

FIRST REGULAR SESSION

SENATE BILL NO. 406

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS CROWELL AND MAYER.

Read 1st time March 1, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1745S.011

AN ACT

To repeal sections 386.370, 393.135, and 620.010, RSMo, and to enact in lieu thereof five new sections relating to utilities, with an emergency clause.

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

Section A. Sections 386.370, 393.135, and 620.010, RSMo, are repealed
2 and five new sections enacted in lieu thereof, to be known as sections 386.370,
3 386.715, 393.135, 620.010, and 1, to read as follows:

386.370. 1. The commission shall, prior to the beginning of each fiscal
2 year beginning with the fiscal year commencing on July 1, 1947, make an
3 estimate of the expenses to be incurred by it during such fiscal year reasonably
4 attributable to the regulation of public utilities as provided in chapters 386, 392
5 and 393 and shall also separately estimate the amount of such expenses directly
6 attributable to such regulation of each of the following groups of public utilities:
7 Electrical corporations, gas corporations, water corporations, heating companies
8 and telephone corporations, telegraph corporations, sewer corporations, and any
9 other public utility as defined in section 386.020, as well as the amount of such
10 expenses not directly attributable to any such group.

11 2. The commission shall allocate to each such group of public utilities the
12 estimated expenses directly attributable to the regulation of such group and an
13 amount equal to such proportion of the estimated expenses not directly
14 attributable to any group as the gross intrastate operating revenues of such group
15 during the preceding calendar year bears to the total gross intrastate operating
16 revenues of all public utilities subject to the jurisdiction of the commission, as
17 aforesaid, during such calendar year. The commission shall then assess the
18 amount so allocated to each group of public utilities, subject to reduction as

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

19 herein provided, to the public utilities in such group in proportion to their
20 respective gross intrastate operating revenues during the preceding calendar
21 year, except that the total amount so assessed to all such public utilities shall not
22 exceed one-fourth of one percent of the total gross intrastate operating revenues
23 of all utilities subject to the jurisdiction of the commission.

24 3. The commission shall render a statement of such assessment to each
25 such public utility on or before July first and the amount so assessed to each such
26 public utility shall be paid by it to the director of revenue in full on or before July
27 fifteenth next following the rendition of such statement, except that any such
28 public utility may at its election pay such assessment in four equal installments
29 not later than the following dates next following the rendition of said statement,
30 to wit: July fifteenth, October fifteenth, January fifteenth and April
31 fifteenth. The director of revenue shall remit such payments to the state
32 treasurer.

33 4. The state treasurer shall credit such payments to a special fund, which
34 is hereby created, to be known as "The Public Service Commission Fund", which
35 fund, or its successor fund created pursuant to section 33.571, shall be devoted
36 solely to the payment of expenditures actually incurred by the commission and
37 attributable to the regulation of such public utilities subject to the jurisdiction of
38 the commission, as aforesaid. Any amount remaining in such special fund or its
39 successor fund at the end of any fiscal year shall not revert to the general
40 revenue fund, but shall be applicable [by appropriation of the general assembly]
41 to the payment of such expenditures of the commission in the succeeding fiscal
42 year and shall be applied by the commission to the reduction of the amount to be
43 assessed to such public utilities in such succeeding fiscal year, such reduction to
44 be allocated to each group of public utilities in proportion to the respective gross
45 intrastate operating revenues of the respective groups during the preceding
46 calendar year.

47 5. In order to enable the commission to make the allocations and
48 assessments herein provided for, each public utility subject to the jurisdiction of
49 the commission as aforesaid shall file with the commission, within ten days after
50 August 28, 1996, and thereafter on or before March thirty-first of each year, a
51 statement under oath showing its gross intrastate operating revenues for the
52 preceding calendar year, and if any public utility shall fail to file such statement
53 within the time aforesaid the commission shall estimate such revenue which
54 estimate shall be binding on such public utility for the purpose of this section.

386.715. 1. The public counsel shall, prior to the beginning of
2 each fiscal year, make available to the commission an estimate of the
3 expenses to be incurred by the public counsel during such fiscal year,
4 reasonably attributable to his or her responsibilities with respect to
5 public utilities under sections 386.700 and 386.710 and shall also
6 separately estimate the amount of such expenses directly attributable
7 to such responsibilities with respect to each of the following groups of
8 public utilities: electrical corporations, gas corporations, water
9 corporations, heating companies, telephone corporations, telegraph
10 corporations, sewer corporations, and any other public utility as
11 defined in section 386.020, as well as the amount of such expenses not
12 directly attributable to any such group.

