

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 416
94TH GENERAL ASSEMBLY

Reported from the Special Committee on Utilities April 2, 2007 with recommendation that House Committee Substitute for Senate Bill No. 416 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

1753L.02C

AN ACT

To repeal sections 247.172, 394.312, and 516.090, RSMo, and to enact in lieu thereof three new sections relating to the statute of limitations for actions involving certain lands.

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

Section A. Sections 247.172, 394.312, and 516.090, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 247.172, 394.312, and 516.090, to read as follows:

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

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

3. Where the parties cannot agree **upon the boundaries of the water service areas that are to be set forth in the agreement**, they may, by mutual consent of all parties involved,

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

14 petition the public service commission to designate the boundaries of the water service areas to
15 be served by each party and such designations by the commission shall be binding on all such
16 parties. Petitions shall be made pursuant to the rules and regulations of the commission
17 governing applications for certificates of public convenience and necessity and the commission
18 shall [be required to] hold evidentiary hearings on all petitions so received **as required in**
19 **subsection 5 of this section.** The commission shall base its final determination **regarding such**
20 **petitions** upon a finding that the commission's designation of water service areas is in the public
21 interest.

22 [3.] **4.** Before becoming effective, all territorial agreements entered into under the
23 provisions of this section, including any subsequent amendments to such agreements, or the
24 transfer or assignment of the agreement or any rights or obligations of any party to an agreement,
25 shall receive the approval of the public service commission by report and order. Applications
26 for commission approval shall be made and notice of such filing shall be given to other water
27 suppliers pursuant to the rules and regulations of the commission governing applications for
28 certificates of public convenience and necessity. Unless otherwise ordered by the commission
29 for good cause shown, the commission shall rule on such applications not later than one hundred
30 twenty days after the application is properly filed with the secretary of the commission.

31 [4.] **5.** The commission shall hold evidentiary hearings to determine whether such
32 territorial agreements should be approved or disapproved, **except that in those instances where**
33 **the matter is resolved by a stipulation and agreement submitted to the commission by all**
34 **the parties, such hearings may be waived by agreement of the parties.** The commission may
35 approve the application if it [shall after hearing determine] **determines** that approval of the
36 territorial agreement in total is not detrimental to the public interest. Review of commission
37 decisions under this section shall be governed by the provisions of sections 386.500 to 386.550,
38 RSMo.

39 [5.] **6.** Commission approval of any territorial agreement entered into under the
40 provisions of this section shall in no way affect or diminish the rights and duties of any water
41 supplier not a party to the agreement to provide service within the boundaries designated in such
42 territorial agreement. In the event any water corporation which is not a party to the territorial
43 agreement and which is subject to the jurisdiction, control and regulation of the commission
44 under chapters 386, RSMo, and 393, RSMo, has sought or hereafter seeks authorization from the
45 commission to sell and distribute water or construct, operate and maintain water supply facilities
46 within the boundaries designated in any such territorial agreement, the commission, in making
47 its determination regarding such requested authority, shall give no consideration or weight to the
48 existence of any such territorial agreement and any actual rendition of retail water supply

49 services by any of the parties to such territorial agreement will not preclude the commission from
50 granting the requested authority.

51 [6.] **7.** The commission shall have jurisdiction to entertain and hear complaints involving
52 any commission-approved territorial agreement. Such complaints shall be brought and
53 prosecuted in the same manner as other complaints before the commission. [After hearing, if]
54 **The commission shall hold an evidentiary hearing regarding such complaints, except that**
55 **in those instances where the matter is resolved by a stipulation and agreement submitted**
56 **to the commission by all the parties, such hearings may be waived by agreement of the**
57 **parties. If** the commission determines that [the] a territorial agreement [is not] **that is the**
58 **subject of a complaint is no longer** in the public interest, it shall have the authority to suspend
59 or revoke the territorial agreement. If the commission determines that the territorial agreement
60 is still in the public interest, such territorial agreement shall remain in full force and effect.
61 Except as provided in this section, nothing in this section shall be construed as otherwise
62 conferring upon the commission jurisdiction over the service, rates, financing, accounting, or
63 management of any public water supply district or municipally owned utility, or to amend,
64 modify, or otherwise limit the rights of public water supply districts to provide service as
65 otherwise provided by law.

