

# SENATE AMENDMENT NO. \_\_\_\_\_

Offered by \_\_\_\_\_ of \_\_\_\_\_

Amend SS/SCS/HCS/House Bill No. 271, Page 7, Section 59.100, Line 15,

2 by inserting after all of said line the following:

3 "91.025. 1. As used in this section, the following  
4 terms mean:

5 (1) "Municipally owned or operated electric power  
6 system", a system for the distribution of electrical power  
7 and energy to the inhabitants of a municipality which is  
8 owned and operated by the municipality itself, whether  
9 operated under authority pursuant to this chapter or under a  
10 charter form of government;

11 (2) "Permanent service", electrical service provided  
12 through facilities which have been permanently installed on  
13 a structure and which are designed to provide electric  
14 service for the structure's anticipated needs for the  
15 indefinite future, as contrasted with facilities installed  
16 temporarily to provide electrical service during  
17 construction. Service provided temporarily shall be at the  
18 risk of the electrical supplier and shall not be  
19 determinative of the rights of the provider or recipient of  
20 permanent service;

21 (3) "Structure" or "structures", an agricultural,  
22 residential, commercial, industrial or other building or a  
23 mechanical installation, machinery or apparatus at which  
24 retail electric energy is being delivered through a metering  
25 device which is located on or adjacent to the structure and  
26 connected to the lines of an electrical corporation, rural

27 electric cooperative, municipally owned or operated electric  
28 power system, or joint municipal utility commission. Such  
29 terms shall include any contiguous or adjacent additions to  
30 or expansions of a particular structure. Nothing in this  
31 section shall be construed to confer any right on an  
32 electric supplier to serve new structures on a particular  
33 tract of land because it was serving an existing structure  
34 on that tract.

35         2. Once a municipally owned or operated electrical  
36 system, or its predecessor in interest, lawfully commences  
37 supplying retail electric energy to a structure through  
38 permanent service facilities, it shall have the right to  
39 continue serving such structure, and other suppliers of  
40 electrical energy shall not have the right to provide  
41 service to the structure except as might be otherwise  
42 permitted in the context of municipal annexation, pursuant  
43 to section 386.800 or pursuant to a territorial agreement  
44 approved under section 394.312. The public service  
45 commission, upon application made by a customer, may order a  
46 change of suppliers on the basis that it is in the public  
47 interest for a reason other than a rate differential, and  
48 the commission is hereby given jurisdiction over municipally  
49 owned or operated electric systems to accomplish the purpose  
50 of this section. The commission's jurisdiction under this  
51 section is limited to public interest determinations and  
52 excludes questions as to the lawfulness of the provision of  
53 service, such questions being reserved to courts of  
54 competent jurisdiction. Except as provided in this section,  
55 nothing in this section shall be construed as otherwise  
56 conferring upon the commission jurisdiction over the  
57 service, rates, financing, accounting or management of any  
58 such municipally owned or operated electrical system, and  
59 nothing in this section, section 393.106, and section

60 394.315 shall affect the rights, privileges or duties of any  
61 municipality to form or operate municipally owned or  
62 operated electrical systems. Nothing in this section shall  
63 be construed to make lawful any provision of service which  
64 was unlawful prior to July 11, 1991. Nothing in this  
65 section shall be construed to make unlawful the continued  
66 lawful provision of service to any structure which may have  
67 had a different supplier in the past, if such a change in  
68 supplier was lawful at the time it occurred.

69 3. Notwithstanding the provisions of this section,  
70 section 393.106, section 394.080, and section 394.315 to the  
71 contrary, in the event that a retail electric supplier is  
72 providing service to a structure located within a city,  
73 town, or village that has ceased to be a rural area, and  
74 such structure is demolished and replaced by a new  
75 structure, such retail electric service supplier may provide  
76 permanent service to the new structure upon the request of  
77 the owner of the new structure.

