

SENATE AMENDMENT NO. _____

Offered by _____ of _____

Amend SS/SCS/HCS/House Bill No. 734, Page 1, Section 67.309, Line 12,

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 supplier may provide
76 permanent service to the new structure upon the request of
77 the owner of the new structure."; and

78 Further amend said bill, page 4, section 386.370, line
79 77, by inserting after all of said line the following:

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

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

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

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

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

125 interest. In granting the applicant's request the
126 commission shall give due regard to territories previously
127 granted to or served by other electric service suppliers and
128 the wasteful duplication of electric service facilities.

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

149 (1) The preference of landowners and prospective
150 electric customers;

151 (2) The rates, terms, and conditions of service of the
152 electric service suppliers;

153 (3) The economic impact on the electric service
154 suppliers;

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

158 (5) Avoiding the wasteful duplication of electric
159 facilities;

160 (6) Minimizing unnecessary encumbrances on the
161 property and landscape within the area to be annexed; and

162 (7) Preventing the waste of materials and natural
163 resources.

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

172 This subsection shall not apply to municipally-owned
173 property in any newly annexed area.

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

191 through (7) of subsection 2 of this section, and section
192 394.080 to the contrary notwithstanding, may grant its order
193 upon a finding that granting of the applicant's request is
194 not detrimental to the public interest. The commission
195 shall issue its decision by report and order no later than
196 one hundred twenty days from the date of the application
197 unless otherwise ordered by the commission for good cause
198 shown. Review of such commission decisions shall be
199 governed by sections 386.500 to 386.550. If the applicant
200 is a rural electric cooperative, the commission shall charge
201 to the rural electric cooperative the appropriate fees as
202 set forth in subsection 9 of this section.

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

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

215 (2) Within six months after the effective date of the
216 annexation receive the approval of the municipality's
217 governing body to begin negotiations pursuant to section
218 394.312 with **[any]** the affected electric service supplier.

219 **[4.] 5.** Upon receiving approval from the
220 municipality's governing body pursuant to subsection **[3] 4**
221 of this section, the municipally owned electric utility and
222 the affected electric service supplier shall meet and
223 negotiate in good faith the terms of the territorial

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

247 [5.] 6. For purposes of this section, the term "fair
248 and reasonable compensation" shall mean the following:

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

252 (2) An amount equal to the reasonable and prudent cost
253 of detaching the facilities in the annexed areas and the
254 reasonable and prudent cost of constructing any necessary
255 facilities to reintegrate the system of the affected
256 electric service supplier outside the annexed area after

257 detaching the portion to be transferred to the municipally
258 owned electric utility; and

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

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

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

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

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

303 [7.] 8. In reaching its decision under subsection [6]
304 7 of this section, the commission shall consider the
305 following factors:

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

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

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

323 (4) Any other issues upon which the municipally owned
324 electric utility and the affected electric service supplier
325 might otherwise agree, including, but not limited to, the
326 valuation formulas and factors contained in subsections [4,
327 5 and 6] 5, 6, and 7, of this section, even if the parties
328 could not voluntarily reach an agreement thereon under those
329 subsections.

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

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

351 (1) Pursuant to subsections 2 through 9 of this
352 section; and

353 (2) Such service is conditioned upon the execution of
354 the appropriate territorial and municipal franchise
355 agreements, which may include a nondiscriminatory

356 requirement, consistent with other applicable law, that the
357 rural electric cooperative collect and remit a sales tax
358 based on the amount of electricity sold by the rural
359 electric cooperative within the municipality."; and

360 Further amend said bill, page 10, section 393.106, line
361 85, by inserting after all of said line the following:

362 "4. Notwithstanding the provisions of this section,
363 section 91.025, section 394.080, and section 394.315 to the
364 contrary, in the event that a retail electric supplier is
365 providing service to a structure located within a city,
366 town, or village that ceased to be a rural area, and such
367 structure is demolished and replaced by a new structure,
368 such retail electric service supplier may provide permanent
369 service to the new structure upon the request of the owner
370 of the new structure."; and

371 Further amend said bill, page 62, section 393.1715,
372 line 150, by inserting after all of said line the following:

373 "394.020. In this chapter, unless the context
374 otherwise requires,

375 (1) "Member" means each incorporator of a cooperative
376 and each person admitted to and retaining membership
377 therein, and shall include a husband and wife admitted to
378 joint membership;