66 [7.] **8.** Notwithstanding the provisions of section 386.410, RSMo, the commission shall
67 by rule set a schedule of fees based upon its costs in reviewing proposed territorial agreements
68 for approval or disapproval. Responsibility for payment of the fees shall be that of the parties
69 to the proceeding as ordered by the commission in each case. The fees shall be paid to the
70 director of revenue who shall remit such payments to the state treasurer. The state treasurer shall
71 credit such payments to the public service commission fund, or its successor fund, as established
72 in section 33.571, RSMo. Nothing in this section shall be construed as otherwise conferring
73 upon the commission jurisdiction over the service, rates, financing, accounting or management
74 of any public water supply district or municipally owned utility and except as provided in this
75 section, nothing shall affect the rights, privileges or duties of public water supply districts, water
76 corporations subject to public service commission jurisdiction or municipally owned utilities.

77 **9. Notwithstanding any other provisions of this section, the commission may hold**
78 **a hearing regarding any application, complaint or petition filed under this section upon its**
79 **own motion.**

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

4 2. Such territorial agreements shall specifically designate the boundaries of the electric
5 service area of each electric service supplier subject to the agreement, any and all powers granted

6 to a rural electric cooperative by a municipality, pursuant to the agreement, to operate within the
7 corporate boundaries of that municipality, notwithstanding the provisions of section 394.020 and
8 of section 394.080 to the contrary, and any and all powers granted to a municipally owned utility,
9 pursuant to the agreement, to operate in areas beyond the corporate municipal boundaries of its
10 municipality.

11 **3.** Where the parties cannot agree **upon the boundaries of the electric service areas**
12 **that are to be set forth in the agreement**, they may, by mutual consent of all parties involved,
13 petition the public service commission to designate the boundaries of the electric service areas
14 to be served by each party and such designations by the commission shall be binding on all such
15 parties. Petitions shall be made pursuant to the rules and regulations of the commission
16 governing applications for certificates of public convenience and necessity and the commission
17 shall [be required to] hold evidentiary hearings on all petitions so received **as required in**
18 **subsection 5 of this section**. The commission shall base its final determination **regarding such**
19 **petitions** upon a finding that the commission's designation of electric service areas is in the
20 public interest.

21 [3.] **4.** The provisions of sections 386.310, RSMo, and 393.106, RSMo, and sections
22 394.160 and 394.315 to the contrary notwithstanding, before becoming effective, all territorial
23 agreements entered into under the provisions of this section, including any subsequent
24 amendments to such agreements, or the transfer or assignment of the agreement or any rights or
25 obligations of any party to an agreement, shall receive the approval of the public service
26 commission by report and order. Applications for commission approval shall be made and notice
27 of such filing shall be given to other electrical suppliers pursuant to the rules and regulations of
28 the commission governing applications for certificates of public convenience and necessity.
29 Unless otherwise ordered by the commission for good cause shown, the commission shall rule
30 on such applications not later than one hundred twenty days after the application is properly filed
31 with the secretary of the commission.

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

40 [5.] **6.** Commission approval of any territorial agreement entered into under the
41 provisions of this section shall in no way affect or diminish the rights and duties of any supplier

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

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

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

77 section nothing shall affect the rights, privileges or duties of rural electric cooperatives, electrical
78 corporations or municipally owned utilities.

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

516.090. Nothing contained in any statute of limitation shall extend to any lands given,
2 granted, sequestered, or appropriated to any public, pious, or charitable use, or to any lands
3 belonging to this state. This section shall be construed to prohibit any judgment granting adverse
4 possession to a claimant where the defendant possesses an interest in land described in a
5 recorded deed and is a public utility as defined in section 386.020, RSMo, **or is a rural electric**
6 **cooperative as defined in chapter 394, RSMo, or is an organization operating under section**
7 **394.200, RSMo.**

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Bill

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