

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 803

90TH GENERAL ASSEMBLY

Reported from the Committee on Commerce and Environment, February 23, 2000, with recommendation that the Senate Committee Substitute do pass.

3398S.06C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 138.420 and 153.030, RSMo 1994, and sections 393.297, 393.298, 393.299 and 393.302, RSMo Supp. 1999, relating to taxation and fees for energy services, and to enact in lieu thereof thirty-two new sections relating to the same subject, with a contingent effective date for certain sections and a contingent termination date for certain sections.

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

Section A. Sections 138.420 and 153.030, RSMo 1994, and sections 393.297, 393.298, 393.299 and 393.302, RSMo Supp. 1999, are repealed and thirty-two new sections enacted in lieu thereof, to be known as sections 138.420, 144.850, 144.853, 144.856, 144.859, 144.861, 153.030, 156.010, 156.020, 156.030, 156.040, 156.050, 156.060, 156.070, 156.080, 156.090, 156.100, 156.110, 156.120, 156.125, 156.130, 156.140, 156.150, 156.160, 156.170, 156.180, 156.190, 156.200, 393.297, 393.298, 393.299 and 393.302, to read as follows:

138.420. 1. The state tax commission shall have the exclusive power of original assessment of the distributable property of railroads, railroad cars, rolling stock, street railroads, bridges, telegraph, telephone, electric power and light companies, electric transmission lines, pipeline companies, express companies, and other similar public utility corporations, companies and firms, [and] of the aircraft of airlines companies **and of property, including components thereof, used to generate electricity and having generating capacity of two megawatts or more**, in a manner not inconsistent with chapter 155, RSMo.

2. After original assessments of the state tax commission have been completed, each corporation, person or public utility interested therein shall be promptly notified of the action of the state tax commission and shall have the right to apply for a rehearing. The state tax commission shall grant and hold such rehearing and fix the date thereof.

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

3. If, after such rehearing and a consideration of the facts, the state tax commission shall be of the opinion that the original decision or any part thereof should be changed, the state tax commission may change or modify the same and such assessed valuations as are finally determined shall be certified to the clerks of the several county commissions and to the assessor in St. Louis city at the same time that valuations of real and tangible personal property are returned.

4. The state tax commission shall also have all power of original assessment of real and tangible personal property in the possession of any assessing officer on January first.

144.850. 1. It is the intent of the general assembly through the passage of sections 144.850 to 144.861:

(1) To maintain a fair and equitable tax structure with regard to in-state and out-of-state sellers of energy services and to preserve the state and local tax base by requiring all persons who provide electricity or gas service to pay an equitable share; and

(2) To equalize the amount of sales and use taxes on competing in-state and out-of-state suppliers of electricity and gas services.

2. Political subdivisions provide police, fire and public health services, including the inspection of gas and electric equipment and other facilities used in the consumption of gas and electricity. The state and political subdivisions impose sales and use taxes on providers of electricity and gas services in order to pay for these and other services related to the transportation, use and consumption of electricity and gas services and for the general operation of government.

3. Missouri has historically restricted competition with respect to electricity and gas services and has allowed political subdivisions to require franchises. Persons entering the gas and electric markets within Missouri receive substantial revenues from consumers in Missouri, thereby creating a purposeful economic presence in this state. In addition, these persons may also cause electricity and gas to be transported over rights-of-way and utility easements and may use electric lines or gas lines which are owned, controlled and maintained by other public and private entities in this state. Unless all such participants in the electricity and gas markets pay comparable taxes and fees, there will be significant tax and franchise fee revenue losses by the state and political subdivisions and unfair competitive disparities among such participants.

4. The legislature finds that electricity and gas are essential, but potentially dangerous, commodities in modern society. The electricity transmission and distribution system is an interconnected and interdependent grid. Therefore, the legislature finds that it is in the interest of public health and safety to require registration of all sellers of electricity and gas for use or consumption within Missouri.

5. It is not the intent of sections 144.850 to 144.861 to regulate the transportation

of natural gas, methane or propane in interstate commerce to the extent that such regulation is preempted by the Constitution of the United States.

144.853. As used in sections 144.853 to 144.861, the following terms mean:

- (1) "Commission", the Missouri public service commission;**
- (2) "Distribution system", the physical plant used to provide energy services including facilities, structures, wires and appurtenances thereto;**
- (3) "Distributor", an electrical or gas corporation as defined by section 386.020, RSMo, which is authorized by the commission pursuant to chapter 393, RSMo, to provide or distribute energy services, a rural electric cooperative organized under chapter 394, RSMo, or a political subdivision that provides energy services;**
- (4) "Energy services", electricity and all associated services that are necessary for its delivery through a distribution system including but not limited to the generation, production, transmission, distribution, billing and metering of such services, natural gas and all associated services that are necessary for its delivery through a distribution system, and propane and methane, but only if such propane or methane is delivered to the end user's site through a pipeline system;**
- (5) "Political subdivision", any county, municipality or village in the state of Missouri;**
- (6) "Retail user", any person who purchases energy services for his or her own use or consumption and not for resale;**
- (7) "Seller", any person who directly or indirectly uses, leases or controls the distribution system of a distributor or any part thereof to sell at retail energy services which are consumed within the state of Missouri, other than a distributor which uses its own distribution system, even if title to the energy services passes from such person to the retail user or a third party outside of the state of Missouri or before such energy services enter the distribution system. A retail user of energy services is deemed not to be a seller within the meaning of this section with respect to the energy services he or she consumes.**

144.856. 1. No person shall provide energy services, including distribution services, to a Missouri seller or retail user, and no retail user shall obtain any energy services from a person, unless the person:

- (1) Is a distributor using his or her own distribution system for final delivery to the retail user; or**
- (2) Has been certified by the commission as a seller.**

2. Upon application of any person desiring to sell energy services to Missouri retail users, the commission shall certify such person as a seller and issue a certificate evidencing such status, and shall provide copies of certificates to all distributors, if the commission determines that such person:

- (1) Has appointed a registered agent in Missouri for service of process;**
- (2) Has filed with the commission his or her agreement to collect and remit all state and local sales and use taxes for all energy services that have not been excluded from taxation by rule, regulation or other ruling by the department of revenue;**
- (3) Has posted a bond in an amount to be determined by the commission to secure his or her agreement to collect and remit such taxes; and**
- (4) Has satisfied any and all additional requirements imposed by law or regulations in order to provide such energy services, including but not limited to specific requirements associated with legislation which may permit retail competition in the supply of electricity within Missouri.**

3. No later than February first next following the effective date of this section, each distributor shall file tariffs or implement procedures to comply with all applicable requirements of this section. The commission shall maintain a list of all sellers who have valid certificates, and such list shall be open to public inspection.