13 2. The public counsel shall allocate to each such group of public
14 utilities the estimated expenses directly attributable to his or her
15 responsibilities under sections 386.700 and 386.710 with respect to such
16 group and an amount equal to such proportion of the estimated
17 expenses not directly attributable to any group as the gross intrastate
18 operating revenues of such group during the three preceding calendar
19 years bears to the total gross intrastate operating revenues of all public
20 utilities subject to the jurisdiction of the commission during such
21 calendar years. The amount so allocated to telephone corporations
22 shall not exceed three percent of the total estimated expenses directly
23 attributable to the public counsel's responsibilities under sections
24 386.700 and 386.710. The commission shall then assess, on behalf of the
25 public counsel, the amount so allocated to each group of public
26 utilities, subject to reduction as provided in this section, to the public
27 utilities in such group in proportion to its respective gross intrastate
28 operating revenues during the preceding calendar year. The total
29 amount so assessed to all such public utilities shall not exceed five
30 hundredths of one percent of the total gross intrastate operating
31 revenues of all utilities subject to the jurisdiction of the
32 commission. Nothing in this section shall authorize the commission to
33 determine how the public counsel allocates the estimated expenses
34 directly attributable to his or her responsibilities under sections
35 386.700 and 386.710 with respect to public utilities described in
36 subsection 1 of this section or how the assessment imposed under this
37 section is spent by the public counsel.

38 **3. On behalf of the public counsel, the commission shall render**
39 **a statement of such assessment to each such public utility on or before**
40 **July first and the amount so assessed to each such public utility shall**
41 **be paid by it to the director of revenue in full on or before July**
42 **fifteenth next following the rendition of such statement, except that**
43 **any such public utility may at its election pay such assessment in four**
44 **equal installments not later than the following dates next following the**
45 **rendition of such statement, to wit: July fifteenth, October fifteenth,**
46 **January fifteenth, and April fifteenth. The director of revenue shall**
47 **remit such payments to the state treasurer.**

48 **4. The state treasurer shall credit such payments to a special**
49 **fund, which is hereby created, to be known as "The Public Counsel**
50 **Fund", which fund, or its successor fund created under section 33.571,**
51 **shall be devoted solely to the payment of expenditures actually**
52 **incurred by the public counsel and attributable to his or her**
53 **responsibilities under sections 386.700 and 386.710 with respect to such**
54 **public utilities subject to the jurisdiction of the commission and shall**
55 **consist of all gifts, donations, appropriations, transfers, payments, and**
56 **bequests to the fund and investment income on the fund. Any amount**
57 **remaining in such special fund or its successor fund at the end of any**
58 **fiscal year shall not revert to the general revenue fund, but shall be**
59 **applicable to the payment of such expenditures of the public counsel**
60 **in the succeeding fiscal year and shall be applied by the public counsel**
61 **to the reduction of the amount to be assessed to such public utilities in**
62 **such succeeding fiscal year, such reduction to be allocated to each**
63 **group of public utilities in proportion to the respective gross intrastate**
64 **operating revenues of the respective groups during the preceding**
65 **calendar year.**

66 **5. In order to enable the public counsel to make the allocations**
67 **and assessments provided for in this section, each public utility subject**
68 **to the jurisdiction of the commission shall file with the commission on**
69 **or before March thirty-first of each year, a statement under oath**
70 **showing its gross intrastate operating revenues for the preceding**
71 **calendar year, and if any public utility shall fail to file such statement**
72 **within the time established in this subsection, the commission shall**
73 **estimate such revenue. Such estimate shall be binding on such public**
74 **utility for the purpose of this section.**

393.135. 1. Any charge made or demanded by an electrical corporation
2 for service, or in connection therewith, which is based on the costs of construction
3 in progress upon any existing or new facility of the electrical corporation, or any
4 other cost associated with owning, operating, maintaining, or financing any
5 property before it is fully operational and used for service, is unjust and
6 unreasonable, and is prohibited.

7 **2. Notwithstanding the provisions of subsection 1 of this section,**
8 **whenever an electrical corporation obtains an early site permit granted**
9 **by the United States Nuclear Regulatory Commission or a successor**
10 **organization, the commission shall allow recovery of the electrical**
11 **corporation's cost of financing the early site permit in the manner**
12 **provided for in subsection 3 of this section, for all prudently incurred**
13 **expenditures directly resulting from the electrical corporation's**
14 **application for such permit except that the electrical corporation shall**
15 **not recover return on equity for such expenditures. The electrical**
16 **corporation shall use its best efforts to minimize the cost of applying**
17 **for such permit. The total amount of expenditures financed under this**
18 **subsection shall not exceed forty million dollars.**

19 **3. Recovery of the financing cost identified in subsection 2 of**
20 **this section shall be provided through the electrical corporation's rates**
21 **or charges. Recovery shall commence with the effective date of tariffs**
22 **approved by the commission in the electrical corporation's first rate**
23 **proceeding that is filed after the Nuclear Regulatory Commission's**
24 **grant of the early site permit is final and nonappealable. Recovery**
25 **shall be allowed only for expenditures directly resulting from the**
26 **electrical corporation's application for such permit that the commission**
27 **has found to be prudent and reasonable after consideration of all**
28 **relevant factors in a general rate case. The electrical corporation shall**
29 **have the burden of establishing the prudence of such expenditures.**

30 **4. The commission shall require that any profits, accruing to an**
31 **electrical corporation from the sale or transfer of the early site permit,**
32 **including explicit or implicit consideration in joint development of a**
33 **nuclear generating plant, be refunded to ratepayers with interest to the**
34 **extent the costs of the early site permit have been recovered in rates.**

