

SECOND REGULAR SESSION

SENATE BILL NO. 817

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

Pre-filed January 3, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4658S.02I

AN ACT

To repeal sections 88.770, 91.550, 386.800, and 394.315, RSMo, and to enact in lieu thereof four new sections relating to rural electric cooperatives.

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

Section A. Sections 88.770, 91.550, 386.800, and 394.315, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 88.770, 91.550, 386.800, and 394.315, to read as follows:

88.770. 1. **Notwithstanding the provisions of section 394.080 to**
2 **the contrary, any city of the fourth classification may sell or lease its**
3 **municipal electric utility to a rural electric cooperative, and such rural**
4 **electric cooperative may provide retail electric service within the**
5 **corporate boundaries of the city.**

6 2. The board of aldermen may provide for and regulate the lighting of
7 streets and the erection of lamp posts, poles and lights therefor, and may make
8 contracts with any person, association or corporation, either private or municipal,
9 for the lighting of the streets and other public places of the city with gas,
10 electricity or otherwise, except that each initial contract shall be ratified by a
11 majority of the voters of the city voting on the question and any renewal contract
12 or extension shall be subject to voter approval of the majority of the voters voting
13 on the question, pursuant to the provisions of section 88.251. The board of
14 aldermen may erect, maintain and operate gas works, electric light works, or light
15 works of any other kind or name, and to erect lamp posts, electric light poles, or
16 any other apparatus or appliances necessary to light the streets, avenues, alleys
17 or other public places, and to supply private lights for the use of the inhabitants
18 of the city and its suburbs, and may regulate the same, and may prescribe 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 regulate the rates to be paid by the consumers thereof, and may acquire by
20 purchase, donation or condemnation suitable grounds within or without the city
21 upon which to erect such works and the right-of-way to and from such works, and
22 also the right-of-way for laying gas pipes, electric wires under or above the
23 grounds, and erecting posts and poles and such other apparatus and appliances
24 as may be necessary for the efficient operation of such works. The board of
25 aldermen may, in its discretion, grant the right to any person, persons or
26 corporation, to erect such works and lay the pipe, wires, and erect the posts, poles
27 and other necessary apparatus and appliances therefor, upon such terms as may
28 be prescribed by ordinance. Such rights shall not extend for a longer time than
29 twenty years, but may be renewed for another period or periods not to exceed
30 twenty years per period. Every initial grant shall be approved by a majority of
31 the voters of the municipality voting on the question, and each renewal or
32 extension of such rights shall be subject to voter approval of the majority of the
33 voters voting on the question, pursuant to the provisions of section
34 88.251. Nothing herein contained shall be so construed as to prevent the board
35 of aldermen from contracting with any person, persons or corporation for
36 furnishing the city with gas or electric lights in cities where franchises have
37 already been granted, and where gas or electric light plants already exist, without
38 a vote of the people, except that the board of aldermen may sell, convey,
39 encumber, lease, abolish or otherwise dispose of any public utilities owned by the
40 city including electric light systems, electric distribution systems or transmission
41 lines, or any part of the electric light systems, electric or other heat systems,
42 electric or other power systems, electric or other railways, gas plants, telephone
43 systems, telegraph systems, transportation systems of any kind, waterworks,
44 equipments and all public utilities not herein enumerated and everything
45 acquired therefor, after first having passed an ordinance setting forth the terms
46 of the sale, conveyance or encumbrance and when ratified by two-thirds of the
47 voters voting on the question, except for the sale of a water or wastewater system,
48 or the sale of a gas plant, which shall be authorized by a simple majority vote of
49 the voters voting on the question. In the event of the proposed sale of a water or
50 wastewater system, or a gas plant, the board of alderman shall hold a public
51 meeting on such proposed sale at least thirty days prior to the vote. The
52 municipality in question shall notify its customers of the informational meeting
53 through radio, television, newspaper, regular mail, electronic mail, or any
54 combination of notification methods to most effectively notify customers at least