4. If, after review of such certificates or upon complaint by the state of Missouri or its political subdivisions, by any distributor, by any seller or by any party with a substantial interest, as determined by the commission, the commission determines that any certificate is invalid or the seller is not in compliance with the conditions for its issuance, the commission shall revoke the certificate and issue a notice to all affected distributors directing that they discontinue providing energy services to retail users with respect to energy services provided by such seller.

5. Upon a finding that a distributor has provided, or is providing, energy services to any retail user with respect to energy services from a person who has not been certified as a seller by the commission, the commission shall within thirty days of the finding issue an order to the distributor to discontinue providing energy services to the retail user from such person, after appropriate notice to the affected persons, such notice to be determined by the commission.

6. The commission may issue a new certificate to a person whose certificate has been revoked, provided that the commission determines that such person has satisfied the conditions set forth in subsection 2 of this section and provided that such person has paid any and all delinquent taxes, including applicable interest and penalties, to the appropriate political subdivisions. The commission shall take into account any failures to collect and remit taxes in determining the amount of the bond referred to in subdivision (3) of subsection 2 of this section.

7. An agreement described in subdivision (2) of subsection 2 of this section shall expressly state that the seller waives:

- (1) His or her right to challenge the validity of the agreement; and**
- (2) His or her right to the refund of amounts paid pursuant to the agreement.**

Any person who otherwise has standing may challenge the validity of this section without signing such agreement by filing an action for a declaratory judgment in circuit court in the county in which the political subdivision is located. The agreement filed with the commission pursuant to subsection 2 of this section shall be limited solely to the requirements of this subsection and the seller's agreement to pay his or her taxes and provisions which require the seller to make available to the political subdivision or the commission his or her records, including the right to audit.

8. The commission shall establish procedures for certification and enforcement pursuant to chapter 536, RSMo.

9. Nothing in this section shall be construed to give any seller the right to use the rights-of-way, utility easements or the distribution system of any distributor for any purpose other than a purpose incidental to the provision of energy services to the seller's retail customers.

10. Any agreement described in subdivision (2) of subsection 2 of this section shall cease to be effective upon the failure of the seller to fulfill any material obligation under the agreement. The appropriate political subdivision shall notify the commission of any failure to pay any amount required by any agreement described in subdivision (2) of subsection 2 of this section. Unless the seller requests a hearing within fifteen days of the date the notice is filed with the commission, the seller shall cease to provide energy services to Missouri retail users. Upon receiving notice from the seller requesting a hearing, the commission shall conduct a hearing to determine whether all material obligations under an agreement have been satisfied. If the commission determines that material obligations have not been satisfied, it shall notify the distributor, and the seller shall thereafter be prohibited from providing energy services to Missouri retail users from the date set forth in the notice, which shall not be less than thirty days after the commission makes its determination. The distributor shall not provide energy services with respect to energy services provided by the seller if the distributor does not request a hearing after being notified of the seller's material fault or if the commission determines that the seller has failed to satisfy a material obligation of the agreement and thirty days have expired from the date of the commission notification of a breach of a material obligation of any agreement authorized by subdivision (2) of subsection 2 of this section.

11. This section shall not be construed as conferring any rights on any seller to provide energy services within a political subdivision in the state of Missouri. No seller may provide energy services unless he or she does so in accordance with all applicable laws and in accordance with the applicable rules of the commission, including but not limited to requirements associated with legislation permitting retail competition in the supply of electricity in the state of Missouri. Any seller of natural gas shall file his or

her agreement with the commission within thirty days from the effective date of this section.

12. Any person liable for the tax pursuant to this section, upon proof that such person has paid a tax in another state or political subdivision with respect to a charge for the sale of such gas, electricity or energy services, shall be allowed a credit against the tax authorized by this section, to the extent of the amount of the tax legally due and paid in the other state or political subdivision with respect to such charge. However, a credit shall not be permitted against the tax due pursuant to this subsection if the service supplied is billed or paid within the political subdivision charging the tax.

144.859. Notwithstanding the provisions of section 1.140, RSMo, to the contrary, the provisions of section 144.856 shall be nonseverable, and if any provision is for any reason held to be invalid, such decision shall invalidate all of the remaining provisions of section 144.856.

144.861. 1. In the event that any legal action to challenge the validity of any agreement made pursuant to subsection 2 of section 144.856 is filed in any court of competent jurisdiction, the party initiating that action shall immediately furnish a certified copy of the initial pleading to the commission, which act shall be deemed to suspend the provisions of such agreement pending a final and nonappealable judgment or disposition of such action. Upon receipt of the notification, the commission shall immediately notify each affected political subdivision and person providing energy services of the suspension of those agreements. No seller shall provide energy services, nor shall any distributor deliver energy services from the seller, after he or she receives notice from the commission that the seller's agreements have been suspended pursuant to subsection 2 of section 144.856.

2. In the event that the provisions of section 144.856 are declared to be void or invalid by final judgment of a court of competent jurisdiction, no energy services by sellers shall be permitted except upon a finding of public convenience and necessity and compliance with all provisions of this chapter, regulations adopted pursuant to this chapter and commission orders. No refund of any tax or fee shall be made to any seller who signs an agreement waiving his or her right to challenge the validity of section 144.856.

153.030. 1. All bridges over streams dividing this state from any other state owned, used, leased or otherwise controlled by any person, corporation, railroad company or joint stock company, and all bridges across or over navigable streams within this state, where the charge is made for crossing the same, which are now constructed, which are in the course of construction, or which shall hereafter be constructed, and all property, real and tangible personal, owned, used, leased or otherwise controlled by telegraph, telephone, electric power and light companies, electric transmission lines, pipeline companies and express companies shall be subject to taxation for state,

county, municipal and other local purposes to the same extent as the property of private persons.

2. And taxes levied thereon shall be levied and collected in the manner as is now or may hereafter be provided by law for the taxation of railroad property in this state, and county commissions, county boards of equalization and the state tax commission are hereby required to perform the same duties and are given the same powers, including punitive powers, in assessing, equalizing and adjusting the taxes on the property set forth in this section as the county commissions and boards of equalization and state tax commission have or may hereafter be empowered with, in assessing, equalizing, and adjusting the taxes on railroad property; and an authorized officer of any such bridge, telegraph, telephone, electric power and light companies, electric transmission lines, pipeline companies, or express company or the owner of any such toll bridge, is hereby required to render reports of the property of such bridge, telegraph, telephone, electric power and light companies, electric transmission lines, pipeline companies, or express companies in like manner as the authorized officer of the railroad company is now or may hereafter be required to render for the taxation of railroad property.