78 386.800. 1. No municipally owned electric utility may  
79 provide electric energy at retail to any structure located  
80 outside the municipality's corporate boundaries after July  
81 11, 1991, unless:

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

85 (2) The service is provided pursuant to an approved  
86 territorial agreement under section 394.312; or

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

90 (4) The structure is located in an area which was  
91 previously served by an electrical corporation regulated  
92 under chapter 386, and chapter 393, and the electrical

93 corporation's authorized service territory was contiguous to  
94 or inclusive of the municipality's previous corporate  
95 boundaries, and the electrical corporation's ownership or  
96 operating rights within the area were acquired in total by  
97 the municipally owned electrical system prior to July 11,  
98 1991. In the event that a municipally owned electric  
99 utility in a city with a population of more than one hundred  
100 twenty-five thousand located in a county of the first class  
101 not having a charter form of government and not adjacent to  
102 any other county of the first class desires to serve  
103 customers beyond the authorized service territory in an area  
104 which was previously served by an electrical corporation  
105 regulated under the provisions of chapter 386, and chapter  
106 393, as provided in this subdivision, in the absence of an  
107 approved territorial agreement under section 394.312 the  
108 municipally owned utility shall apply to the public service  
109 commission for an order assigning nonexclusive service  
110 territories and concurrently shall provide written notice of  
111 the application to other electric service suppliers with  
112 electric facilities located in or within one mile outside of  
113 the boundaries of the proposed expanded service territory.  
114 The proposed service area shall be contiguous to the  
115 authorized service territory which was previously served by  
116 an electrical corporation regulated under the provisions of  
117 chapter 386, and chapter 393, as a condition precedent to  
118 the granting of the application. The commission shall have  
119 one hundred twenty days from the date of application to  
120 grant or deny the requested order. The commission after  
121 hearing may grant the order upon a finding that granting of  
122 the applicant's request is not detrimental to the public  
123 interest. In granting the applicant's request the  
124 commission shall give due regard to territories previously

125 granted to or served by other electric service suppliers and  
126 the wasteful duplication of electric service facilities.

127 2. Any municipally owned electric utility may extend,  
128 pursuant to lawful annexation, its electric service  
129 territory to include [any structure located within a newly  
130 annexed area which has not received permanent service from  
131 another supplier within ninety days prior to the effective  
132 date of the annexation] areas where another electric  
133 supplier currently is not providing permanent service to a  
134 structure. If a rural electric cooperative has existing  
135 electric service facilities with adequate and necessary  
136 service capability located in or within one mile outside the  
137 boundaries of the area proposed to be annexed, a majority of  
138 the existing developers, landowners, or prospective electric  
139 customers in the area proposed to be annexed may, anytime  
140 within forty-five days prior to the effective date of the  
141 annexation, submit a written request to the governing body  
142 of the annexing municipality to invoke mandatory good faith  
143 negotiations under section 394.312 to determine which  
144 electric service supplier is best suited to serve all or  
145 portions of the newly annexed area. In such negotiations  
146 the following factors shall be considered, at a minimum:

147 (1) The preference of landowners and prospective  
148 electric customers;

149 (2) The rates, terms, and conditions of service of the  
150 electric service suppliers;

151 (3) The economic impact on the electric service  
152 suppliers;

153 (4) Each electric service supplier's operational  
154 ability to serve all or portions of the annexed area within  
155 three years of the date the annexation becomes effective;

156 (5) Avoiding the wasteful duplication of electric  
157 facilities;

158           (6) Minimizing unnecessary encumbrances on the  
159 property and landscape within the area to be annexed; and  
160           (7) Preventing the waste of materials and natural  
161 resources.

162 If the municipally owned electric utility and rural electric  
163 cooperative are unable to negotiate a territorial agreement  
164 pursuant to section 394.312 within forty-five days, then  
165 they may submit proposals to those submitting the original  
166 written request, whose preference shall control, section  
167 394.080 to the contrary notwithstanding, and the governing  
168 body of the annexing municipality shall not reject the  
169 petition requesting annexation based on such preference.  
170 This subsection shall not apply to municipally-owned  
171 property in any newly annexed area.