55 fifteen days prior to the informational meeting. In advance of putting a proposed
56 sale of a water or wastewater system or a gas plant before the voters, the board
57 of aldermen may seek an appraisal as set forth in subsections 3 and 4 of section
58 393.320. The board may also seek and provide additional reasonable analyses to
59 inform voters of such sale, including, but not limited to, the impact of such sale
60 on all city funds and revenues, other city services, and annexation. Nothing in
61 this section shall be so construed as to discourage the board of aldermen from
62 seeking multiple bids when considering the disposal of a water or wastewater
63 system or a gas plant by sale.

64 [2.] 3. The board of aldermen's determination of the fair market value of
65 a water or wastewater system or a gas plant for the purposes of this section shall
66 not be dispositive of the price of a water or wastewater system, or a gas plant,
67 which may be subject to negotiation by the board of aldermen.

68 [3.] 4. The board of aldermen may consider alternatives to disposing of
69 a water or wastewater system or a gas plant by sale, including entering into a
70 finance agreement, purchase agreement, management agreement, or lease
71 agreement with another entity.

72 [4.] 5. The board of aldermen may make available on its internet site, if
73 such internet site exists, at least forty-five days prior to submitting a proposal for
74 election pursuant to this section, a copy of the appraisal or additional reasonable
75 analyses under subsection [1] 2 of this section and the fair market value of a
76 water or wastewater system or a gas plant. Such information may also be posted
77 in the building where the board of aldermen has its monthly meetings.

78 [5.] 6. The board of aldermen may make a good-faith effort to notify each
79 property owner of the city and each ratepayer of a water or wastewater system
80 or a gas plant of the proposal to dispose of the water or wastewater system, or a
81 gas plant, by sale through radio, television, newspaper, regular mail, electronic
82 mail, or any combination of such notification methods. Such notice may also
83 include instructions for locating a summary of the proposal and a summary of any
84 appraisal and analyses as under subsection 1 of this section on the board of
85 aldermen's internet site, if such internet site exists. In the event the board of
86 aldermen does not have an internet site, the notice may inform the recipient that
87 written copies of such information may be made available at the building where
88 the board of aldermen has its monthly meetings.

89 [6.] 7. Nothing in this section shall be construed as a violation of section
90 115.646, relating to the use of public funds to advocate, support, or oppose the

91 ballot measure prescribed in subsection [7] 8 of this section.

92 [7.] 8. The ballots shall be substantially in the following form and shall
 93 indicate the property, or portion thereof, and whether the same is to be sold,
 94 leased or encumbered:

95 Shall _____ (Indicate the property by stating whether electric
 96 distribution system, electric transmission lines or waterworks, etc.)
 97 be _____ (Indicate whether sold, leased or encumbered.)?

91.550. 1. Before any city of the third class shall sell or dispose of, in any
 2 way, or abandon or cease to operate any electric light plant, waterworks plant,
 3 gas plant, street railway or any other public utility which may be owned by it, it
 4 shall first submit the proposition for such sale or disposition or abandonment or
 5 ceasing to operate, by ordinance, to the voters of said city and it shall require a
 6 majority of the votes cast to be in favor of the proposition before any authority
 7 shall exist for such sale, disposition, abandonment or ceasing to operate.

8 **2. Notwithstanding the provisions of section 394.080 to the**
 9 **contrary, any city of the third classification may sell or lease its**
 10 **municipal electric utility to a rural electric cooperative, and such rural**
 11 **electric cooperative may provide retail electric service within the**
 12 **corporate boundaries of the city.**

386.800. 1. No municipally owned electric utility may provide electric
 2 energy at retail to any structure located outside the municipality's corporate
 3 boundaries after July 11, 1991, unless:

4 (1) The structure was lawfully receiving permanent service from the
 5 municipally owned electric utility prior to July 11, 1991; or

6 (2) The service is provided pursuant to an approved territorial agreement
 7 under section 394.312;

