

SECOND REGULAR SESSION

# SENATE BILL NO. 759

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR LAGER.

Read 1st time February 7, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

5616S.01I

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### AN ACT

To repeal sections 393.1020, 393.1025, 393.1030, 393.1040, and 393.1045, and to enact  
in lieu thereof four new sections relating to renewable energy.

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

Section A. Sections 393.1020, 393.1025, 393.1030, 393.1040, and 393.1045,  
2 RSMo, are repealed and four new sections enacted in lieu thereof, to be known as  
3 sections 393.1025, 393.1030, 393.1034, and 393.1039, to read as follows:

393.1025. As used in sections [393.1020] **393.1030** to [393.1030]  
2 **393.1039**, the following terms mean:

3 (1) "Commission", the public service commission;  
4 (2) "Department", the department of natural resources;  
5 (3) "Electric utility", any electrical corporation as defined by section  
6 386.020;

7 (4) "Mandate", the portfolio requirements provided for in  
8 subsection 1 of section **393.1030**;

9 (5) "Renewable energy credit" or "REC", a tradeable certificate of proof  
10 that one megawatt-hour of electricity has been generated from renewable energy  
11 sources; and

12 [(5)] (6) "Renewable energy resources", electric energy produced from  
13 wind, solar thermal sources, photovoltaic cells and panels, dedicated crops grown  
14 for energy production, cellulosic agricultural residues, plant residues, methane  
15 from landfills, from agricultural operations, or from wastewater treatment,  
16 thermal depolymerization or pyrolysis for converting waste material to energy,  
17 clean and untreated wood such as pallets, hydropower (not including pumped  
18 storage) that does not require a new diversion or impoundment of water [and

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

19 that] **where each generator at the plant site** has a nameplate rating of ten  
20 megawatts or less, fuel cells using hydrogen produced by one of the above-named  
21 renewable energy sources, and other sources of energy not including nuclear that  
22 become available after November 4, 2008, and are certified as renewable [by rule]  
23 by the department.

393.1030. 1. The commission shall, in consultation with the department,  
2 prescribe by rule a portfolio requirement for all electric utilities to generate or  
3 purchase electricity generated from renewable energy resources. Such portfolio  
4 requirement shall, **unless reduced as provided for in subsection 3 of this**  
5 **section**, provide that electricity from renewable energy resources shall constitute  
6 the following portions of each electric utility's sales:

7 (1) No less than [two] **seven** percent for calendar years [2011 through  
8 2013] **2014 to 2017**;

9 (2) No less than [five] **twelve** percent for calendar years [2014 through  
10 2017] **2018 to 2020**; and

11 (3) No less than [ten] **fifteen** percent [for calendar years 2018 through  
12 2020; and

13 (4) No less than fifteen percent in each calendar year beginning in 2021.  
14 At least two percent of each portfolio requirement shall be derived from solar  
15 energy] **in each calendar year beginning in 2021**. The [portfolio  
16 requirements] **mandate percentages** shall apply to all power sold to **an**  
17 **electric utility's** Missouri [consumers] **retail customers** whether such power  
18 is self-generated or purchased from another source in or outside of this state. [A  
19 utility may comply with the standard in whole or in part by purchasing RECs.]  
20 **RECs associated with energy from a renewable energy resource located**  
21 **in any of the continental forty-eight states shall qualify for purposes of**  
22 **an electric utility's obligation to meet the mandate applicable through**  
23 **December 31, 2016. Only RECs directly associated with energy from a**  
24 **renewable energy resource located in Missouri or located in a state that**  
25 **shares a state boundary with Missouri shall qualify for purposes of an**  
26 **electric utility's obligation to meet the mandate percentages applicable**  
27 **on or after January 1, 2017.** Each kilowatt-hour of eligible energy generated  
28 in Missouri shall count as 1.25 kilowatt-hours for purposes of compliance.