172           3. In the event an electrical corporation rather than  
173 a municipally owned electric utility lawfully is providing  
174 electric service in the municipality, all the provisions of  
175 subsection 2 shall apply equally as if the electrical  
176 corporation were a municipally owned electric utility,  
177 except that if the electrical corporation and the rural  
178 electric cooperative are unable to negotiate a territorial  
179 agreement pursuant to section 394.312 within forty-five  
180 days, then either electric service supplier may file an  
181 application with the commission for an order determining  
182 which electric service supplier should serve, in whole or in  
183 part, the area to be annexed. The application shall be made  
184 pursuant to the rules and regulations of the commission  
185 governing applications for certificates of public  
186 convenience and necessity. The commission after the  
187 opportunity for hearing shall make its determination after  
188 consideration of the factors set forth in subdivisions (1)  
189 through (7) of subsection 2 of this section, and section  
190 394.080 to the contrary notwithstanding, may grant its order

191 upon a finding that granting of the applicant's request is  
192 not detrimental to the public interest. The commission  
193 shall issue its decision by report and order no later than  
194 one hundred twenty days from the date of the application  
195 unless otherwise ordered by the commission for good cause  
196 shown. Review of such commission decisions shall be  
197 governed by sections 386.500 to 386.550. If the applicant  
198 is a rural electric cooperative, the commission shall charge  
199 to the rural electric cooperative the appropriate fees as  
200 set forth in subsection 9 of this section.

201 [3.] 4. When a municipally owned electric utility  
202 desires to extend its service territory to include any  
203 structure located within a newly annexed area which has  
204 received permanent service from another electric service  
205 supplier within ninety days prior to the effective date of  
206 the annexation, it shall:

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

213 (2) Within six months after the effective date of the  
214 annexation receive the approval of the municipality's  
215 governing body to begin negotiations pursuant to section  
216 394.312 with [any] the affected electric service supplier.

217 [4.] 5. Upon receiving approval from the  
218 municipality's governing body pursuant to subsection [3] 4  
219 of this section, the municipally owned electric utility and  
220 the affected electric service supplier shall meet and  
221 negotiate in good faith the terms of the territorial  
222 agreement and any transfers or acquisitions, including, as  
223 an alternative, granting the affected electric service

224 supplier a franchise or authority to continue providing  
225 service in the annexed area. In the event that the affected  
226 electric service supplier does not provide wholesale  
227 electric power to the municipality, if the affected electric  
228 service supplier so desires, the parties [shall] may also  
229 negotiate, consistent with applicable law, regulations and  
230 existing power supply agreements, for power contracts which  
231 would provide for the purchase of power by the municipality  
232 from the affected electric service supplier for an amount of  
233 power equivalent to the loss of any sales to customers  
234 receiving permanent service at structures within the annexed  
235 areas which are being sought by the municipally owned  
236 electric utility. The parties shall have no more than one  
237 hundred eighty days from the date of receiving approval from  
238 the municipality's governing body within which to conclude  
239 their negotiations and file their territorial agreement with  
240 the commission for approval under the provisions of section  
241 394.312. The time period for negotiations allowed under  
242 this subsection may be extended for a period not to exceed  
243 one hundred eighty days by a mutual agreement of the parties  
244 and a written request with the public service commission.

245 [5.] 6. For purposes of this section, the term "fair  
246 and reasonable compensation" shall mean the following:

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

250 (2) An amount equal to the reasonable and prudent cost  
251 of detaching the facilities in the annexed areas and the  
252 reasonable and prudent cost of constructing any necessary  
253 facilities to reintegrate the system of the affected  
254 electric service supplier outside the annexed area after  
255 detaching the portion to be transferred to the municipally  
256 owned electric utility; and

257 (3) ~~Four~~ Two hundred percent of gross revenues less  
258 gross receipts taxes received by the affected electric  
259 service supplier from the twelve-month period preceding the  
260 approval of the municipality's governing body under the  
261 provisions of subdivision (2) of subsection ~~3~~ 4 of this  
262 section, normalized to produce a representative usage from  
263 customers at the subject structures in the annexed area; and

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

267 (5) Any other costs reasonably incurred by the  
268 affected electric supplier in connection with the  
269 transaction.

