

SECOND REGULAR SESSION

SENATE BILL NO. 803

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS GOODE, SCHNEIDER, KINDER,
MATHEWSON, CHILDERS AND MAXWELL.

Read 1st time January 11, 2000, and 1,000 copies ordered printed.

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TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 138.420 and 153.030, RSMo 1994, and sections 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-one 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Section A. Sections 138.420 and 153.030, RSMo 1994, and sections 393.298, 393.299 and 393.302, RSMo Supp. 1999, are repealed and thirty-one new sections enacted in lieu thereof, to be known as sections 138.420, 144.850, 144.853, 144.856, 144.859, 144.861, 153.030, 156.010, 156.020,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, 393.298, 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, **property, including components thereof, with generating capacity of two megawatts or more used to generate electricity**, electric transmission lines, pipeline companies, express companies, and other similar public utility corporations, companies and firms, and of the aircraft of airlines companies 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

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

commission shall grant and hold such rehearing and fix the date thereof.

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 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 suppliers of electricity and gas service.

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 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 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, or rural electric cooperative organized under chapter 394, RSMo;

(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, and natural gas, propane or methane;

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

(6) "Retail user", any person who purchases energy services for its 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 a political subdivision or any part thereof to sell at retail energy services which are consumed within the political subdivision 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 customer or a third party outside of a political subdivision 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 it consumes.

144.856. 1. No person, other than a distributor or a political subdivision providing energy services within its territorial limits, shall provide energy services in a political subdivision unless the person appoints a registered agent in Missouri for service of process, is certified by the commission as a seller and files its 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 of the department of revenue. Retail sales of energy services by a distributor or political subdivision for consumption within Missouri and outside the territorial limits of the distributor or political subdivision shall only be made if the distributor or political subdivision is certified as a seller by the commission. No retail user shall

obtain any energy services from a person other than the distributor or political subdivision providing service within its territorial limits unless the person has been certified as a seller and filed its 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 law or rule, regulation or other ruling of the department of revenue. Electric and gas corporations shall file tariffs and electric cooperatives shall implement service conditions no later than October 1, 2000, to comply with the provisions of this section. Any electric or gas corporation which is not providing energy services with respect to energy services sold by a seller to a retail user as of October 1, 2000, shall, upon receiving a request to provide such services, file tariffs or implement service conditions within thirty days of the request. Such tariffs or service conditions shall contain provisions requiring each retail user which purchases or desires to purchase energy services from a person, other than the distributor authorized to provide energy services in the political subdivision in which such energy services will be consumed, to provide documentation to the distributor or political subdivision identifying such person and showing that such person has been certified as a seller by the commission. For purposes of meeting this requirement, the retail user shall furnish a copy of the certificate granted such person by the commission. In the event the retail user fails to provide such a certificate, the distributor or political subdivision shall be the only person authorized to provide energy services to the retail user. The commission shall maintain a current list of all sellers that have valid certificates, and such list shall be open to public inspection. 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 is not in compliance, it shall issue a notice to all affected distributors directing that they discontinue accepting such certificate and discontinue providing energy services to retail users based on that particular certificate or any subsequent certificates involving the same seller. Upon a finding that a distributor has provided or distributed, or is providing or distributing, energy services to any person who has obtained energy services from a seller which has not been certified by the commission, the commission shall within thirty days of the finding issue an order to the distributor to discontinue energy services to such person from such seller, after appropriate notice to the affected persons, such notice to be determined by the commission. The commission may exercise any additional authority as granted pursuant to chapter 386, RSMo, to enforce the provisions of this section.

2. An agreement described in subsection 1 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 pursuant to subsection 1 of this section shall be limited solely to the requirements of this subsection and the seller's agreement to pay its taxes and provisions which require the seller to make available to the political subdivision or the commission its records, including the right to audit.

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

4. 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.

5. Any agreement described in subsection 1 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 of this section. Upon such notification, the commission shall immediately notify the seller which shall cease to provide energy services unless it requests a hearing with the commission within fifteen days of the date the notice is filed with the commission. 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 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 subsection 1 of this section.

6. 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. Any seller of natural

gas shall file its agreement with the commission within thirty days from the effective date of this section.

7. 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 1 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 it receives notice from the commission that the seller's agreements have been suspended pursuant to subsection 1 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 that signs an agreement waiving its 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 January 1, 2001, 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 January 1, 2001, shall be revised annually based upon market value and the distribution of the assessed valuations to the political subdivisions shall be adjusted to recognize new or dissolved political subdivisions within which the electric power company owns transmission and distribution assets as of January 1, 2001.

6. Any cooperative formed pursuant to chapter 394, RSMo, shall, before January 1, 2001, and annually thereafter, calculate and report to the state tax commission the

number of electric transmission and distribution line miles owned by the cooperative for each taxing jurisdiction included within the service territory of the cooperative.