379 (2) "Person" includes any natural person, firm,
380 association, corporation, business trust, partnership,
381 federal agency, state or political subdivision or agency
382 thereof, or any body politic; and

383 (3) "Rural area" shall be deemed to mean any area of
384 the United States not included within the boundaries of any
385 city, town or village having a population in excess of
386 ~~[fifteen]~~ sixteen hundred inhabitants, and such term shall
387 be deemed to include both the farm and nonfarm population
388 thereof. The number of inhabitants specified in this

389 subsection shall be increased by six percent every ten years
390 after each decennial census beginning in 2030."; and

391 Further amend said bill, page 63, section 394.120, line
392 57, by inserting after all of said line the following:

393 "394.315. 1. As used in this section, the following
394 terms mean:

395 (1) "Permanent service", electrical service provided
396 through facilities which have been permanently installed on
397 a structure and which are designed to provide electric
398 service for the structure's anticipated needs for the
399 indefinite future, as contrasted with facilities installed
400 temporarily to provide electrical service during
401 construction. Service provided temporarily shall be at the
402 risk of the electrical supplier and shall not be
403 determinative of the rights of the provider or recipient of
404 permanent service;

405 (2) "Structure" or "structures", an agricultural,
406 residential, commercial, industrial or other building or a
407 mechanical installation, machinery or apparatus at which
408 retail electric energy is being delivered through a metering
409 device which is located on or adjacent to the structure and
410 connected to the lines of an electrical supplier. Such
411 terms shall include any contiguous or adjacent additions to
412 or expansions of a particular structure. Nothing in this
413 section shall be construed to confer any right on [a rural
414 electric cooperative] an electric supplier to serve new
415 structures on a particular tract of land because it was
416 serving an existing structure on that tract.

417 2. Once a rural electric cooperative, or its
418 predecessor in interest, lawfully commences supplying retail
419 electric energy to a structure through permanent service
420 facilities, it shall have the right to continue serving such
421 structure, and other suppliers of electrical energy shall

422 not have the right to provide service to the structure
423 except as might be otherwise permitted in the context of
424 municipal annexation, pursuant to section 386.800 and
425 section 394.080, or pursuant to a territorial agreement
426 approved under section 394.312. The public service
427 commission, upon application made by an affected party, may
428 order a change of suppliers on the basis that it is in the
429 public interest for a reason other than a rate differential,
430 and the commission is hereby given jurisdiction over rural
431 electric cooperatives to accomplish the purpose of this
432 section. The commission's jurisdiction under this section
433 is limited to public interest determinations and excludes
434 questions as to the lawfulness of the provision of service,
435 such questions being reserved to courts of competent
436 jurisdiction. Except as provided herein, nothing in this
437 section shall be construed as otherwise conferring upon the
438 commission jurisdiction over the service, rates, financing,
439 accounting or management of any such cooperative, and except
440 as provided in this section, nothing contained herein shall
441 affect the rights, privileges or duties of existing
442 cooperatives pursuant to this chapter. Nothing in this
443 section shall be construed to make lawful any provision of
444 service which was unlawful prior to July 11, 1991. Nothing
445 in this section shall be construed to make unlawful the
446 continued lawful provision of service to any structure which
447 may have had a different supplier in the past, if such a
448 change in supplier was lawful at the time it occurred.
449 However, those customers who had cancelled service with
450 their previous supplier or had requested cancellation by May
451 1, 1991, shall be eligible to change suppliers as per
452 previous procedures. No customer shall be allowed to change
453 electric suppliers by disconnecting service between May 1,
454 1991, and July 11, 1991.

455 3. Notwithstanding the provisions of this section,
456 section 91.025, section 393.106, and section 394.080 to the
457 contrary, in the event that a retail electric supplier is
458 providing service to a structure located within a city,
459 town, or village that has ceased to be a rural area, and
460 such structure is demolished and replaced by a new
461 structure, such retail electric service supplier may provide
462 permanent service to the new structure upon the request of
463 the owner of the new structure."; and

464 Further amend the title and enacting clause accordingly.