3. On or before the fifteenth day of April in the year 1946 and each year thereafter an authorized officer of each such company shall furnish the state tax commission and county clerks a report, duly subscribed and sworn to by such authorized officer, which is like in nature and purpose to the reports required of railroads under chapter 151, RSMo, showing the full amount of all real and tangible personal property owned, used, leased or otherwise controlled by each such company on January first of the year in which the report is due.

4. If any telephone company assessed pursuant to chapter 153 has a microwave relay station or stations in a county in which it has no wire mileage but has wire mileage in another county, then, for purposes of apportioning the assessed value of the distributable property of such companies, the straight line distance between such microwave relay stations shall constitute miles of wire. In the event that any public utility company assessed pursuant to this chapter has no distributable property which physically traverses the counties in which it operates, then the assessed value of the distributable property of such company shall be apportioned to the physical location of the distributable property.

5. All distributable property of electric power and light companies assessed by the state tax commission in the taxable year beginning on the effective date of this section, shall continue to be assessed and the values distributed by the same method used in that taxable year; however, assessments for tax years beginning after the effective date of this section, shall be revised annually based upon market value and the state tax commission shall allocate such market value to each county based on the ratio which the line miles located in that county bear to the total line miles in the state of Missouri.

6. The state tax commission, upon certification by the public service commission

that retail competition in the provision of electric power exists in this state, shall thereafter utilize the same valuation method for all electricity-generating property described in section 138.420, RSMo.

156.010. It is the intent of the general assembly through the passage of this act to provide fairness with respect to taxes and fees charged for electricity and natural gas and to implement the provisions of section 25 of article X of the Missouri Constitution by authorizing certain electricity and natural gas usage taxes, fees or charges to replace certain existing electricity and natural gas taxes, fees or charges.

156.020. As used in sections 156.010 to 156.200, the following terms mean:

(1) "Base year", the later of the calendar year 2000 or the year immediately preceding the year in which this section becomes effective for sections 156.030, 156.080 and 156.100, and the year in which this section becomes effective for section 156.170. For purposes of section 156.125, the base year shall mean the calendar year immediately preceding the year in which a political subdivision enacts legislation to replace a PILOT with a local electricity usage charge or local gas usage charge;

(2) "Commission", the Missouri public service commission;

(3) "Customer class", one or more, but not more than ten, generally recognized groups of like users;

(4) "Distributable property", all the real or tangible personal property owned, used, leased or otherwise controlled by any person other than a political subdivision as defined in section 153.034, RSMo, and shall not include any local property, as defined in that section, and shall further not include property, including components thereof, used to generate electricity and having a capacity of less than two megawatts;

(5) "Electricity delivered", electricity with respect to which local electricity distribution service is provided and undistributed electricity;

(6) "Gas delivered", natural gas with respect to which local gas distribution service is provided and undistributed gas;

(7) "Local electricity distribution service", the transportation of electricity over a local electricity distribution system for use by customers;

(8) "Local electricity distribution system", the physical plant used to distribute electricity from the point it leaves the transmission system or generating facility to the point it passes through the meter, including all real estate, personal property, facilities, structures, wires, meters, and appurtenances used for or in connection with or to facilitate the distribution of electricity;

(9) "Local electricity distributor", any person who provides local electricity distribution service, local transmission service, or a person other than a utility that consumes undistributed electricity;

(10) "Local electricity franchise agreement", any ordinance or agreement

between a utility and a county, city, town or village governing the terms under which the county, city, town or village grants the utility a franchise for use of any right-of-way for the purpose of providing electricity to customers within the county, city, town or village;

(11) "Local electricity franchise fee", any payment required pursuant to a local electric franchise agreement made by a utility to a county, city, town or village as a percentage of the utility's gross receipts derived from selling electricity within the county, city, town or village;

(12) "Local electricity franchise fee agreement", any portion of an ordinance or local electricity franchise agreement providing for the payment of a local electricity franchise fee as consideration for a franchise for use of any right-of-way for the purpose of providing electricity within the county, city, town or village;

(13) "Local electricity gross receipts tax", any license or occupational tax imposed by or for any city, county, town or village upon persons engaged in the business of supplying or furnishing electricity, electrical power, or electrical service within a city, county, town or village as of the beginning of the base year;

(14) "Local electricity or gas usage charge", a charge imposed that replaces a local electricity or gas PILOT;

(15) "Local electricity sales taxes", any local sales taxes imposed upon the selling of electricity by county, city, town or village and including any use tax imposed upon the selling of electricity by a county, city, town or village;

(16) "Local electricity usage tax", any tax imposed by sections 156.010 to 156.200 that replaces a local electricity gross receipts tax, a local electricity franchise fee, local electricity sales taxes or the tax levied on distributable property;

(17) "Local gas distribution service", the transportation of natural gas over a local gas distribution system for use by customers;

(18) "Local gas distribution system", the physical plant used to distribute gas from the point it leaves an interstate or intrastate pipeline to the point it passes through the user's meter, including all real estate, personal property, facilities, structures, meters and appurtenances used for or in connection with or to facilitate the distribution of gas;

(19) "Local gas distributor", any person who provides local gas distribution service, local transportation service or a person other than a utility that consumes undistributed gas;

(20) "Local gas franchise agreement", any ordinance or agreement between a utility and a county, city, town or village governing the terms under which the county, city, town or village grants the utility a franchise for the use of any right-of-way for the purpose of providing natural gas to customers within the county, city, town or village;

(21) "Local gas franchise fee", any payment required pursuant to a local gas franchise agreement made by a utility to a county, city, town or village as a percentage of the utility's gross receipts derived from selling natural gas within the county, city, town or village;

(22) "Local gas franchise fee agreement", any portion of an ordinance or local gas franchise agreement providing for the payment of a local gas franchise fee as consideration for a franchise for the use of any right-of-way for the purpose of providing natural gas within the county, city, town or village;

(23) "Local gas gross receipts tax", any license or occupational tax imposed by or for any county, city, town or village upon persons engaged in the business of supplying or furnishing natural gas within a county, city, town or village as of the beginning of the base year;

(24) "Local gas sales taxes", any local sales taxes imposed upon the selling of natural gas by a county, city, town or village and including any use tax imposed upon the selling of natural gas by a county, city, town or village;

(25) "Local gas usage tax", any tax imposed by sections 156.010 to 156.200 that replaces a local gas gross receipts tax, a local gas franchise fee or a local gas sales tax;

(26) "Local transmission service", the transportation of electricity to a consumer that is not physically connected to a local distribution system;

(27) "Local transportation service", the transportation of natural gas to a consumer that bypasses a local gas distribution system;

(28) "Municipal utility", a department, division or agency of a political subdivision engaged in the business of generating, transmitting or distributing electricity or transmitting or distributing natural gas;

(29) "Payments in lieu of taxes (PILOT)", the payment or transfer of funds or services by a municipal utility and used to provide government services by the political subdivision including the value of free or subsidized services, provided the value of these services are stated annually in an ordinance as a percentage of the total gross receipts of the municipal utility;

(30) "Person", any individual or any incorporated or unincorporated entity;

(31) "Undistributed electricity", electricity which is not delivered by a local electricity distributor. This term shall not include electricity generated by a person for the person's own use with a generation unit placed in service before January 1, 2000, or electricity generated using a generating capacity of less than two megawatts;

(32) "Undistributed gas", natural gas which is not delivered by a local gas distributor; and

(33) "Utility", as of the beginning of the base year, an electrical corporation or a gas corporation as defined by section 386.020, RSMo, a person engaged in the business

of generating electricity for sale, or a rural electric cooperative organized pursuant to chapter 394, RSMo.