7. If a person places into service, on or after January 1, 2001, new electric generating property but does not provide any distribution service in the state, then the apportionment of the assessed valuation of such property shall be distributed as if the property were distributable property owned by the electrical corporation, as defined in section 386.020, RSMo, which is authorized to provide electric distribution service within that service territory. If the new electric generating property is located in an area not included within the service territory of an electrical corporation, then the apportionment of the assessed valuation of that property shall be distributed to each of the taxing jurisdictions of the state based on the proportion that the number of electric transmission and distribution line miles in that jurisdiction owned by electric cooperatives established pursuant to chapter 394, RSMo, bears to the statewide total number of electric transmission and distribution line miles of all electric cooperatives. For the purpose of this subsection, "person" includes any individual, firm, copartnership, joint adventure, association or private corporation.

8. 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 as specified in section 138.420, RSMo.

156.010. It is the intent of the general assembly through the passage of this act to provide uniformity and 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 calendar year January 1, 2000, through December 31, 2000, except as otherwise provided for PILOTs;

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

(3) "Customer class", one or more generally recognized groups of like users, as determined by the commission;

(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, having a capacity of less than two megawatts used to generate electricity;

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

(8) "Local electricity distribution service", the transportation of electricity over a local electricity distribution system for sale to customers;

(9) "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;

(10) "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;

(11) "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 pursuant to section 66.300, RSMo, section 92.045, RSMo, sections 94.110 and 94.360, RSMo, as of January 1, 2000;

(12) "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;

(13) "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;

(14) "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;

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

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

(18) "Local gas distribution service", the transportation of natural gas over a local gas distribution system for sale to customers;

(19) "Local gas distribution system", the physical plant used to distribute gas from the point it leaves an interstate 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;

(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 pursuant to sections 66.300, RSMo, 92.045, RSMo, 94.100, RSMo, or 94.360, RSMo, as of January 1, 2000;

(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 is not physically connected to a local gas distribution system;

(28) "Person", any incorporated or unincorporated entity;

(29) "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 utility;

(30) "Undistributed electricity", electricity which is not delivered by a local electricity distributor. This term shall not include electricity generated by a person for his or her 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;

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

(32) "Utility", as of January 1, 2000, 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.

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 1, 2001. Customer class shall be determined by the local electricity distributor or local gas distributor. 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 or local gas gross receipts tax for the base year from that customer class. 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 1, 2001, 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 review the data submitted by each county, city, town or village, and certify no later than December 1, 2001, 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 1, 2002, except that a local electricity franchise fee agreement or local gas franchise fee agreement which is in force prior to the effective date of that 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 1, 2002, 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 1, 2002.

156.070. The local electricity franchise fee prohibited pursuant to section 156.050 is hereby replaced as of January 1, 2002, 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.

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. 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 1, 2001. Customer class shall be determined by the local electricity distributor or local gas distributor. 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 or local gas franchise fee during the base year from that customer class. 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 1, 2001, 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 review the data submitted by each county, city, town or village, and certify no later than December 1, 2001, 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 subsection.

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.

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 1, 2001. Customer class shall be determined by the local electricity distributor or local gas distributor. 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. 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 1, 2001, 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 to the state auditor. In order to establish appropriate systems of accounting, the state auditor shall review the data submitted by each county or other political subdivision, and certify no later than December 1, 2001, 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. 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 an existing PILOT with a local electricity or gas usage charge based on the amount of electricity or therms of natural gas delivered. The local electricity or gas usage charge imposed pursuant to this section shall be imposed upon all persons using the distribution system of the political subdivision including the political subdivision at a rate per kilowatt hour of electricity delivered or therms of natural gas delivered.

2. As a replacement for the PILOT the governing body of the political subdivision shall calculate and impose a separate charge at a rate per kilowatt hour or therm for each customer class. Each political subdivision which imposes such a charge as a distributor shall certify 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 not later than July first of the year in which the charge is imposed. The base year shall be the year prior to the year the political

subdivision imposes the charge. Customer classes shall be determined by the political subdivision. The rate shall be established at a rate that would have produced revenues in the base year not 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 which imposes the replacement charge shall present data no later than October first of the year in which it imposes the replacement charge, supporting the amount of the local electricity or gas usage PILOT by customer class imposed by the political subdivision to the state auditor. To establish appropriate systems of accounting, the state auditor shall review the data submitted by each political subdivision, and certify no later than December first of the year in which it is imposed, that the amount that would have been produced by imposition of the local electricity or 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 or gas usage charge imposed by this section shall not go into effect until thirty days after the state auditor has provided the certification required by this section.

4. The local electricity or gas PILOT shall be replaced thirty days after the state auditor provides the certification required by subsection 3 of this section with a local electricity or gas usage charge based on the amount of electricity or gas delivered. The local electricity or gas usage charge imposed pursuant to this section shall be imposed by the political subdivision as a distributor at a rate per kilowatt hour of electricity delivered or therms of natural gas delivered and shall be paid to the general fund of the political subdivision.

5. The local electricity or gas usage charge imposed by a political subdivision as a distributor shall be added to the charges of the local electricity distributor or local gas distributor. The local electricity or gas usage charge imposed pursuant to this section shall be included in the cost of local electricity distribution service or local gas distribution service.

