

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 2279**  
**94TH GENERAL ASSEMBLY**

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Reported from the Special Committee on Utilities April 14, 2008 with recommendation that House Committee Substitute for House Bill No. 2279 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

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**AN ACT**

To repeal sections 393.170, 393.275, 393.1012, 407.300, and 537.340, RSMo, and to enact in lieu thereof thirteen new sections relating to utilities, with penalty provisions.

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

Section A. Sections 393.170, 393.275, 393.1012, 407.300, and 537.340, RSMo, are  
2 repealed and thirteen new sections enacted in lieu thereof, to be known as sections 386.572,  
3 393.170, 393.171, 393.275, 393.1012, 394.320, 407.300, 407.301, 407.302, 407.303, 537.340,  
4 570.055, and 570.056, to read as follows:

**386.572. 1. No corporation, person, public utility, or municipality that owns any  
2 gas plant shall violate any law or any order, decision, decree, rule, direction, demand, or  
3 requirement of the commission or any part or portion thereof relating to federally  
4 mandated natural gas safety standards. Notwithstanding the above, a municipality that  
5 owns any gas plant shall be subject to the provisions of this section only for violations of  
6 natural gas safety laws, rules, or orders.**

**7 2. The maximum penalties for violations of federally mandated natural gas safety  
8 standards, or such stricter natural gas safety standards or rules as may be approved by the  
9 commission, shall not be greater than fifteen thousand dollars for each violation with a  
10 maximum penalty for a continuing violation or a multiple series of violations of the same  
11 standard or rule provision not to exceed one hundred fifty thousand dollars,  
12 notwithstanding any provisions of subsection 1 of section 386.570 to the contrary. The**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

13 **maximum penalty for each violation shall increase to twenty thousand dollars, effective**  
14 **January 1, 2015, twenty-five thousand dollars, effective January 1, 2025, thirty thousand**  
15 **dollars, effective January 1, 2035, and forty thousand dollars, effective January 1, 2040.**  
16 **The maximum penalty for a continuing violation or a multiple series of violations of the**  
17 **same standard or rule provision shall increase to two hundred thousand dollars, effective**  
18 **January 1, 2015, two hundred fifty thousand dollars, effective January 1, 2025, three**  
19 **hundred thousand dollars, effective January 1, 2035, and four hundred thousand dollars,**  
20 **effective January 1, 2040. In determining the amount of the penalty, the commission shall**  
21 **consider the nature, circumstances, and gravity of the violation, and also shall consider,**  
22 **with respect to the entity found to have committed the violation:**

- 23 (1) **The degree of culpability;**
- 24 (2) **Any history of prior violations;**
- 25 (3) **The effect of the penalty on the entity's ability to continue operation;**
- 26 (4) **Any good faith effort in attempting to achieve compliance;**
- 27 (5) **Ability to pay the penalty; and**
- 28 (6) **Such other matters as are relevant in the case.**

29 **3. Every violation of a specific natural gas safety standard or rule by any**  
30 **corporation, person, public utility, or municipality that owns any gas plant is a separate**  
31 **and distinct offense, regardless of whether such violations relate to the same incident. In**  
32 **case of a continuing violation, each day's continuance thereof shall be a separate and**  
33 **distinct offense.**

34 **4. In construing and enforcing the provisions of this section, the act, omission, or**  
35 **failure of any officer, agent, or employee of any corporation, person, public utility, or**  
36 **municipality that owns any gas plant acting within the scope of official duties of**  
37 **employment shall in every case be considered the act, omission, or failure of such**  
38 **corporation, person, public utility, or municipality that owns any gas plant.**

393.170. 1. No gas corporation, electrical corporation, water corporation or sewer  
2 corporation shall begin construction of a gas plant, electric plant, water system or sewer system  
3 without first having obtained the permission and approval of the commission.

4 2. No such corporation shall exercise any right or privilege under any franchise hereafter  
5 granted, or under any franchise heretofore granted but not heretofore actually exercised, or the  
6 exercise of which shall have been suspended for more than one year, without first having  
7 obtained the permission and approval of the commission. Before such certificate shall be issued  
8 a certified copy of the charter of such corporation shall be filed in the office of the commission,  
9 together with a verified statement of the president and secretary of the corporation, showing that  
10 it has received the required consent of the proper municipal authorities.