29 2. [The commission, in consultation with the department and within one  
30 year of November 4, 2008, shall select a program for tracking and verifying the  
31 trading of renewable energy credits.] An unused [credit] **REC** may exist for up

32 to three years from the date of its creation. [A credit] **An REC** may be used only  
33 once to comply with [sections 393.1020 to 393.1030] **the mandate** and may not  
34 also be used to satisfy any similar nonfederal requirement. An electric utility  
35 may not use [a credit] **an REC** derived from a green pricing  
36 program. [Certificates] **RECs** from net-metered sources shall initially be owned  
37 by the customer-generator. The commission, except where the department is  
38 specified, shall make whatever rules are necessary to [enforce the renewable  
39 energy standard. Such rules shall include:

40 (1) A maximum average retail rate increase of one percent determined by  
41 estimating and comparing the electric utility's cost of compliance with least-cost  
42 renewable generation and the cost of continuing to generate or purchase  
43 electricity from entirely nonrenewable sources, taking into proper account future  
44 environmental regulatory risk including the risk of greenhouse gas regulation;

45 (2)] **implement the provisions of this section.**

46 3. (1) **Notwithstanding the mandate, an electric utility shall have**  
47 **no obligation to provide electricity from renewable energy resources**  
48 **in any calendar year to the extent the net cost of doing so exceeds the**  
49 **amount the electric utility may charge to its customers via the**  
50 **surcharge authorized in this subsection. The cost of renewable energy**  
51 **resources that would have been built or contracted for regardless of the**  
52 **mandate because of its favorable cost or operational characteristics**  
53 **when compared to other possible energy resources shall not be**  
54 **included in the net cost of providing electricity from renewable**  
55 **resources calculation used to determine the surcharge authorized in**  
56 **this subsection or to determine the caps provided for in this**  
57 **subsection. Except for the cost of renewable energy resources that**  
58 **would have been built or contracted for regardless of the mandate**  
59 **because of its favorable cost or operational characteristics when**  
60 **compared to other possible energy resources, the surcharge authorized**  
61 **in this subsection for any calendar year shall include the net costs of**  
62 **providing electricity from renewable energy resources determined as**  
63 **provided in subdivision (2) of this subsection. Notwithstanding the**  
64 **surcharge authorized in this subsection for any calendar year,**  
65 **including the net costs of providing electricity from renewable energy**  
66 **resources, the sums charged to customers via the surcharge authorized**  
67 **in this subsection in any calendar year shall not exceed an amount**

68 designed to recover an additional one percent of the electric utility's  
69 base rate portion of its revenue requirement used to calculate rates in  
70 its most recent general rate case completed at the commission prior to  
71 the commencement of the calendar year. The electric utility shall be  
72 permitted to recover the net costs through equal percentage surcharges  
73 applied to base rates annually outside of the general rate case process,  
74 effective January 1, 2013, and each calendar year thereafter, based on  
75 the electric utility's estimate of revenues to be received from retail  
76 customers during the applicable calendar year. Any overrecovery or  
77 underrecovery of the net costs in any calendar year due to variations  
78 in revenues from the amount estimated by the electric utility shall be  
79 reflected in an adjustment to the surcharge in effect for the following  
80 calendar year, which adjustment shall be made to that surcharge  
81 effective May first of the following calendar year. Such adjustment  
82 shall be in an amount designed to recover, or return, the prior year's  
83 overrecovery or underrecovery by December thirty-first of the calendar  
84 year in which the adjustment is made, based upon the electric utility's  
85 estimated revenues for that calendar year, and it shall not be subject  
86 to the one percent limitation provided for in this subdivision.

87 (2) (a) The calculation of the gross cost of providing electricity  
88 from renewable energy resources for each calendar year shall be  
89 determined by adding the following costs associated with investments  
90 in renewable energy resources and contractual commitments for RECs  
91 or electricity from renewable energy resources if the investment was  
92 placed in service, or if the contractual commitment for the RECs or  
93 electricity from the resource was made, on or after January 1, 2012:

94 a. Costs associated with owning, operating, and maintaining such  
95 renewable energy resources, including, but not limited to:

96 (i) A return on the electric utility's net investment in such  
97 resources at the rate of return on rate base specified in the electric  
98 utility's most recent general rate proceeding where such return was  
99 specified and where such proceeding was concluded at the commission  
100 prior to the beginning of that calendar year;

101 (ii) Related income taxes and property taxes;

102 (iii) Related operation and maintenance expenses, including  
103 applicable administrative and general expenses; and

104 (iv) Applicable depreciation expenses;

105           b. Cost of RECs;  
106           c. Cost of solar rebates;  
107           d. Cost to purchase electricity;  
108           e. Any applicable administrative and general costs;  
109           f. Additional costs incurred to integrate a renewable energy  
110 resource due to its intermittent operating characteristics; and  
111           g. Other costs of compliance.