156.030. 1. In accordance with section 25 of article X of the Missouri Constitution, any existing or authorized local electricity gross receipts tax or local gas gross receipts tax is hereby repealed and shall be replaced with a local electricity usage tax or local gas usage tax based on the amount of electricity or natural gas delivered. The local electricity usage tax or local gas usage tax imposed pursuant to this section shall be imposed upon the local electricity distributor or local gas distributor at a rate per kilowatt hour of electricity delivered or therms of natural gas delivered and shall be paid to the county, city, town or village. The local electricity distributor or local gas distributor shall remit the local electricity usage tax or local gas usage tax, respectively, on a periodic basis as determined by the governing body of the county, city, town or village upon the kilowatt hours or therms that it bills during the preceding period.

2. As a replacement for local electricity gross receipts taxes or local gas gross receipts taxes, the governing body of a county, city, town or village shall calculate and impose a separate tax rate per kilowatt hour or therm for each customer class. Each local electricity distributor and each local gas distributor shall certify to the county, city, town or village the number of kilowatt hours of electricity delivered, the number of therms of natural gas delivered and the tax revenues from the local electricity gross receipts tax or local gas gross receipts tax to the county, city, town or village for the base year for each customer class not later than July first next following the effective date of this section. Customer classes and initial classification of customers shall be determined by the local electricity distributor or local gas distributor, and the customer may appeal such initial classification or the appropriateness of current classification to the commission, which shall resolve the controversy in accordance with applicable tariffs and service conditions to the greatest extent practicable. Unmetered accounts shall be assigned to the appropriate customer class based upon the estimated kilowatt hours as determined by the local electricity distributor or local gas distributor. In the case of a local electricity usage tax, the tax rate or rates shall be established to produce revenues in the base year not greater than the amount of revenues produced by the local electricity gross receipts tax for the base year from that customer class. In the case of a local gas usage tax, the tax rate or rates shall be established to produce revenues in the base year not greater than the amount of revenues produced by the local gas gross receipts tax in the base year from that customer class, assuming that the local gas gross receipts tax in the base year applied to all charges for natural gas in the base year, including all natural gas commodity charges. Local electricity distributors and local gas distributors shall be exempt from payment of local electricity usage taxes

and local gas usage taxes where the gross receipts from electricity or natural gas would have been exempt from the local electricity gross receipts tax or local gas gross receipts tax at the end of the base year.

156.040. Every county, city, town or village shall present data no later than October first next following the effective date of this section, supporting the amount of the local electricity usage tax or local gas usage tax by customer class imposed by the county, city, town or village to the state auditor. In order to establish appropriate systems of accounting, the state auditor shall audit the data submitted by each county, city, town or village, and certify no later than December first next following the effective date of this section, that the amount that would have been produced by imposition of the local electricity usage tax or local gas usage tax in the base year is no greater than the amount that was produced by the corresponding local electricity gross receipts tax or local gas gross receipts tax in the base year. The local electricity usage tax or local gas usage tax imposed by section 156.030 shall not go into effect until thirty days after the state auditor has provided the certification required by this section.

156.050. In accordance with section 25 of article X of the Missouri Constitution, a county or other political subdivision is prohibited from collecting any local electricity franchise fee or local gas franchise fee after January first next following the effective date of this section, except that a local electricity franchise fee agreement or local gas franchise fee agreement which is in force prior to the effective date of this section shall not be terminated as a result of its adoption unless the county or other political subdivision and utility mutually agree to terminate the agreement. In the event that any local electricity franchise fee agreement or local gas franchise fee agreement is not terminated by mutual agreement of the county or other political subdivision and the utility, the county or other political subdivision may not renew, extend, exercise options to extend, or renegotiate the terms of a local electricity franchise fee agreement or local gas franchise fee agreement beyond the term of the current agreement, or beyond January first next following the effective date of this section, if no term is provided.

156.060. No new local electricity franchise fee or local gas franchise fee shall be imposed by or for a county or other political subdivision after January first next following the effective date of this section.

156.070. The local electricity franchise fee or local gas franchise fee prohibited pursuant to section 156.050 is hereby replaced as of January first next following the effective date of this section, with a local electricity usage tax or local gas usage tax based on the amount of electricity or natural gas delivered. The local electricity usage tax or local gas usage tax imposed pursuant to this section shall be imposed upon the local electricity distributor or local gas distributor at a rate per kilowatt hour of

electricity delivered or therms of natural gas delivered and shall be paid to the county or other political subdivision. The local electricity distributor or local gas distributor shall remit the local electricity usage tax or local gas usage tax, respectively, on a periodic basis as determined by the governing body of the county, city, town or village upon the kilowatt hours or therms that it bills during the preceding period.

156.080. As a replacement for local electricity franchise fees or local gas franchise fees, the governing body of a county, city, town or village shall calculate and impose a separate tax rate per kilowatt hour or therm for each customer class for each local electricity distributor and each local gas distributor. Each local electricity distributor and local gas distributor shall certify to the county, city, town or village the number of kilowatt hours of electricity delivered, the number of therms of natural gas delivered and the tax revenues from the local electricity franchise fee or local gas franchise fee to the county, city, town or village for the base year for each customer class not later than July first next following the effective date of this section. Customer classes and initial classification shall be determined by the local electricity distributor or local gas distributor, and a customer may appeal such initial classification or the appropriateness of the current classification to the public service commission, which shall resolve the controversy in accordance with applicable tariff and service conditions to the greatest extent practicable. Unmetered accounts shall be assigned to the appropriate customer class based upon the estimated kilowatt hours or therms as determined by the local electricity distributor or local gas distributor. In the case of a local electricity usage tax, the tax rate or rates shall be established to produce revenues in the base year no greater than the amount of revenues produced by the local electricity franchise fee during the base year from that customer class. In the case of a local gas usage tax, the tax rate or rates shall be established to produce revenues in the base year not greater than the amount of revenues produced by the local gas franchise fee in the base year from that customer class, assuming that all local gas franchise fees in the base year applied to all charges for natural gas in the base year, including all natural gas commodity charges. Local electricity distributors and local gas distributors shall be exempt from payment of local electricity usage taxes and local gas usage taxes where the franchise fee from electricity or natural gas would have been exempt at the end of the base year.