11           3. The commission shall have the power to grant the permission and approval herein  
12 specified whenever it shall after due hearing determine that such construction or such exercise  
13 of the right, privilege or franchise is necessary or convenient for the public service. The  
14 commission may by its order impose such condition or conditions as it may deem reasonable and  
15 necessary. Unless exercised within a period of two years from the grant thereof, authority  
16 conferred by such certificate of convenience and necessity issued by the commission shall be null  
17 and void.

18           **4. For any application for approval for the construction of any new electric**  
19 **generating facility, the commission shall consider local planning and zoning and master**  
20 **plans governing the area in which the electric plant is to be constructed before approving**  
21 **the final location of such electric generating facility. Before approval is granted, the**  
22 **commission shall hold at least one public hearing on the application in the county in which**  
23 **the electric generating facility is to be constructed.**

24           **5. Any order approving or disapproving such electric generating facility shall**  
25 **contain specific findings regarding the matters set forth in subsection 4 of this section.**

**393.171. 1. The commission shall have the authority to grant the permission and**  
2 **approval specified in section 393.170, after the construction or acquisition of any electric**  
3 **plant located in a first class county without a charter form of government has been**  
4 **completed if the commission determines that the grant of such permission and approval**  
5 **is necessary or convenient for the public service. Any such permission and approval shall,**  
6 **for all purposes, have the same effect as the permission and approval granted prior to such**  
7 **construction or acquisition. This subsection is enacted to clarify and specify the law in**  
8 **existence at all times since the original enactment of section 393.170.**

9           **2. The provisions of this section shall expire on August 28, 2009.**

**393.275. 1. The commission shall notify the governing body of each city or county**  
2 **imposing a business license tax pursuant to section 66.300, 92.045, 94.110, 94.270 or 94.360,**  
3 **RSMo, or a similar tax adopted pursuant to charter provisions in any constitutional charter city**  
4 **with a population of at least three hundred fifty thousand inhabitants which is located in more**  
5 **than one county, on gross receipts of any gas corporation, electric corporation, water corporation**  
6 **or sewer corporation of any tariff increases authorized for such firm doing business in that city**  
7 **or county if the approved increase exceeds seven percent. The commission shall include with**  
8 **such notice to any city or county the percentage increase approved for the utility, together with**  
9 **an estimate of the annual increase in gross receipts resulting from the tariff increase on customers**  
10 **residing in that city or county. The provisions of this subsection shall not apply to rate**  
11 **adjustments in the purchase price of natural gas which are approved by the commission and such**

12 **purchased gas adjustment rates shall include the gas cost portion of net write-offs incurred**  
13 **by the gas corporation in providing service to system sales customers.**

14 2. The governing body of each city or county notified of a tariff increase as provided in  
15 subsection 1 of this section shall reduce the tax rate of its business license tax on the gross  
16 receipts of utility corporations. Within sixty days of the effective date of the tariff increase, the  
17 tax rate shall be reduced to the extent necessary so that revenue for the ensuing twelve months  
18 will be approximately equal to the revenue received during the preceding twelve months plus a  
19 growth factor. The growth factor shall be equal to the average of the additional revenue received  
20 in each of the preceding three years. However, a city or county may maintain the tax rate of its  
21 business license tax on the gross receipts of utility corporations without reduction if an ordinance  
22 to maintain the tax rate is enacted by the governing body of the city or an order to maintain the  
23 tax rate is issued by the governing body of the county after September 28, 1985. The provisions  
24 of this subsection shall not apply to rate adjustments in the purchase price of natural gas which  
25 are approved by the commission.

393.1012. 1. Notwithstanding any provisions of chapter 386, RSMo, and this chapter  
2 to the contrary, beginning August 28, 2003, a gas corporation providing gas service may file a  
3 petition and proposed rate schedules with the commission to establish or change ISRS rate  
4 schedules that will allow for the adjustment of the gas corporation's rates and charges to provide  
5 for the recovery of costs for eligible infrastructure system replacements. The commission may  
6 not approve an ISRS to the extent it would produce total annualized ISRS revenues below the  
7 lesser of one million dollars or one-half of one percent of the gas corporation's base revenue level  
8 approved by the commission in the gas corporation's most recent general rate proceeding. The  
9 commission may not approve an ISRS to the extent it would produce total annualized ISRS  
10 revenues exceeding ten percent of the gas corporation's base revenue level approved by the  
11 commission in the gas corporation's most recent general rate proceeding. An ISRS and any  
12 future changes thereto shall be calculated and implemented in accordance with the provisions  
13 of sections 393.1009 to 393.1015. ISRS revenues shall be subject to a refund based upon a  
14 finding and order of the commission to the extent provided in subsections 5 and 8 of section  
15 393.1009.