270 ~~6.]~~ 7. In the event the parties are unable to reach  
271 an agreement under subsection ~~4~~ 5 of this section, within  
272 sixty days after the expiration of the time specified for  
273 negotiations, the municipally owned electric utility or the  
274 affected electric service supplier may apply to the  
275 commission for an order assigning exclusive service  
276 territories within the annexed area and a determination of  
277 the fair and reasonable compensation amount to be paid to  
278 the affected electric service supplier under subsection ~~5~~  
279 6 of this section. Applications shall be made and notice of  
280 such filing shall be given to all affected parties pursuant  
281 to the rules and regulations of the commission governing  
282 applications for certificates of public convenience and  
283 necessity. Unless otherwise ordered by the commission for  
284 good cause shown, the commission shall rule on such  
285 applications not later than one hundred twenty days after  
286 the application is properly filed with the secretary of the  
287 commission. The commission shall hold evidentiary hearings  
288 to assign service territory between the affected electric  
289 service suppliers inside the annexed area and to determine

290 the amount of compensation due any affected electric service  
291 supplier for the transfer of plant, facilities or associated  
292 lost revenues between electric service suppliers in the  
293 annexed area. The commission shall make such determinations  
294 based on findings of what best serves the public interest  
295 and shall issue its decision by report and order. Review of  
296 such commission decisions shall be governed by sections  
297 386.500 to 386.550. The payment of compensation and  
298 transfer of title and operation of the facilities shall  
299 occur within ninety days after the order and any appeal  
300 therefrom becomes final unless the order provides otherwise.

301 [7.] 8. In reaching its decision under subsection 6 of  
302 this section, the commission shall consider the following  
303 factors:

304 (1) Whether the acquisition or transfers sought by the  
305 municipally owned electric utility within the annexed area  
306 from the affected electric service supplier are, in total,  
307 in the public interest, including the preference of the  
308 owner of any affected structure, consideration of rate  
309 disparities between the competing electric service  
310 suppliers, and issues of unjust rate discrimination among  
311 customers of a single electric service supplier if the rates  
312 to be charged in the annexed areas are lower than those  
313 charged to other system customers; and

314 (2) The fair and reasonable compensation to be paid by  
315 the municipally owned electric utility, to the affected  
316 electric service supplier with existing system operations  
317 within the annexed area, for any proposed acquisitions or  
318 transfers; and

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

321 (4) Any other issues upon which the municipally owned  
322 electric utility and the affected electric service supplier

323 might otherwise agree, including, but not limited to, the  
324 valuation formulas and factors contained in subsections [4,  
325 5 and 6] 5, 6, and 7, of this section, even if the parties  
326 could not voluntarily reach an agreement thereon under those  
327 subsections.

328       [8.] 9. The commission is hereby given all necessary  
329 jurisdiction over municipally owned electric utilities and  
330 rural electric cooperatives to carry out the purposes of  
331 this section consistent with other applicable law; provided,  
332 however, the commission shall not have jurisdiction to  
333 compel the transfer of customers or structures with a  
334 connected load greater than one thousand kilowatts. The  
335 commission shall by rule set appropriate fees to be charged  
336 on a case-by-case basis to municipally owned electric  
337 utilities and rural electric cooperatives to cover all  
338 necessary costs incurred by the commission in carrying out  
339 its duties under this section. Nothing in this section  
340 shall be construed as otherwise conferring upon the public  
341 service commission jurisdiction over the service, rates,  
342 financing, accounting, or management of any rural electric  
343 cooperative or municipally owned electric utility, except as  
344 provided in this section.