112           (b) The net cost of providing electricity from a renewable energy  
113 resource placed in service by the electric utility on or after January 1,  
114 2012, or energy from renewable energy resources contractually  
115 committed to on or after such date, shall be calculated by taking the  
116 sum of subparagraphs a. to g. of paragraph (a) of this subdivision and  
117 subtracting from such sum only the value of the energy produced from  
118 such resources. The value of the energy produced from such resources  
119 shall be calculated by multiplying the energy produced from such  
120 resources by the time differentiated per kilowatt-hour price in the  
121 electric utility's energy rate tariffs, where available and as adjusted for  
122 losses, filed biannually with the commission under the provisions of 4  
123 CSR 240-3.155. Where such time differentiated rates are not available,  
124 then the per kilowatt-hour price in the electric utility's energy rate  
125 tariffs, as adjusted for losses, under the provisions of 4 CSR 240-3.155  
126 shall be used.

127           4. Penalties of at least twice the [average market value of renewable  
128 energy credits] per kilowatt-hour prices specified in paragraph (b) of  
129 subdivision (2) of subsection 3 of this section, as adjusted for losses, in  
130 the electric utility's tariff filings under 4 CSR 240-3.155, may be  
131 assessed for [the] a given compliance period for failure to meet the [targets of  
132 subsection 1] mandate, as such mandate may be reduced by subsection  
133 3 of this section. [An electric utility will be excused if it proves to the  
134 commission that] Such penalties shall not apply if the failure was due to  
135 events beyond [its] the electric utility's reasonable control that could not have  
136 been reasonably mitigated[, or that the maximum average retail rate increase has  
137 been reached]. Penalties shall not be recovered from customers. Amounts  
138 forfeited under this section shall be remitted to the department to purchase  
139 renewable energy credits needed for compliance. Any excess forfeited revenues  
140 shall be used by the department's energy center solely for renewable energy and  
141 energy efficiency projects;

142       [(3)] **5.** [Provisions for] **Electric utilities shall submit to the**  
143 **commission** an annual report [to be filed by each electric utility] in a format  
144 sufficient to document its progress in meeting the [targets;] **requirements**  
145 **provided for in subsection 1 of this section.**

146       [(4) Provision for recovery outside the context of a regular rate case of  
147 prudently incurred costs and the pass-through of benefits to customers of any  
148 savings achieved by an electrical corporation in meeting the requirements of this  
149 section.

150       **3.] 6. Except for those electric utilities that qualify for an**  
151 **exemption under section 393.1050, starting January 1, 2013**, each electric  
152 utility shall make available to its retail customers a [standard] **solar** rebate  
153 [offer of at least two dollars per installed watt] for new or expanded solar electric  
154 systems sited on customers' premises, up to a maximum of twenty-five kilowatts  
155 per system, that [become] **were confirmed by the electric utility to be**  
156 **installed and operational after [2009] 2012**. The solar rebate shall be two  
157 **dollars per watt for qualifying systems confirmed by the electric utility**  
158 **to be installed and operational in 2013**, with the rebate per watt to be  
159 **reduced by twenty-five cents in each succeeding year until the rebate**  
160 **is eliminated for systems that have not been confirmed by the electric**  
161 **utility to be installed and operational by December 31, 2020**. The solar  
162 rebates to be paid under this subsection shall only be issued to  
163 **qualified retail customers of the electric utility, and eligibility shall be**  
164 **determined based on the requirements contained in the appropriate**  
165 **solar rebate tariff or rider filed by the utility with the commission**. The  
166 **solar rebate shall be paid within sixty days of the electric utility's**  
167 **confirmation that the system is installed and operating**. Electric  
168 **utilities shall not be obligated to offer rebate payments for new or**  
169 **expanded solar electric systems that were not confirmed by the electric**  
170 **utility to have been installed and operational by December 31, 2020**. As  
171 **a condition of receiving a rebate, customers shall transfer to the**  
172 **electric utility all rights, title, and interest in and to the RECs**  
173 **associated with the new or expanded solar electric system that**  
174 **qualified the customer for the solar rebate for a period of ten years**  
175 **from the date the electric utility confirmed that the solar electric**  
176 **system was installed and operational**. RECs transferred to the electric  
177 **utility under this subsection may be used by the electric utility to meet**