16 2. The commission shall not approve an ISRS for any gas corporation that has not had  
17 a general rate proceeding decided or dismissed by issuance of a commission order within the past  
18 [three] **five** years, unless the gas corporation has filed for or is the subject of a new general rate  
19 proceeding.

20 3. In no event shall a gas corporation collect an ISRS for a period exceeding [three] **five**  
21 years unless the gas corporation has filed for or is the subject of a new general rate proceeding;  
22 provided that the ISRS may be collected until the effective date of new rate schedules established

23 as a result of the new general rate proceeding, or until the subject general rate proceeding is  
24 otherwise decided or dismissed by issuance of a commission order without new rates being  
25 established.

**394.320. 1. Notwithstanding any other law to the contrary, any regional electric cooperative engaged in providing electrical power and energy under an all-requirements contract to two or more municipalities of any classification that is located in whole or in part within the state of Missouri and that has the primary function of generating and transmitting power from a generation cooperative to a distribution cooperative shall allow the municipalities to whom it provides electrical power at wholesale or related services to appoint at least four members to the governing board of such regional electric cooperative. The appointments shall be made by a majority vote of the mayors of the municipalities served by the regional electric cooperative. Those appointed on behalf of the municipalities to the governing board of the regional electric cooperative shall be subject to section 394.160 and the cooperative's bylaws respecting directors of the governing board and shall enjoy the full rights, privileges, and benefits of the other members of the governing board of the regional electric cooperative.**

**2. This section may be enforced in any court of proper jurisdiction by an injunctive remedy requiring that the regional electric cooperative cease part or all of its activities within Missouri if such regional electric cooperative fails to comply with any of the requirements of subsection 1 of this section.**

**407.300. 1. Every purchaser or collector of, or dealer in junk, scrap metal, or any secondhand property shall keep a register [which shall contain the name and address of the person from whom] containing a written or electronic record for each purchase or trade in which each type of metal subject to the provisions of this section is obtained for value. There shall be a separate record for each transaction involving any copper or aluminum or brass or bronze wire [or] , cable [is purchased], pipe, tubing, bar, ingot, rod, fitting, or fastener, whatever may be the condition or length of such [copper wire or cable; the residence or place of business and driver's license number of such person;] metal. The record shall contain the following data: A copy of the operator's license or photo identification issued by the state or by the United States government or agency thereof to the person from whom the material is obtained, which shall contain a current address of the person from whom the material is obtained and the date, time, and place of and a full description of each such purchase or trade including the quantity by weight thereof[; and shall permit any peace officer to inspect the register at any reasonable time].**

15           2. The records required under this section shall be maintained for a minimum of  
16 twenty-four months from when such material is obtained and shall be available for  
17 inspection by any law enforcement officer.

18           3. Anyone convicted of violating this section shall be [fined not less than twenty-five  
19 dollars nor more than five hundred dollars, or imprisoned for not less than thirty days nor more  
20 than six months, or both] **guilty of a class A misdemeanor.**

21           4. **This section shall not apply to any of the following transactions:**

22           (1) Any transaction for which the total amount paid for all regulated scrap metal  
23 purchased or sold does not exceed fifty dollars;

24           (2) Any transaction for which the seller has an existing business relationship with  
25 the scrap metal dealer and is known to the scrap metal dealer making the purchase to be  
26 an established business or political subdivision that operates a business with a fixed  
27 location that can be reasonably expected to generate regulated scrap metal and can be  
28 reasonably identified as such a business; or

29           (3) Any transaction for which the type of metal subject to subsection 1 of this  
30 section is a minor part of a larger item, except for equipment used in the generation and  
31 transmission of electrical power or telecommunications.