345       10. Notwithstanding sections 394.020 and 394.080 to  
346 the contrary, a rural electric cooperative may provide  
347 electric service within the corporate boundaries of a  
348 municipality if such service is provided:

349       (1) Pursuant to subsections 2 through 9 of this  
350 section; and

351       (2) Such service is conditioned upon the execution of  
352 the appropriate territorial and municipal franchise  
353 agreements, which may include a nondiscriminatory  
354 requirement, consistent with other applicable law, that the  
355 rural electric cooperative collect and remit a sales tax

356 based on the amount of electricity sold by the rural  
357 electric cooperative within the municipality.

358 393.106. 1. As used in this section, the following  
359 terms mean:

360 (1) "Permanent service", electrical service provided  
361 through facilities which have been permanently installed on  
362 a structure and which are designed to provide electric  
363 service for the structure's anticipated needs for the  
364 indefinite future, as contrasted with facilities installed  
365 temporarily to provide electrical service during  
366 construction. Service provided temporarily shall be at the  
367 risk of the electrical supplier and shall not be  
368 determinative of the rights of the provider or recipient of  
369 permanent service;

370 (2) "Structure" or "structures", an agricultural,  
371 residential, commercial, industrial or other building or a  
372 mechanical installation, machinery or apparatus at which  
373 retail electric energy is being delivered through a metering  
374 device which is located on or adjacent to the structure and  
375 connected to the lines of an electrical supplier. Such  
376 terms shall include any contiguous or adjacent additions to  
377 or expansions of a particular structure. Nothing in this  
378 section shall be construed to confer any right on an  
379 electric supplier to serve new structures on a particular  
380 tract of land because it was serving an existing structure  
381 on that tract.

382 2. Once an electrical corporation or joint municipal  
383 utility commission, or its predecessor in interest, lawfully  
384 commences supplying retail electric energy to a structure  
385 through permanent service facilities, it shall have the  
386 right to continue serving such structure, and other  
387 suppliers of electrical energy shall not have the right to  
388 provide service to the structure except as might be

389 otherwise permitted in the context of municipal annexation,  
390 pursuant to section 386.800 and section 394.080, or pursuant  
391 to a territorial agreement approved under section 394.312.  
392 The public service commission, upon application made by an  
393 affected party, may order a change of suppliers on the basis  
394 that it is in the public interest for a reason other than a  
395 rate differential. The commission's jurisdiction under this  
396 section is limited to public interest determinations and  
397 excludes questions as to the lawfulness of the provision of  
398 service, such questions being reserved to courts of  
399 competent jurisdiction. Except as provided in this section,  
400 nothing contained herein shall affect the rights, privileges  
401 or duties of existing corporations pursuant to this  
402 chapter. Nothing in this section shall be construed to make  
403 lawful any provision of service which was unlawful prior to  
404 July 11, 1991. Nothing in this section shall be construed  
405 to make unlawful the continued lawful provision of service  
406 to any structure which may have had a different supplier in  
407 the past, if such a change in supplier was lawful at the  
408 time it occurred. However, those customers who had  
409 cancelled service with their previous supplier or had  
410 requested cancellation by May 1, 1991, shall be eligible to  
411 change suppliers as per previous procedures. No customer  
412 shall be allowed to change electric suppliers by  
413 disconnecting service between May 1, 1991, and July 11, 1991.

414 3. Notwithstanding the provisions of this section,  
415 section 91.025, section 394.080, and section 394.315 to the  
416 contrary, in the event that a retail electric supplier is  
417 providing service to a structure located within a city,  
418 town, or village that ceased to be a rural area, and such  
419 structure is demolished and replaced by a new structure,  
420 such retail electric service supplier may provide permanent

421 service to the new structure upon the request of the owner  
422 of the new structure.