35 **5. If the electrical corporation does not construct or participate**
36 **in construction of a nuclear generating plant at the site for which an**
37 **early site permit is granted that is fully operational and used to**

38 **provide service within ten years after the Nuclear Regulatory**
39 **Commission's grant of the early site permit is final and nonappealable,**
40 **the commission shall require that any financing cost recovery under**
41 **subsection 3 of this section be refunded to the electrical corporation's**
42 **customers with interest over a period of five years.**

43 **6. There is hereby established the "Governor's Task Force on**
44 **Electrical Generation Options". The task force shall review evidence**
45 **regarding generation options, including nuclear power options other**
46 **than a traditional large baseload nuclear plant, including evidence**
47 **regarding system benefits, rate impact, and financing options. The task**
48 **force shall issue a report on or before September 30, 2011. The**
49 **governor shall appoint members on the task force, which shall include**
50 **representatives of the commission, the public counsel, industrial**
51 **consumers, commercial consumers, other consumer groups, investor-**
52 **owned utilities, rural electric cooperatives, and municipal utilities.**

620.010. 1. There is hereby created a "Department of Economic
2 Development" to be headed by a director appointed by the governor, by and with
3 the advice and consent of the senate. All of the general provisions, definitions
4 and powers enumerated in section 1 of the Omnibus State Reorganization Act of
5 1974 shall continue to apply to this department and its divisions, agencies and
6 personnel.

7 2. The powers, duties and functions vested in the public service
8 commission, chapters 386, 387, 388, 389, 390, 392, 393, and others, and the
9 administrative hearing commission, sections 621.015 to 621.198 and others, are
10 transferred by type III transfers to the department of economic development. The
11 director of the department is directed to provide and coordinate staff and
12 equipment services to these agencies in the interest of facilitating the work of the
13 bodies and achieving optimum efficiency in staff services common to all the
14 bodies. Nothing in the Reorganization Act of 1974 shall prevent the chairman of
15 the public service commission from presenting additional budget requests or from
16 explaining or clarifying its budget requests to the governor or general assembly.

17 3. The powers, duties and functions vested in the office of the public
18 counsel are transferred by type III transfer to the department of economic
19 development. [Funding for the general counsel's office shall be by general
20 revenue.]

21 4. The public service commission is authorized to employ such staff as it

22 deems necessary for the functions performed by the general counsel other than
23 those powers, duties and functions relating to representation of the public before
24 the public service commission.

25 5. All the powers, duties and functions vested in the tourism commission,
26 chapter 258 and others, are transferred to the "Division of Tourism", which is
27 hereby created, by type III transfer.

28 6. All the powers, duties and functions of the department of community
29 affairs, chapter 251 and others, not otherwise assigned, are transferred by type
30 I transfer to the department of economic development, and the department of
31 community affairs is abolished. The director of the department of economic
32 development may assume all the duties of the director of community affairs or
33 may establish within the department such subunits and advisory committees as
34 may be required to administer the programs so transferred. The director of the
35 department shall appoint all members of such committees and heads of subunits.

36 7. The state council on the arts, chapter 185 and others, is transferred by
37 type II transfer to the department of economic development, and the members of
38 the council shall be appointed by the director of the department.

39 8. The Missouri housing development commission, chapter 215, is
40 assigned to the department of economic development, but shall remain a
41 governmental instrumentality of the state of Missouri and shall constitute a body
42 corporate and politic.

43 9. All the authority, powers, duties, functions, records, personnel,
44 property, matters pending and other pertinent vestiges of the division of
45 manpower planning of the department of social services are transferred by a type
46 I transfer to the "Division of Job Development and Training", which is hereby
47 created, within the department of economic development. The division of
48 manpower planning within the department of social services is abolished. The
49 provisions of section 1 of the Omnibus State Reorganization Act of 1974,
50 Appendix B, relating to the manner and procedures for transfers of state agencies
51 shall apply to the transfers provided in this section.

52 10. Any rule or portion of a rule, as that term is defined in section
53 536.010, that is created under the authority delegated in this section shall
54 become effective only if it complies with and is subject to all of the provisions of
55 chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
56 nonseverable and if any of the powers vested with the general assembly pursuant
57 to chapter 536 to review, to delay the effective date, or to disapprove and annul

58 a rule are subsequently held unconstitutional, then the grant of rulemaking
59 authority and any rule proposed or adopted after August 28, 2008, shall be
60 invalid and void.

**Section 1. If any section, subsection, subdivision, paragraph,
2 sentence, or clause of sections 386.370, 386.715, or 393.135 is held to be
3 invalid or unconstitutional, such decision shall not affect any
4 remaining portion, section, or part thereof which can be given effect
5 without the invalid provision.**

Section B. Because immediate action is necessary to ensure adequate
2 funding for public representation in matters related to public utilities and to
3 ensure sufficient and affordable energy provision to citizens of the state, section
4 A of this act is deemed necessary for the immediate preservation of the public
5 health, welfare, peace, and safety, and is hereby declared to be an emergency act
6 within the meaning of the constitution, and section A of this act shall be in full
7 force and effect upon its passage and approval.

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Bill

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