8 (3) The service is provided pursuant to lawful municipal annexation and
 9 subject to the provisions of this section; or

10 (4) The structure is located in an area which was previously served by an
 11 electrical corporation regulated under chapter 386, and chapter 393, and the
 12 electrical corporation's authorized service territory was contiguous to or inclusive
 13 of the municipality's previous corporate boundaries, and the electrical
 14 corporation's ownership or operating rights within the area were acquired in total
 15 by the municipally owned electrical system prior to July 11, 1991. In the event
 16 that a municipally owned electric utility in a city with a population of more than
 17 one hundred twenty-five thousand located in a county of the first class not having

18 a charter form of government and not adjacent to any other county of the first
19 class desires to serve customers beyond the authorized service territory in an area
20 which was previously served by an electrical corporation regulated under the
21 provisions of chapter 386, and chapter 393, as provided in this subdivision, the
22 municipally owned utility shall apply to the public service commission for an
23 order assigning nonexclusive service territories. The proposed service area shall
24 be contiguous to the authorized service territory which was previously served by
25 an electrical corporation regulated under the provisions of chapter 386, and
26 chapter 393, as a condition precedent to the granting of the application. The
27 commission shall have one hundred twenty days from the date of application to
28 grant or deny the requested order. The commission may grant the order upon a
29 finding that granting of the applicant's request is not detrimental to the public
30 interest. In granting the applicant's request the commission shall give due
31 regard to territories previously granted to other electric suppliers.

32 2. Any municipally owned electric utility may extend, pursuant to lawful
33 annexation, its service territory to include any structure located within a newly
34 annexed area which has not received permanent service from another supplier
35 within ninety days prior to the effective date of the annexation.

36 3. **It shall constitute a restraint of trade under section 416.031 for**
37 **a municipality to require, as a condition of annexation or as a**
38 **condition of the provision of other municipal services in the area to be**
39 **annexed, that the owner or owners of fee interests of record in the area**
40 **to be annexed obtain electric service from the electric provider**
41 **currently providing electric service within the municipality's corporate**
42 **boundaries. Concurrent with giving notice by publication of the**
43 **proposed annexation pursuant to section 71.012 and section 71.015, the**
44 **municipality shall also notify in writing all providers of electric service**
45 **that have existing facilities located in or within five miles outside of**
46 **the boundaries of the area proposed to be annexed. In the event that**
47 **an owner of a fee interest of record in the area elects to receive**
48 **permanent service from a rural electric cooperative for any structure**
49 **to be constructed either before or after the annexation becomes**
50 **effective, the rural electric cooperative may provide such service,**
51 **notwithstanding the provisions of section 394.080 to the contrary.**

52 4. When a municipally owned electric utility desires to extend its service
53 territory to include any structure located within a newly annexed area which has

54 received permanent service from another supplier within ninety days prior to the
55 effective date of the annexation, it shall:

56 (1) Notify by publication in a newspaper of general circulation the record
57 owner of said structure, and notify in writing any affected electric supplier and
58 the public service commission, within sixty days after the effective date of the
59 annexation its desire to extend its service territory to include said structure; and

60 (2) Within six months after the effective date of the annexation receive the
61 approval of the municipality's governing body to begin negotiations pursuant to
62 section 394.312 with any affected electric supplier.

63 [4.] 5. Upon receiving approval from the municipality's governing body
64 pursuant to subsection [3] 4 of this section, the municipally owned electric utility
65 and the affected electric supplier shall meet and negotiate in good faith the terms
66 of the territorial agreement and any transfers or acquisitions, including, as an
67 alternative, granting the affected electric supplier a franchise or authority to
68 continue providing service in the annexed area. In the event that the affected
69 electric supplier does not provide wholesale electric power to the municipality, if
70 the affected electric supplier so desires, the parties shall also negotiate,
71 consistent with applicable law, regulations and existing power supply agreements,
72 for power contracts which would provide for the purchase of power by the
73 municipality from the affected electric supplier for an amount of power equivalent
74 to the loss of any sales to customers receiving permanent service at structures
75 within the annexed areas which are being sought by the municipally owned
76 electric utility. The parties shall have no more than one hundred eighty days
77 from the date of receiving approval from the municipality's governing body within
78 which to conclude their negotiations and file their territorial agreement with the
79 commission for approval under the provisions of section 394.312. The time period
80 for negotiations allowed under this subsection may be extended for a period not
81 to exceed one hundred eighty days by a mutual agreement of the parties and a
82 written request with the public service commission.