423 394.020. In this chapter, unless the context otherwise  
424 requires,

425 (1) "Member" means each incorporator of a cooperative  
426 and each person admitted to and retaining membership  
427 therein, and shall include a husband and wife admitted to  
428 joint membership;

429 (2) "Person" includes any natural person, firm,  
430 association, corporation, business trust, partnership,  
431 federal agency, state or political subdivision or agency  
432 thereof, or any body politic; and

433 (3) "Rural area" shall be deemed to mean any area of  
434 the United States not included within the boundaries of any  
435 city, town or village having a population in excess of  
436 fifteen hundred inhabitants, and such term shall be deemed  
437 to include both the farm and nonfarm population thereof.\_\_\_\_

438 The number of inhabitants specified in this subsection shall  
439 be increased by six percent every ten years after each  
440 decennial census beginning in 2030.

441 394.315. 1. As used in this section, the following  
442 terms mean:

443 (1) "Permanent service", electrical service provided  
444 through facilities which have been permanently installed on  
445 a structure and which are designed to provide electric  
446 service for the structure's anticipated needs for the  
447 indefinite future, as contrasted with facilities installed  
448 temporarily to provide electrical service during  
449 construction. Service provided temporarily shall be at the  
450 risk of the electrical supplier and shall not be  
451 determinative of the rights of the provider or recipient of  
452 permanent service;

453           (2) "Structure" or "structures", an agricultural,  
454 residential, commercial, industrial or other building or a  
455 mechanical installation, machinery or apparatus at which  
456 retail electric energy is being delivered through a metering  
457 device which is located on or adjacent to the structure and  
458 connected to the lines of an electrical supplier. Such  
459 terms shall include any contiguous or adjacent additions to  
460 or expansions of a particular structure. Nothing in this  
461 section shall be construed to confer any right on [a rural  
462 electric cooperative] an electric supplier to serve new  
463 structures on a particular tract of land because it was  
464 serving an existing structure on that tract.

465           2. Once a rural electric cooperative, or its  
466 predecessor in interest, lawfully commences supplying retail  
467 electric energy to a structure through permanent service  
468 facilities, it shall have the right to continue serving such  
469 structure, and other suppliers of electrical energy shall  
470 not have the right to provide service to the structure  
471 except as might be otherwise permitted in the context of  
472 municipal annexation, pursuant to section 386.800 and  
473 section 394.080, or pursuant to a territorial agreement  
474 approved under section 394.312. The public service  
475 commission, upon application made by an affected party, may  
476 order a change of suppliers on the basis that it is in the  
477 public interest for a reason other than a rate differential,  
478 and the commission is hereby given jurisdiction over rural  
479 electric cooperatives to accomplish the purpose of this  
480 section. The commission's jurisdiction under this section  
481 is limited to public interest determinations and excludes  
482 questions as to the lawfulness of the provision of service,  
483 such questions being reserved to courts of competent  
484 jurisdiction. Except as provided herein, nothing in this  
485 section shall be construed as otherwise conferring upon the

486 commission jurisdiction over the service, rates, financing,  
487 accounting or management of any such cooperative, and except  
488 as provided in this section, nothing contained herein shall  
489 affect the rights, privileges or duties of existing  
490 cooperatives pursuant to this chapter. Nothing in this  
491 section shall be construed to make lawful any provision of  
492 service which was unlawful prior to July 11, 1991. Nothing  
493 in this section shall be construed to make unlawful the  
494 continued lawful provision of service to any structure which  
495 may have had a different supplier in the past, if such a  
496 change in supplier was lawful at the time it occurred.  
497 However, those customers who had cancelled service with  
498 their previous supplier or had requested cancellation by May  
499 1, 1991, shall be eligible to change suppliers as per  
500 previous procedures. No customer shall be allowed to change  
501 electric suppliers by disconnecting service between May 1,  
502 1991, and July 11, 1991.

503 3. Notwithstanding the provisions of this section,  
504 section 91.025, section 393.106, and section 394.080 to the  
505 contrary, in the event that a retail electric supplier is  
506 providing service to a structure located within a city,  
507 town, or village that has ceased to be a rural area, and  
508 such structure is demolished and replaced by a new  
509 structure, such retail electric service supplier may provide  
510 permanent service to the new structure upon the request of  
511 the owner of the new structure."; and

512 Further amend the title and enacting clause accordingly.