure, such retail electric service supplier may provide permanent service to
42 the new structure upon the request of the owner of the new structure."; and

43
44 Further amend said bill by amending the title, enacting clause, and intersectional references
45 accordingly.