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. 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;

(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 1, 2002, with a local electricity usage tax based on the amount of electricity delivered and paid to the department of revenue. 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 31, 2002, and December thirty-first of each subsequent year.

156.160. Each local electricity distributor shall certify to the state tax commission the number of kilowatt hours delivered and the gross revenues for the base year not later than July 1, 2001.

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 department of revenue shall collect the local electricity usage tax provided for in section 156.150 and distribute the revenues therefrom in the following order: first, to the blind pension fund in an amount equal to funds received in the base year; second, any remaining funds to counties and other political subdivisions in an amount equal to funds received in the base year; and third, any remaining funds shall be distributed to public schools in accordance with the provisions of section 156.190.

156.190. Additional revenues resulting from increased consumption produced by the tax which replaced the tax levied on distributable property shall be distributed to public schools on a per student basis. These additional revenues shall not be used as substitute funds but shall supplement the total amount of money allocated for public schools in Missouri.

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, shall receive from the applicable unit of government his or her cost including reasonable attorney's fees incurred in maintaining such suit. 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.

393.298. 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, **or rural electric cooperative organized pursuant to chapter 394, RSMo;**
- (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, **and natural gas, propane or methane;**
- (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 its 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 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 customer or a third party outside of a**

political subdivision 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 it 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.] **No person, other than a distributor or a political subdivision providing energy services within its territorial limits, shall provide energy services in a political subdivision unless the person appoints a registered agent in Missouri for service of process, is certified by the commission as a seller and files its agreement with the commission to collect and remit all 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. Retail sales of energy services by a distributor or political subdivision for consumption within Missouri and outside the territorial limits of the distributor or political subdivision shall only be made if the distributor or political subdivision is certified as a seller by the commission. No retail user shall obtain any energy services from a person other than the distributor or political subdivision providing service within its territorial limits unless the person has been certified as a seller and filed its agreement with the commission to collect and remit all 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. Electric and gas corporations shall file tariffs and electric cooperatives shall implement service conditions no later than October 1, 2000, to comply with the provisions of this section. Any electric or gas corporation which is not providing energy services with respect to energy services sold by a seller to a retail user as of October 1, 2000, shall, upon receiving a request to provide such services, file tariffs or implement service conditions within thirty days of the request. Such tariffs or service conditions shall contain provisions requiring each retail user which purchases or desires to purchase energy services from a person, other than the distributor authorized to provide energy services in the political subdivision in which such energy services will be consumed, to provide documentation to the distributor or political subdivision identifying such**

person and showing that such person has been certified as a seller by the commission. For purposes of meeting this requirement, the retail user shall furnish a copy of the certificate granted such person by the commission. In the event the retail user fails to provide such a certificate, the distributor or political subdivision shall be the only person authorized to provide energy services to the retail user. The commission shall maintain a current list of all sellers that have valid certificates, and such list shall be open to public inspection. 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 is not in compliance, it shall issue a notice to all affected distributors directing that they discontinue accepting such certificate and discontinue providing energy services to retail users based on that particular certificate or any subsequent certificates involving the same seller. Upon a finding that a distributor has provided or distributed, or is providing or distributing, energy services to any person who has obtained energy services from a seller which has not been certified by the commission, the commission shall within thirty days of the finding issue an order to the distributor to discontinue energy services to such person from such seller, after appropriate notice to the affected persons, such notice to be determined by the commission. The commission may exercise any additional authority as granted pursuant to chapter 386, RSMo, to enforce the provisions of this section.

2. 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. **Electrical and gas corporations shall file tariffs and electric cooperatives shall implement service conditions no later than October 1, 2000, to comply with the provisions of this subsection.**

3. An agreement described in subsections 1 and 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] **pursuant to** subsections 1 and 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. The commission shall establish procedures for certification **and enforcement** pursuant to chapter 536, RSMo.

5. 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. Any agreement described in subsection 1 or 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 of this section. Upon such notification, the commission shall immediately notify the seller which shall cease to provide energy services unless it requests a hearing with the commission within fifteen days of the date the notice is filed with the commission. 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 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 of this section.

7. 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. 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. 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] **pursuant to** this section, upon proof that such person has paid a **business license** tax in another state or political subdivision with respect to a [charge] **business license** for the sale [or transfer of such gas, electricity or] **of** 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.**

10. 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. The enactment of sections 156.010 to 156.200 shall become effective January 1, 2002, if by that date an amendment to article X of the Missouri Constitution has been adopted

which abolishes local taxes on electricity and natural gas upon implementation of a replacement tax, and not otherwise. The repeal and reenactment of sections 138.420, 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 August 28, 2000. Sections 138.420, 144.850, 144.853, 144.856, 144.859, 144.861, 153.030, 393.298, 393.299 and 393.302 shall terminate on January 1, 2002, if by that date an amendment to article X of the Missouri Constitution has been adopted which authorizes the general assembly to abolish local taxes on electricity and natural gas.

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