156.090. Every county, city, town or village shall present data no later than October first next following the effective date of this section, supporting the amount of the local electricity usage tax or local gas usage tax by customer class imposed by the county, city, town or village for the base year to the state auditor. In order to establish appropriate systems of accounting, the state auditor shall audit the data submitted by each county, city, town or village, and certify no later than December first next

following the effective date of this section, that the amount that would have been produced by imposition of the local electricity usage tax or local gas usage tax in the base year is no greater than the amount that was produced by the corresponding local electricity franchise fee or local gas franchise fee. The local electricity usage tax or local gas usage tax imposed by section 156.070 shall not go into effect until thirty days after the state auditor has provided the certification required by this section.

156.100. 1. In accordance with section 25 of article X of the Missouri Constitution, any existing or authorized local electricity sales tax or local gas sales tax is hereby repealed, and shall be replaced with a local electricity usage tax or local gas usage tax based on the amount of electricity or natural gas delivered. The local electricity usage tax or local gas usage tax imposed pursuant to this section shall be imposed upon the local electric distributor or local gas distributor at a rate per kilowatt hour of electricity delivered or therms of natural gas delivered, and shall be paid to and distributed by the department of revenue. The local electricity distributor or local gas distributor shall remit the tax on a periodic basis as determined by the department of revenue upon the kilowatt hours or therms that it bills during the preceding period.

2. As a replacement for local electricity sales taxes or local gas sales taxes, the governing body of a county or other political subdivision shall calculate and impose a separate rate per kilowatt hour or therm for each customer class. Each local electricity distributor and each local gas distributor shall certify to the county, city, town or village the kilowatt hours of electricity delivered, the number of therms of natural gas delivered and the tax revenues from the local sales taxes to the county, city, town or village for the base year for each customer class not later than July first next following the effective date of this section. Customer classes and initial classification of customers shall be determined by the local electricity distributor or local gas distributor, and a customer may appeal such initial classification or the appropriateness of current classification to the public service commission, which shall resolve the controversy in accordance with applicable tariff and service conditions to the greatest extent practicable. Unmetered accounts shall be assigned to the appropriate customer class based upon the estimated kilowatt hours as determined by the local electricity distributor or local gas distributor. In the case of a local electricity usage tax, the tax rate or rates shall be established to produce revenues in the base year no greater than the amount of revenues produced by the local electricity sales taxes or local gas sales taxes for the base year from that customer class. In the case of a local gas usage tax, the tax rate or rates shall be established to produce revenues in the base year not greater than the amount of revenues produced by the local gas sales tax in the base year from that customer class, assuming that local gas sales taxes in the

base year applied to all charges for natural gas in the base year, including all natural gas commodity charges. Local electricity distributors and local gas distributors shall be exempt from payment of local electricity usage taxes and local gas usage taxes where the sale of electricity or natural gas would have been exempt from the local sales taxes at the end of the base year.

156.110. Every county and political subdivision shall present data no later than October first next following the effective date of this section, supporting the amount of the local electricity usage tax or local gas usage tax by customer class imposed by the county or other political subdivision for the base year to the state auditor. In order to establish appropriate systems of accounting, the state auditor shall audit the data submitted by each county or other political subdivision, and certify no later than December first next following the effective date of this section, that the amount that would have been produced by imposition of the local electricity usage tax or local gas usage tax in the base year is no greater than the amount that was produced by the local electricity sales taxes or local gas sales taxes. The local electricity usage taxes or local gas usage taxes imposed by section 156.100 shall not go into effect until thirty days after the state auditor has provided the certification required by this section.

156.120. The local electricity usage taxes and local gas usage taxes imposed pursuant to sections 156.030, 156.070 and 156.100 upon a local electricity distributor or local gas distributor that is a utility shall be added to the charges of the local electricity distributor or local gas distributor as a separate item on the customer's bill. The local electricity usage tax imposed pursuant to section 156.150 upon a local electricity distributor that is a utility shall be included in the cost of local electricity distribution service. Imposition and recovery of the local electricity usage taxes or local gas usage taxes imposed by sections 156.030, 156.070, 156.100 and 156.150 shall not be subject to review or adjustment by the commission.

156.125. 1. In accordance with section 25 of article X of the Missouri Constitution, any political subdivision which imposes a PILOT may at its option replace the PILOT with a local electricity usage charge or local gas usage charge based on the amount of electricity or natural gas delivered. The local electricity usage charge or local gas usage charge shall be imposed by the political subdivision upon its municipal utility at rates based on kilowatt hours of electricity delivered or therms of natural gas delivered and remitted on a periodic basis as determined by the governing body of the political subdivision. The local electricity usage charge or local gas usage charge shall be added to the cost of local electricity distribution service or local gas distribution service and shall be paid to the general fund of the political subdivision.

2. The governing body of the political subdivision replacing a PILOT shall impose a separate local electricity usage charge rate or local gas usage charge rate for

each customer class. The political subdivision shall determine the number of kilowatt hours of electricity delivered, the number of therms of natural gas delivered and the revenues from the PILOT for the base year for each customer class and a customer may appeal such determination to the commission, which shall resolve the controversy in accordance with applicable tariffs and service conditions to the greatest extent practicable. Unmetered accounts shall be assigned to the appropriate customer class based upon the kilowatt hours or therms as determined by the local electricity distributor or local gas distributor. The local electricity usage charge rate or local gas usage charge rate for each customer class shall be established at a level that would have produced revenues in the base year no greater than the amount of revenues produced by the political subdivision's PILOT for the base year from that customer class.

3. Every political subdivision replacing a PILOT shall present data to the state auditor no later than three months before the local electricity usage charge or local gas usage charge is to become effective, supporting the rates of its local electricity usage charge or local gas usage charge by customer class. The state auditor shall audit the data submitted by the political subdivision and, if the data supports the proposed rates, shall certify no later than one month before the effective date of the local electricity usage charge or local gas usage charge that the amount that would have been produced by the imposition of the local electricity usage charge or local gas usage charge in the base year is no greater than the amount that was produced by the PILOT in the base year. The local electricity PILOT or local gas PILOT shall be replaced by the local electricity usage charge or local gas usage charge no sooner than thirty days after the state auditor provides the certification.

4. The governing body of a political subdivision that has replaced the PILOT with a local electricity usage charge or a local gas usage charge may:

- (1) Eliminate an existing local electricity usage charge or local gas usage charge;
- (2) Reduce an existing local electricity usage charge rate or local gas usage charge rate; or
- (3) Grant, extend or expand an exemption from the local electricity usage charge or local gas usage charge.

