

FIRST REGULAR SESSION

# SENATE BILL NO. 80

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODE.

Pre-filed December 1, 2000, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0215S.011

## AN ACT

To repeal sections 138.420, 153.030, 393.297, 393.298, 393.299 and 393.302, RSMo 2000, relating to taxation and fees for energy services, and to enact in lieu thereof eleven new sections relating to the same subject, with an effective date for certain sections.

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

Section A. Sections 138.420, 153.030, 393.297, 393.298, 393.299 and 393.302, RSMo 2000, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 138.420, 144.850, 144.853, 144.856, 144.859, 144.861, 153.030, 393.297, 393.298,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 services", all services that are associated with and necessary to the delivery of electricity, natural gas, propane or methane to the end user's site through a wire or pipeline system. Distribution services shall include the transmission and distribution of electricity, the transportation of natural gas, billing and metering, and shall exclude energy services;**
- (3) "Distribution system", the physical plant used to provide distribution services including facilities, structures, wires, pipelines and appurtenances thereto;**
- (4) "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 distribution services, a rural electric cooperative organized under chapter 394, RSMo, or a political subdivision that provides energy services;**
- (5) "Energy services", electricity, natural gas and methane and propane, but only if such methane or propane is delivered to the end user's site through a pipeline system;**
- (6) "Political subdivision", any county, municipality or village in the state of Missouri;**
- (7) "Retail user", any person who purchases energy services for his or her own use or consumption and not for resale;**
- (8) "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 sell energy services to a Missouri retail user for delivery to such retail user through a distribution system 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 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 ninety days after 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. The commission shall provide, at the time of certification, a copy of each such certificate to all Missouri distributors.**

**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 distribution 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, distribution services to any retail user with respect to energy services provided by 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 distribution services to the retail user with respect to such energy services, 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 filing 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 distribution 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 provide distribution services with respect to such energy services, 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 seller may provide energy services 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 during which this section becomes effective shall continue to be assessed, and the values distributed by the same method**

**used in that taxable year, for that taxable year and all succeeding taxable years and the state tax commission shall allocate such market value to each county based on the ratio which the line miles of such company located in that county bear to the total line miles of such company in the state of Missouri; except that, beginning with the taxable year next following the year in which the commission determines that such property is functionally separated from the regulated portion of such utility's property, the distributable property shall be assessed as an independent property, and the state tax commission shall allocate such market value to each county based on the ratio which the line miles of such company located in that county bear to the total line miles of such company in the state of Missouri; provided, however, that assessments of such property shall be revised annually based upon market value.**

**6. Other provisions of section 153.034 to the contrary notwithstanding, all property of electric power and light companies which is first assessed after the taxable year during which this section becomes effective shall be taxed as local property and the value distributed in the manner provided by law for taxation of local property, except that any such property which is "distributable property", as defined in section 153.034, shall be assessed by the state tax commission as an independent property.**

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[.]; **and**

(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 services", all services that are associated with and necessary to the delivery of electricity, natural gas, propane or methane to the end user's site through a wire or pipeline system. Distribution services shall include the transmission and distribution of electricity, the transportation of natural gas, billing and metering, and shall exclude energy services;**

(3) "Distribution system", the physical plant used to provide [energy] **distribution** services including facilities, structures, wires, **pipelines** and appurtenances thereto;

[(3)] (4) "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] **distribution** services, **a rural electric cooperative organized pursuant to chapter 394, RSMo, or a political subdivision that provides energy services;**

[(4)] (5) "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] **electricity, natural gas and methane and propane, but only if such methane or propane is delivered to the end user's site through a pipeline system;**

[(5)] (6) "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)] (7) "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)] (8) "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)] (9) "Political subdivision", any county, municipality or village in the state of Missouri;

[(9)] (10) "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;

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

[(10)] (12) "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 sell energy services to a Missouri retail user for delivery to such retail user through a distribution system 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 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 ninety days after 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. The commission shall provide, at the time of certification, a copy of each such certificate to all Missouri distributors.**

**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 distribution 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, distribution services to any retail user with respect to energy services provided by 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 distribution services to the retail user with respect to such energy services, 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 ninety days after the effective date of this section, 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] filing** 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] **distribution 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?

YES

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, 2003. 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 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 1, 2002.