

SECOND REGULAR SESSION

# SENATE BILL NO. 869

96TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS KEHOE, RICHARD, ENGLER, WASSON, WRIGHT-JONES,  
SCHAEFER, DEMPSEY AND GREEN.

Read 1st time February 29, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

5999S.011

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## AN ACT

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

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*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Section A. Sections 386.370, 393.135, and 620.010, RSMo, are repealed  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

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

18 amount so allocated to each group of public utilities, subject to reduction as  
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] **twenty-three hundredths** of one percent of the total gross  
23 intrastate operating revenues of all utilities subject to the jurisdiction of the  
24 commission.

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

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

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

54 within the time aforesaid the commission shall estimate such revenue which  
55 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 under sections  
5 386.700 and 386.710 and shall also separately estimate the amount of  
6 such expenses directly attributable to such responsibilities with respect  
7 to each of the following groups of public utilities: electrical  
8 corporations, gas corporations, water corporations, heating companies,  
9 telephone corporations, telegraph corporations, sewer corporations,  
10 and any other public utility as defined in section 386.020, as well as the  
11 amount of such expenses not directly attributable to any such group.

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

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

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

61           **5. In order to enable the public counsel to make the allocations**  
62 **and assessments provided for in this section, each public utility subject**  
63 **to the jurisdiction of the commission shall file with the commission on**  
64 **or before March thirty-first of each year, a statement under oath**  
65 **showing its gross intrastate operating revenues for the preceding**  
66 **calendar year, and if any public utility shall fail to file such statement**  
67 **within the time established in this subsection, the commission shall**  
68 **estimate such revenue. Such estimate shall be binding on such public**  
69 **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 obtaining the early site permit in the manner**  
12 **provided for in subsection 3 of this section, for the prudently incurred**  
13 **costs directly incurred by the electrical corporation to apply for and**  
14 **obtain such permit. The electrical corporation shall take reasonable**  
15 **steps to minimize the cost of applying for and obtaining such permit.**

16       **3. Notwithstanding the provisions of subsection 1 of this section,**  
17 **an electrical corporation that has obtained an early site permit shall**  
18 **be entitled to recover through rates charged to ratepayers all costs the**  
19 **electrical corporation has prudently incurred directly related to**  
20 **applying for and obtaining the early site permit, from the first dollar**  
21 **through the cap outlined below, in an amount not to exceed forty-five**  
22 **million dollars for such site permit. The forty-five million dollar cost**  
23 **cap applicable to electrical corporations shall be reduced by the**  
24 **amount of funding provided to the electrical corporation toward its**  
25 **costs of applying for and obtaining the early site permit from other**  
26 **sources, including but not limited to rural electric cooperatives or their**  
27 **organizations and municipal electric utilities or their**  
28 **organizations. Any electrical corporation that, as part of a partnership**  
29 **or other group formed for such purpose, contributes or otherwise bears**  
30 **any portion of the costs incurred to obtain an early site permit shall**  
31 **also be entitled to recover its share of such costs. The electrical**  
32 **corporation's costs of applying for and obtaining the early site permit,**  
33 **plus interest on the unrecovered balance at a rate per annum equal to**  
34 **the applicable electrical corporation's short-term borrowing rate, shall**  
35 **be recovered through each applicable electrical corporation's rates**  
36 **charged to its ratepayers ratably over a period not to exceed six**  
37 **years. Such rate recovery shall commence with the effective date of**  
38 **tariffs approved by the commission in each applicable electrical**  
39 **corporation's first general rate proceeding filed after the date on which**  
40 **the early site permit is obtained and the Nuclear Regulatory**

41 Commission's grant of the early site permit is final and  
42 unappealable. Recovery shall be allowed only for expenditures directly  
43 incurred by the electrical corporation to apply for and obtain such  
44 permit that the commission has found to be prudent and reasonable in  
45 the general rate case where recovery is sought, plus interest on the  
46 unrecovered balance as aforesaid. The recovery provided for in this  
47 section shall only apply to the electrical corporation's prudently  
48 incurred expenditures directly incurred by the electrical corporation  
49 to apply for and obtain such permit plus interest on the unrecovered  
50 balance as aforesaid and shall not serve as precedent for the  
51 commission to allow similar recovery of other types of costs. The  
52 electrical corporation shall have the burden of proof regarding the  
53 prudence of those early site permit costs about which a reasonable  
54 doubt is created by a party to such general rate case. Any party who  
55 challenges the prudence of the decision to apply for and obtain the  
56 early site permit shall bear the burden of proof regarding any  
57 allegation that the decision to apply for and obtain such permit was  
58 imprudent.

59 4. Nothing in this section shall be construed to imply that any  
60 commission decision that the early site permit costs were prudently  
61 incurred implies a determination of the prudence of the electrical  
62 corporation's decision to commence construction of a nuclear plant.

63 5. If an electrical corporation has recovered from ratepayers  
64 expenditures for an early site permit pursuant to subsection 3 of this  
65 section and then subsequently sells or transfers some or all of its  
66 interest in the early site permit or subsequently receives  
67 reimbursement or other proceeds for all or part of its costs from  
68 another source, the commission shall return such proceeds to  
69 ratepayers with interest to the extent such expenditures have been  
70 recovered in rates. If the amount of such proceeds exceeds the amount  
71 paid by customers the commission may in its discretion award up to  
72 twenty-five percent of such excess proceeds to the electrical  
73 corporation.

74 6. There is hereby established the "Governor's Task Force on  
75 Electrical Generation Options". The task force shall review evidence  
76 regarding generation options, including nuclear power options other  
77 than a traditional large baseload nuclear plant, including evidence

78 **regarding system benefits, rate impact, and financing options. The task**  
79 **force shall issue a report on or before September 30, 2012. The**  
80 **governor shall appoint members on the task force, which shall include**  
81 **an equal number of representatives of each of the following: the**  
82 **commission, the public counsel, industrial consumers, residential**  
83 **consumers, commercial consumers, small investor-owned utilities, large**  
84 **investor-owned utilities, rural electric cooperatives, and municipal**  
85 **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.**

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

✓  
Unofficial

Bill

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