156.130. A county, city, town or village may, upon the majority vote of the governing body:

- (1) Eliminate an existing local electricity usage tax or local gas usage tax;
 - (2) Reduce an existing local electricity usage tax rate or local gas usage tax rate;
- or
- (3) Grant, extend or expand an exemption from the local electricity usage tax or local gas usage tax.

156.140. After the initial imposition of a local electricity usage tax or local gas usage tax pursuant to subsection 2 of section 156.030, section 156.080 or subsection 2 of section 156.100, no county or other political subdivision authorized to levy a local electricity usage tax or local gas usage tax shall, without a majority vote of the electorate:

- (1) Impose a new local electricity usage tax or local gas usage tax;**
- (2) Increase an existing local electricity usage tax rate or local gas usage tax rate; or**
- (3) Eliminate or reduce exemptions from the local electricity usage tax or local gas usage tax.**

156.150. In accordance with section 25 of article X of the Missouri Constitution, the tax on distributable property is hereby replaced as of January first next following the effective date of this section, with a local electricity usage tax based on the amount of electricity delivered. The local electricity usage tax shall be paid to the collector, the collector's office or other office or officer designated by the county or city to receive such payments of the appropriate county or city. The local electricity usage taxes imposed pursuant to this section shall be imposed upon the local electricity distributor at a rate per kilowatt hour of electricity delivered and shall be due and payable no later than December thirty-first next following the effective date of this section, and December thirty-first of each subsequent year.

156.160. Not later than the effective date of this section, each local electricity distributor shall certify to the state tax commission the number of kilowatt hours delivered and the property taxes levied on distributable property for the base year.

156.170. The state tax commission shall calculate a separate tax rate per kilowatt hour of electricity delivered for each local electricity distributor. The tax rate shall be established to produce revenues in the base year no greater than the amount of revenues produced by the tax levied on distributable property for the base year. The tax rate calculated by the state tax commission shall be reviewed by the state auditor, and certified by the state auditor to the department of revenue.

156.180. The state tax commission shall determine the distribution of the local electricity usage tax provided for in section 156.150 by allocating the revenues from the tax as follows: first, to the blind pension fund in an amount equal to funds received in the base year; and second, any remaining funds to counties and other political subdivisions in amounts proportionate to the amounts they received from the tax on distributable property in the base year. The state tax commission shall notify the collector, the collector's office or other office or officer designated by the county or city to receive such payments of the appropriate county or city.

156.190. For purposes of any Missouri statute relating to the distribution or

disposition of tax revenues by any county or other political subdivision, each local electricity usage tax and local gas usage tax imposed pursuant to sections 156.010 to 156.200 shall be deemed to be the specific tax that it replaced.

156.200. Any taxpayer may bring an action to enforce compliance with the provisions of sections 156.010 to 156.200 and, if a final, nonappealable judgment is rendered in favor of the taxpayer, may receive from the applicable unit of government his or her costs including reasonable attorney's fees incurred in maintaining such suit, if approved by the court. If a final judgment of a court of competent jurisdiction determines that a county or other political subdivision has violated the provisions of this section, the county or other political subdivision shall be required to return the excess funds to consumers as determined by the court.

393.297. 1. It is the intent of the general assembly through the passage of [this act] **sections 144.010 and 144.020, RSMo, and sections 393.297 to 393.302:**

(1) To maintain a fair and equitable tax structure **with regard to in-state and out-of-state sellers of energy services** and to preserve the local tax base by requiring all persons who provide electricity or gas service to pay an equitable share; and

(2) To equalize the amount of business taxes, franchise fees and payments in lieu of taxes on competing suppliers **in-state and out-of-state** of electricity and gas service.

(3) To restore to political subdivisions revenue sources that existed prior to any previously implemented gas industry restructuring.

(4) To remove disparities in the liability of natural gas suppliers for business taxes, franchise fees, and payments in lieu of taxes, which disparities have arisen as a result of any previously implemented gas industry restructuring.

2. Political subdivisions provide police, fire and public health services, including the inspection of gas and electric equipment and other facilities used in the consumption of gas and electricity. Political subdivisions impose license taxes, franchise fees and sales taxes on providers of electricity and gas services, and require payments in lieu of taxes from publicly owned utilities in order to pay for these and other services related to the transportation, use and consumption of electricity and gas services and for the general operation of government.

3. Missouri has historically restricted competition with respect to electricity and gas services by authorizing the Missouri public service commission to limit the number of providers and has allowed political subdivisions to require franchises for these services. Persons entering the gas and electric markets within Missouri receive substantial revenues from consumers in Missouri, thereby creating a purposeful economic presence in this state. In addition, these persons may also cause electricity and gas to be transported over rights-of-way and utility easements and may use electric lines or gas lines which are owned, controlled and maintained by other public and private entities in this state. Unless all **such** participants in the electricity and gas markets pay

comparable taxes and fees, there will be significant tax and franchise fee revenue losses by political subdivisions and unfair competitive disparities among such participants.

4. The legislature finds that electricity and gas are essential, but potentially dangerous, commodities in modern society. The electricity transmission and distribution system is an interconnected and interdependent grid. Therefore, the legislature finds that it is in the interest of public health and safety to require registration of all sellers of electricity and gas for use or consumption within Missouri.

5. It is not the intent of [this act] **sections 144.010 and 144.020, RSMo, and sections 393.297 to 393.302** to regulate the transportation of natural gas, methane, or propane in interstate commerce to the extent that such regulation is preempted by the Constitution of the United States.

393.298. As used in this section and sections 393.299, 393.301 and 393.302, the following terms mean:

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

(2) "Distribution system", the physical plant used to provide energy services including facilities, structures, wires and appurtenances thereto;

(3) "Distributor", an electrical or gas corporation as defined by section 386.020, RSMo, which is authorized by the commission [under] **pursuant to** this chapter, to provide or distribute energy services, **a rural electric cooperative organized pursuant to chapter 394, RSMo, or a political subdivision that provides energy services;**

(4) "Energy services", [the retail sale of] electricity [or natural gas, propane or methane to customers or consumers] and all associated services that are necessary for their delivery through a distribution system including but not limited to the generation, production, transmission, distribution, billing and metering of such services, **natural gas and all associated services that are necessary for its delivery through a distribution system, and propane and methane, but only if such propane or methane is delivered to the end user's site through a pipeline system;**

(5) "Gross receipts", all revenues from energy services which are subject to a business license tax of a political subdivision or a franchise agreement between a distributor and a political subdivision or a PILOT;

(6) "Person", includes any individual, firm, cooperative, copartnership, joint venture, association, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or agency, or any other group or combination acting as a unit, and the plural as well as the singular number;