83 [5.] 6. For purposes of this section, the term "fair and reasonable
84 compensation" shall mean the following:

85 (1) The present-day reproduction cost, new, of the properties and facilities
86 serving the annexed areas, less depreciation computed on a straight-line basis;
87 and

88 (2) An amount equal to the reasonable and prudent cost of detaching the
89 facilities in the annexed areas and the reasonable and prudent cost of

90 constructing any necessary facilities to reintegrate the system of the affected
91 electric supplier outside the annexed area after detaching the portion to be
92 transferred to the municipally owned electric utility; and

93 (3) Four hundred percent of gross revenues less gross receipts taxes
94 received by the affected electric supplier from the twelve-month period preceding
95 the approval of the municipality's governing body under the provisions of
96 subdivision (2) of subsection [3] 4 of this section, normalized to produce a
97 representative usage from customers at the subject structures in the annexed
98 area; and

99 (4) Any federal, state and local taxes which may be incurred as a result
100 of the transaction, including the recapture of any deduction or credit; and

101 (5) Any other costs reasonably incurred by the affected electric supplier
102 in connection with the transaction.

103 [6.] 7. In the event the parties are unable to reach an agreement under
104 subsection [4] 5 of this section, within sixty days after the expiration of the time
105 specified for negotiations, the municipally owned electric utility may apply to the
106 commission for an order assigning exclusive service territories within the annexed
107 area and a determination of the fair and reasonable compensation amount to be
108 paid to the affected electric supplier under subsection [5] 6 of this
109 section. Applications shall be made and notice of such filing shall be given to all
110 affected parties pursuant to the rules and regulations of the commission
111 governing applications for certificates of public convenience and necessity. Unless
112 otherwise ordered by the commission for good cause shown, the commission shall
113 rule on such applications not later than one hundred twenty days after the
114 application is properly filed with the secretary of the commission. The
115 commission shall hold evidentiary hearings to assign service territory between
116 affected electric suppliers inside the annexed area and to determine the amount
117 of compensation due any affected electric supplier for the transfer of plant,
118 facilities or associated lost revenues between electric suppliers in the annexed
119 area. The commission shall make such determinations based on findings of what
120 best serves the public interest and shall issue its decision by report and
121 order. Review of such commission decisions shall be governed by sections 386.500
122 to 386.550. The payment of compensation and transfer of title and operation of
123 the facilities shall occur within ninety days after the order and any appeal
124 therefrom becomes final unless the order provides otherwise.

125 [7.] 8. In reaching its decision under subsection [6] 7 of this section, the

126 commission shall consider the following factors:

127 (1) Whether the acquisition or transfers sought by the municipally owned
128 electric utility within the annexed area from the affected electric supplier are, in
129 total, in the public interest, including consideration of rate disparities between
130 the competing electric suppliers and issues of unjust rate discrimination among
131 customers of a single electric supplier if the rates to be charged in the annexed
132 areas are lower than those charged to other system customers; and

133 (2) The fair and reasonable compensation to be paid by the municipally
134 owned electric utility, to the affected electric supplier with existing system
135 operations within the annexed area, for any proposed acquisitions or transfers;
136 and

137 (3) Any effect on system operation, including, but not limited to, loss of
138 load and loss of revenue; and

139 (4) Any other issues upon which the municipally owned electric utility and
140 the affected electric supplier might otherwise agree, including, but not limited to,
141 the valuation formulas and factors contained in subsections [4,] 5 [and], 6, **and**
142 **7** of this section, even if the parties could not voluntarily reach an agreement
143 thereon under those subsections.

