

SECOND REGULAR SESSION

# SENATE BILL NO. 685

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time January 18, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

4780S.02I

## AN ACT

To repeal section 386.210, RSMo, and to enact in lieu thereof one new section relating to ex parte communications with the public service commission.

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

Section A. Section 386.210, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 386.210, to read as follows:

386.210. 1. The commission may confer in person, or by correspondence,  
2 by attending conventions, or in any other way, with the members of the public,  
3 any public utility or similar commission of this and other states and the United  
4 States of America, or any official, agency or instrumentality thereof, on any  
5 matter relating to the performance of its duties.

6 2. Such communications may address any issue that at the time of such  
7 communication is not the subject of a case that has been filed with the  
8 commission.

9 3. **Notwithstanding the provisions of subsection 2 of this section,**  
10 **at no time shall any** such communications [may also] address substantive or  
11 procedural matters that are the subject of a pending filing or case [in which no  
12 evidentiary hearing has been scheduled, provided that], **or that are likely to**  
13 **become the subject of a pending filing or case, unless** the communication:

14 (1) Is made at a public agenda meeting of the commission **or other**  
15 **forum** where such matter has been posted in advance as an item for discussion  
16 or decision **so as to provide notice to the office of public counsel, affected**  
17 **parties, and members of the public; and**

18 (2) [Is made at a forum where representatives of the public utility affected  
19 thereby, the office of public counsel, and any other party to the case are present;

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

20 or

21           (3)] **The commission causes to be prepared a full record of such**  
22 **meeting or discussion by audio recording, video recording, or written**  
23 **transcript to be made available to the public subject to the**  
24 **commission's rules governing confidential and proprietary information.**

25           **4. If any communication under subsection 3 of this section is**  
26 **made:**

27           **(1) Unintentionally** outside such agenda meeting or forum, [is] **the**  
28 **communication shall be** subsequently disclosed to the public utility, the office  
29 of the public counsel, [and] any [other] **affected party [to the case], and the**  
30 **public** in accordance with the following procedure:

31           (a) If the communication is written, the person or party making the  
32 communication shall no later than the next business day following the  
33 communication file a copy of the written communication in the official case file  
34 of the pending filing or case and serve it upon all parties of record;

35           (b) If the communication is oral, the party making the oral communication  
36 shall no later than the next business day following the communication file a  
37 memorandum in the official case file of the pending case disclosing the  
38 communication and serve such memorandum on all parties of record. The  
39 memorandum must contain a summary of the substance of the communication  
40 and not merely a listing of the subjects covered;

41           **(2) Intentionally outside such agenda meeting or forum, the**  
42 **commission shall implement appropriate protective measures to**  
43 **prevent any person from gaining any unfair advantage as a result of**  
44 **such communication in any commission proceeding. Such measures**  
45 **may include restrictions on the presentation of evidence, recusal of the**  
46 **commissioner or commissioners involved in the communication, or**  
47 **restrictions on the presentation of evidence to the commission in future**  
48 **proceedings by the party engaged in the communication.**

49           **[4.] 5.** Nothing in this section or any other provision of law shall be  
50 construed as imposing any limitation on the free exchange of ideas, views, and  
51 information between any person and the commission or any commissioner,  
52 provided that such communications relate to matters of general regulatory policy  
53 and do not address the merits of the specific facts, evidence, claims, or positions  
54 presented or taken in a pending case unless such communications comply with  
55 the provisions of subsection 3 of this section.

56 [5.] 6. The commission and any commissioner may also advise any  
57 member of the general assembly or other governmental official of the issues or  
58 factual allegations that are the subject of a pending case, provided that the  
59 commission or commissioner does not express an opinion as to the merits of such  
60 issues or allegations, and may discuss in a public agenda meeting with parties to  
61 a case in which an evidentiary hearing has been scheduled, any procedural  
62 matter in such case or any matter relating to a unanimous stipulation or  
63 agreement resolving all of the issues in such case.

64 [6.] 7. The commission may enter into and establish fair and equitable  
65 cooperative agreements or contracts with or act as an agent or licensee for the  
66 United States of America, or any official, agency or instrumentality thereof, or  
67 any public utility or similar commission of other states, that are proper,  
68 expedient, fair and equitable and in the interest of the state of Missouri and the  
69 citizens thereof, for the purpose of carrying out its duties pursuant to section  
70 386.250 as limited and supplemented by section 386.030 and to that end the  
71 commission may receive and disburse any contributions, grants or other financial  
72 assistance as a result of or pursuant to such agreements or contracts. Any  
73 contributions, grants or other financial assistance so received shall be deposited  
74 in the public service commission utility fund or the state highway commission  
75 fund depending upon the purposes for which they are received.

76 [7.] 8. The commission may make joint investigations, hold joint hearings  
77 within or without the state, and issue joint or concurrent orders in conjunction  
78 or concurrence with any railroad, public utility or similar commission, of other  
79 states or the United States of America, or any official, agency or any  
80 instrumentality thereof, except that in the holding of such investigations or  
81 hearings, or in the making of such orders, the commission shall function under  
82 agreements or contracts between states or under the concurrent power of states  
83 to regulate interstate commerce, or as an agent of the United States of America,  
84 or any official, agency or instrumentality thereof, or otherwise.

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