(7) "PILOT", the payment or transfer of funds or services by a gas or electric utility owned by a political subdivision and used to provide government services by the political subdivision including the value of free or subsidized services, provided the value of these services are stated

annually in an ordinance as a percentage of the total gross receipts of the gas or electric system;

(8) "Political subdivision", any county, municipality or village in the state of Missouri;

(9) "Proportionate share", the seller's gross receipts multiplied by the franchise fee rate, specified in a franchise agreement between a distributor and a political subdivision or the PILOT rate as provided in any ordinance or order of the political subdivision for the corresponding use of rights-of-way, utility easements or the distribution system of a political subdivision;

(10) **"Retail user", any person who purchases energy services for his or her own use or consumption and not for resale;**

(11) **"Seller", any person who directly or indirectly uses, leases or controls the distribution system of a distributor [or a political subdivision] or any part thereof to sell energy services at retail which are consumed within the [political subdivision] state of Missouri other than a distributor [or a political subdivision] which uses its own distribution system, even if title to the energy services passes from such person to the retail user or a third party outside of the state of Missouri or before such energy services enter the distribution system. A retail user of energy services is deemed not to be a seller within the meaning of this section with respect to the energy services he or she consumes.**

393.299. 1. [No person, other than a distributor or a political subdivision operating within its territorial limits, shall provide energy services in a political subdivision which has business license taxes in effect pursuant to section 66.300, RSMo, section 71.610, RSMo, section 92.045, RSMo, section 94.110 or 94.360, RSMo, on persons who sell energy services unless the person is certified by the commission as a seller and files its agreement with the commission to pay to the political subdivision all applicable business license taxes. All retail sales of energy shall be made by a distributor, seller or a political subdivision operating within its territorial limits. No distributor or political subdivision shall provide energy services to any person on behalf of any seller unless the seller has been certified as a seller and filed its agreement with the commission to pay all applicable business license taxes and the commission has furnished such distributor or political subdivision with evidence of such certification.

2.] No person shall provide energy services, including distribution services, to a Missouri seller or retail user, and no retail user shall obtain any energy services from a person, unless the person:

(1) Is a distributor using his or her own distribution system for final delivery to the retail user; or

(2) Has been certified by the commission as a seller.

2. Upon the application of any person desiring to sell energy services to Missouri retail users, the commission shall certify such person as a seller and issue a certificate evidencing such status, and shall provide copies of certificates to all distributors, if the commission determines that such person:

(1) Has appointed a registered agent in Missouri for service of process;
(2) Has filed with the commission his or her agreement with the commission to collect and remit all state and local sales and use taxes for all energy services that have not been excluded from taxation by rule, regulation or other ruling by the department of revenue;

(3) Has posted a bond in an amount to be determined by the commission to secure his or her agreement to collect and remit such taxes; and

(4) Has satisfied any and all additional requirements imposed by law or regulations in order to provide such energy services, including but not limited to specific requirements associated with legislation which may permit retail competition in the supply of electricity within Missouri.

3. No later than February first next following the effective date of this section, each distributor shall file tariffs or implement procedures to comply with all applicable requirements of this section. The commission shall maintain a list of all sellers who have valid certificates, and such list shall be open to public inspection.

4. If, after review of such certificates or upon complaint by the state of Missouri or its political subdivisions, by any distributor, by any seller or by any party with a substantial interest, as determined by the commission, the commission determines that any certificate is invalid or the seller is not in compliance with the conditions for its issuance, the commission shall revoke the certificate and issue a notice to all affected distributors directing that they discontinue providing energy services to retail users with respect to energy services provided by such seller.

5. Upon a finding that a distributor has provided, or is providing, energy services to any retail user with respect to energy services from a person who has not been certified as a seller by the commission, the commission shall within thirty days of the finding issue an order to the distributor to discontinue providing energy services to the retail user from such person, after appropriate notice to the affected persons, such notice to be determined by the commission.

6. The commission may issue a new certificate to a person whose certificate has been revoked, provided that the commission determines that such person has satisfied the conditions set forth in subsection 2 of this section and provided that such person has paid any and all delinquent taxes, including applicable interest and penalties, to the appropriate political subdivisions. The commission shall take into account any failures to collect and remit taxes in determining the amount of the bond referred to in subdivision (3) of subsection 2 of this section.

7. No person shall provide energy services in a political subdivision if a franchise agreement is in effect between a distributor and a political subdivision with respect to energy services, or if the political subdivision owns the distribution system, unless (1) that person enters

into an agreement with the political subdivision to pay its proportionate share of the franchise fee or the PILOT, which agreement shall be supplied to the distributor, or (2) the person obtains certification from the commission as a seller and files its agreement to pay the seller's proportionate share of any franchise fee or PILOT. No distributor or political subdivision shall provide energy services to any person on behalf of any seller if a franchise agreement is in effect between a distributor and a political subdivision for energy services, or if the political subdivision owns the distribution system, unless (1) that seller has entered into an agreement with the political subdivision to pay the seller's proportionate share of the franchise fee or the PILOT, or (2) the seller has obtained certification from the commission as a seller and files its agreement to pay the seller's proportionate share of any franchise fee or PILOT. **Distributors shall file tariffs or implement procedures no later than October 1, 2000, to comply with the provisions of this subsection.**

[3.] **8.** An agreement described in [subsections 1 and 2] **subdivision (2) of subsection 2** of this section shall expressly state that the seller waives (1) its right to challenge the validity of the agreement and (2) its right to the refund of amounts paid pursuant to the agreement. Any person who otherwise has standing may challenge the validity of this section without signing such agreement by filing an action for a declaratory judgment in circuit court in the county in which the political subdivision is located. The agreement filed with the commission [under subsections 1 and 2] **pursuant to subdivision (2) of subsection 2** of this section shall be limited solely to the requirements of this subsection and the seller's agreement to pay its taxes, its proportionate share of franchise fees or PILOT's and provisions which require the seller to make available to the political subdivision or the commission its records, including the right to audit.

[4.] **9.** The commission shall establish procedures for certification **and enforcement** pursuant to chapter 536, RSMo.

[5.] **10.** Nothing in this section shall be construed to give any seller the right to use the rights-of-way, utility easements or the distribution system of any distributor or political subdivision for any purpose other than to provide energy services to the seller's retail customers.