144 [8.] **9.** The commission is hereby given all necessary jurisdiction over
145 municipally owned electric utilities and rural electric cooperatives to carry out
146 the purposes of this section consistent with other applicable law; provided,
147 however, the commission shall not have jurisdiction to compel the transfer of
148 customers or structures with a connected load greater than one thousand
149 kilowatts. The commission shall by rule set appropriate fees to be charged on a
150 case-by-case basis to municipally owned electric utilities and rural electric
151 cooperatives to cover all necessary costs incurred by the commission in carrying
152 out its duties under this section.

394.315. 1. As used in this section, the following terms mean:

2 (1) "Permanent service", electrical service provided through facilities
3 which have been permanently installed on a structure and which are designed to
4 provide electric service for the structure's anticipated needs for the indefinite
5 future, as contrasted with facilities installed temporarily to provide electrical
6 service during construction. Service provided temporarily shall be at the risk of
7 the electrical supplier and shall not be determinative of the rights of the provider
8 or recipient of permanent service;

9 (2) "Structure" or "structures", an agricultural, residential, commercial,

10 industrial or other building or a mechanical installation, machinery or apparatus
11 at which retail electric energy is being delivered through a metering device which
12 is located on or adjacent to the structure and connected to the lines of an
13 electrical supplier. Such terms shall include any contiguous or adjacent additions
14 to or expansions of a particular structure. Nothing in this section shall be
15 construed to confer any right on a rural electric cooperative to serve new
16 structures on a particular tract of land because it was serving an existing
17 structure on that tract.

18 2. Once a rural electric cooperative, or its predecessor in interest, lawfully
19 commences supplying retail electric energy to a structure through permanent
20 service facilities, it shall have the right to continue serving such structure, and
21 other suppliers of electrical energy shall not have the right to provide service to
22 the structure except as might be otherwise permitted in the context of municipal
23 annexation, pursuant to section 386.800 and section 394.080, or pursuant to a
24 territorial agreement approved under section 394.312. The public service
25 commission, upon application made by an affected party, may order a change of
26 suppliers on the basis that it is in the public interest for a reason other than a
27 rate differential, and the commission is hereby given jurisdiction over rural
28 electric cooperatives to accomplish the purpose of this section. The commission's
29 jurisdiction under this section is limited to public interest determinations and
30 excludes questions as to the lawfulness of the provision of service, such questions
31 being reserved to courts of competent jurisdiction. Except as provided herein,
32 nothing in this section shall be construed as otherwise conferring upon the
33 commission jurisdiction over the service, rates, financing, accounting or
34 management of any such cooperative, and except as provided in this section,
35 nothing contained herein shall affect the rights, privileges or duties of existing
36 cooperatives pursuant to this chapter. Nothing in this section shall be construed
37 to make lawful any provision of service which was unlawful prior to July 11,
38 1991. Nothing in this section shall be construed to make unlawful the continued
39 lawful provision of service to any structure which may have had a different
40 supplier in the past, if such a change in supplier was lawful at the time it
41 occurred. However, those customers who had cancelled service with their
42 previous supplier or had requested cancellation by May 1, 1991, shall be eligible
43 to change suppliers as per previous procedures. No customer shall be allowed to
44 change electric suppliers by disconnecting service between May 1, 1991, and July
45 11, 1991.

46 **3. Notwithstanding the provisions of this section and section**
47 **394.080 to the contrary, in the event that a rural electric cooperative is**
48 **providing service to a structure located within a city, town, or village**
49 **in excess of one thousand fifteen hundred inhabitants, and such**
50 **structure is demolished and replaced by a new structure, the rural**
51 **electric cooperative may provide permanent service to the new**
52 **structure upon the request of the owner of the new structure.**

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