178 the mandate provided for in subsection 1 of this section. The electric  
179 utility may, at its sole discretion, treat the solar rebate payments as a  
180 capital expenditure instead of an expense for purposes of calculating  
181 the net cost of providing electricity from a renewable energy resource  
182 under subdivision (2) of subsection 3 of this section during the time  
183 period that the electric utility owns the RECs associated with the solar  
184 electric system.

185 [4.] 7. The department shall, in consultation with the commission,  
186 establish by rule a certification process for electricity generated from renewable  
187 resources and used to fulfill the requirements of subsection 1 of this  
188 section. Certification criteria for renewable energy generation shall be  
189 determined by factors that include fuel type, technology, and the environmental  
190 impacts of the generating facility. Renewable energy facilities [shall not cause  
191 undue adverse air, water, or land use impacts, including impacts associated with  
192 the gathering of generation feedstocks] **meeting all federal, state, and local**  
193 **laws and regulations shall be deemed to have met all certification**  
194 **requirements.** If any amount of fossil fuel is used with renewable energy  
195 resources, only the portion of electrical output attributable to renewable energy  
196 resources shall be used to fulfill the [portfolio requirements] **mandate.**

197 [5.] 8. In carrying out the provisions of this section, the commission and  
198 the department shall include methane generated from the anaerobic digestion of  
199 farm animal waste and thermal depolymerization or pyrolysis for converting  
200 waste material to energy as renewable energy resources for purposes of this  
201 section.

**393.1034. Notwithstanding the commission's decision in**  
2 **commission Case No. EO-2005-0329, an electric utility shall be entitled**  
3 **to utilize the cost recovery mechanism provided for in section 393.1030,**  
4 **and the commission shall allow for such recovery.**

**393.1039. The department shall annually assess electric utilities**  
2 **in an amount not to exceed five thousandths of one percent of its**  
3 **annual intrastate revenues starting in 2013. Such assessments shall be**  
4 **placed in a special fund, which is hereby created, to be known as the**  
5 **"Agricultural Energy Fund", which shall be devoted solely to the**  
6 **payment of expenditures actually incurred by the department in**  
7 **encouraging and developing biomass energy projects in the state. The**  
8 **state treasurer shall be custodian of the fund. In accordance with**

9 sections 30.170 and 30.180, the state treasurer may approve  
10 disbursements. The fund shall be a dedicated fund and, upon  
11 appropriation, money in the fund shall be used solely for the  
12 administration of this section. Notwithstanding the provisions of  
13 section 33.080 to the contrary, any moneys remaining in the fund at the  
14 end of the biennium shall not revert to the credit of the general  
15 revenue fund but shall be applicable to the payment of such  
16 expenditures of the department on the succeeding fiscal year and  
17 applied by the department to the reduction of the amount to be  
18 assessed to such electric utilities in such succeeding fiscal year. The  
19 state treasurer shall invest moneys in the fund in the same manner as  
20 other funds are invested. Any interest and moneys earned on such  
21 investments shall be credited to the fund.

[393.1020. Sections 393.1025 and 393.1030 shall be known  
2 as the "Renewable Energy Standard".]

[393.1040. In addition to the renewable energy objectives  
2 set forth in sections 393.1025, 393.1030, and 393.1035, it is also the  
3 policy of this state to encourage electrical corporations to develop  
4 and administer energy efficiency initiatives that reduce the annual  
5 growth in energy consumption and the need to build additional  
6 electric generation capacity.]

[393.1045. Any renewable mandate required by law shall  
2 not raise the retail rates charged to the customers of electric retail  
3 suppliers by an average of more than one percent in any year, and  
4 all the costs associated with any such renewable mandate shall be  
5 recoverable in the retail rates charged by the electric  
6 supplier. Solar rebates shall be included in the one percent rate  
7 cap provided for in this section.]

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