[6.] **11.** Any agreement described in [subsection 1 or 2] **subdivision (2) of subsection 2** of this section shall cease to be effective upon the failure of the seller to fulfill any material obligation under the agreement. The appropriate political subdivision shall notify the commission of any failure to pay any amount required by any agreement described in [subsection 1 or 2] **subdivision (2) of subsection 2** of this section. [Upon such notification, the commission shall immediately notify the seller which shall cease to provide energy services] Unless [it] **the seller** requests a hearing [with the commission] within fifteen days of the date the notice is filed with the commission, **the seller shall cease to provide energy services to Missouri customers.** Upon receiving notice from the seller requesting a hearing, the commission shall conduct a hearing to determine whether all material obligations under an agreement have been

satisfied. If the commission determines that material obligations have not been satisfied, it shall notify the distributor, and the seller shall thereafter be prohibited from providing energy services from the date set forth in the notice, which shall not be less than thirty days after the commission makes its determination. The distributor shall not provide energy services [to] **with respect to energy services provided by** the seller if the distributor does not request a hearing after being notified of its material fault or if the commission determines that the seller has failed to satisfy a material obligation of the agreement and thirty days have expired from the date of the commission notification of a breach of a material obligation of any agreement authorized by [subsection 1 or 2] **subdivision (2) of subsection 2** of this section.

[7.] **12.** A seller shall be required to pay a political subdivision at a rate equal to but not greater than the rate paid by a distributor for business license taxes, franchise fees or PILOT's as provided for in an ordinance or order of the political subdivision or in a franchise agreement.

[8.] **13.** This section shall not be construed as conferring any rights on any seller to provide energy services within a political subdivision in the state of Missouri. No seller may provide energy services unless it does so in accordance with all applicable laws and in accordance with the applicable rules of the commission, **including but not limited to requirements associated with legislation permitting retail competition in the supply of electricity in the state of Missouri.** Any seller of natural gas shall file its agreement with the commission within thirty days from the passage of this section.

[9.] Any person liable for the tax under this section, upon proof that such person has paid a tax in another state or political subdivision with respect to a charge for the sale or transfer of such gas, electricity or energy services, shall be allowed a credit against the tax authorized by this section, to the extent of the amount of the tax legally due and paid in the other state or political subdivision with respect to such charge.

10.] **14.** Notwithstanding the provisions of section 1.140, RSMo, to the contrary, the provisions of this section shall be nonseverable, and if any provision is for any reason held to be invalid, such decision shall invalidate all of the remaining provisions of this section.

393.302. **1.** Notwithstanding the provisions of section 393.299, a political subdivision may by ordinance impose a tax upon persons who use or consume gas, electricity or energy services within such political subdivision but who take title to such gas, electricity or energy services outside of that political subdivision. Any person liable for the tax [under] **pursuant to this** section, upon proof that such person has paid a tax in another state or political subdivision with respect to a charge for the sale or transfer of such gas, electricity or energy services, shall be allowed a credit against the tax authorized by this section, to the extent of the amount of the tax legally due and paid in the other state or political subdivision with respect to such charge. [The tax shall be measured by all charges for gas, electricity or energy services by the person using or consuming the gas, electricity or energy services at a rate equal to the rate of the applicable

business license tax, as authorized in section 66.300, RSMo, section 71.610, RSMo, section 92.045, RSMo, section 94.110 or 94.360, RSMo, or the applicable franchise fee.]

2. The tax shall be computed by multiplying a rate equal to the applicable business license tax, as authorized by section 66.330, RSMo, section 71.610, RSMo, section 92.045, RSMo, section 94.110, RSMo, or section 94.360, RSMo, the PILOT as determined by subdivision (7) of section 393.298, or the applicable franchise fee, by all charges for gas, electricity or energy services to the person using or consuming the gas, electricity or energy services upon which a business license tax has not already been paid to the political subdivision, such charges to include any separately stated recovery of the applicable business license tax, the PILOT, or the applicable franchise fee from the customer.

3. Such tax shall not become effective unless the governing body of the political subdivision submits to the voters of that political subdivision at any public election allowed pursuant to subsection 1 of section 115.123, RSMo, a proposal to impose a tax under the provisions of this section. The question **may be submitted to the voters in connection with users of gas, users of electricity, or both, and** shall be submitted [to the voters in substantially the following form:

Shall the (political subdivision) levy a tax for the purpose of equalizing the obligations of all users of gas, electricity or energy services of a percent which is equal to the obligations of current taxpayers on the purchase price of gas, electricity or energy services sold by any person, corporation or other business entity for ultimate use in the political subdivision but not subject to the current tax?

G YES

G NO]

with language that indicates that its purpose is to equalize tax burdens by levying a tax on any person who purchases gas service, electric service or gas or electric services from a source other than the local utility company and thereby causing that person to pay a tax equal to that of a person who purchases from the local utility company. If a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the question, then the tax shall become effective on the first day of the first calendar quarter following the calendar quarter in which the election was held. If a majority of the votes cast on the question by the qualified voters voting thereon are opposed to the question, then the governing body of the political subdivision shall have no power to impose the tax authorized by this section unless and until the governing body of the political subdivision again submits the question to the qualified voters of the political subdivision and such question is approved by a majority of the qualified voters voting on the question.

4. A political subdivision which imposes a business license tax pursuant to section 66.330, RSMo, section 71.610, RSMo, section 92.045, RSMo, section 94.110, RSMo,

or section 94.360, RSMo, or which has a franchise fee agreement or PILOT, shall submit to the voters of that political subdivision the proposal specified in subsection 3 of this section as soon as practicable, but not later than April 15, 2002. The governing body of the political subdivision shall notify the public service commission of the results within twenty days of the election. The public service commission shall cease to implement the provisions of section 393.299 for any political subdivision on the effective date of the tax authorized by subsection 1 of this section for such political subdivision, unless the political subdivision certifies to the public service commission that its ordinances require the seller to collect the tax. Each political subdivision which imposes a tax authorized by subsection 1 of this section shall establish by ordinance a method for its collection, whether from the seller, distributor or retail user and which may include requiring the seller or customer to disclose sufficient information to the distributor to compute the tax. If collection of the tax is required by the seller or distributor, the seller or distributor shall be entitled to retain two percent for the cost of collection.

Section B. 1. The enactment of sections 156.010 to 156.200 shall become effective January first next following the date notice is received by the revisor of statutes from the public service commission pursuant to subsection 2 of this section or January 1, 2001, whichever later occurs, if by that date an amendment to article X of the Missouri Constitution which abolishes local taxes on electricity and natural gas upon implementation of a replacement tax has been adopted, and not otherwise.

2. The public service commission shall provide notice to the revisor of statutes that statutes have been enacted and will become effective which will allow retail customers to choose a supplier of electricity, and such notice shall be provided no later than the effective date of such statutes.

3. The repeal and reenactment of sections 153.030, 393.298, 393.299 and 393.302, and the enactment of sections 144.850, 144.853, 144.856, 144.859 and 144.861, shall become effective January first next following the date notice is received by the revisor of statutes from the public service commission pursuant to subsection 2 of this section or January 1, 2001, whichever later occurs, if by that date an amendment to article X of the Missouri Constitution which would abolish local taxes on electricity and natural gas upon implementation of a replacement tax has not been adopted, and not otherwise.

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