**407.301. 1. No scrap metal dealer shall knowingly purchase or possess a metal beer  
2 keg as defined in section 311.082, RSMo, whether damaged or undamaged, or any  
3 reasonably recognizable part thereof, on any premises that the dealer uses to buy, sell,  
4 store, shred, melt, cut, or otherwise alter scrap metal except when the purchase is from the  
5 brewer or its authorized representative.**

6           2. Anyone convicted of violating this section shall be guilty of a class A  
7 misdemeanor punishable only by fine. Nothing in this section shall be construed to  
8 preclude a person violating this section from also being prosecuted for any applicable  
9 criminal offense.

**407.302. 1. No scrap yard shall purchase any metal that can be identified as  
2 belonging to a political subdivision or electrical cooperative, municipal utility, or a utility  
3 regulated under chapter 386 or 393, RSMo, including bleachers, guardrails, signs, street  
4 and traffic lights or signals, and manhole cover or covers, whether broken or unbroken,  
5 from anyone other than the political subdivision, electrical cooperative or utility, or  
6 manufacturer of the metal or item described in this section unless such person is  
7 authorized in writing by the political subdivision, electrical cooperative or utility, or  
8 manufacturer to sell the metal.**

9           2. Anyone convicted of violating this section shall be guilty of a class B  
10 misdemeanor.

1           **407.303. 1. Any scrap metal dealer paying out an amount that is five hundred**  
2 **dollars or more shall make such payment in the form of a check or shall pay by any**  
3 **method in which a financial institution makes and retains a record of the transaction.**

4           **2. This section shall not apply to any transaction for which the seller has an existing**  
5 **business relationship with the scrap metal dealer and is known to the scrap metal dealer**  
6 **making the purchase to be an established business or political subdivision that operates a**  
7 **business with a fixed location that can be reasonably expected to generate regulated scrap**  
8 **metal and can be reasonably identified as such a business.**

**537.340. 1. If any person shall cut down, injure or destroy or carry away any tree placed**  
2 **or growing for use, shade or ornament, or any timber, rails or wood standing, being or growing**  
3 **on the land of any other person, including any governmental entity, or shall dig up, quarry or**  
4 **carry away any stones, ore or mineral, gravel, clay or mold, or any ice or other substance or**  
5 **material being a part of the realty, or any roots, fruits or plants, or cut down or carry away grass,**  
6 **grain, corn, flax or hemp in which such person has no interest or right, standing, lying or being**  
7 **on land not such person's own, or shall knowingly break the glass or any part of it in any building**  
8 **not such person's own, the person so offending shall pay to the party injured treble the value of**  
9 **the things so injured, broken, destroyed or carried away, with costs. Any person filing a claim**  
10 **for damages pursuant to this section need not prove negligence or intent.**

11           **2. Notwithstanding the provisions of subsection 1 of this section, the following rules**  
12 **shall apply to the trimming, removing, and controlling of trees and other vegetation by any**  
13 **electric supplier:**

14           **(1) Every electric supplier that operates electric transmission or distribution lines**  
15 **shall have the authority to maintain the same by trimming, removing, and controlling trees**  
16 **and other vegetation posing a hazard to the continued safe and reliable operation thereof;**

17           **(2) An electric supplier may exercise its authority under subdivision (1) of this**  
18 **subsection if the trees and other vegetation are within the legal description of any recorded**  
19 **easement, or in the absence of a recorded easement, the following:**

20           **(a) Within ten feet, plus one-half the length of any attached cross arm, of either side**  
21 **of the centerline of electricity lines potentially energized at or below 34.5 kilovolts**  
22 **measured line to line and located within the limits of any city; or**

23           **(b) Within thirty feet of either side of the centerline of electricity lines potentially**  
24 **energized at or below 34.5 kilovolts measured line to line and located outside the limits of**  
25 **any city; or**

26           **(c) Within fifty feet of either side of the centerline of electricity lines potentially**  
27 **energized between 34.5 and one hundred kilovolts measured line to line; or**

28           **(d) Within the greater of the following for any electricity lines potentially energized**  
29 **at one hundred kilovolts or more measured line to line:**

30           **a. Seventy-five feet to either side of the centerline; or**

31           **b. Any required clearance distance adopted by either the Federal Energy**  
32 **Regulatory Commission or an Electric Reliability Organization authorized by the Energy**  
33 **Policy Act of 2005, 16 U.S.C. Section 824o. Such exercise shall be considered reasonable**  
34 **and necessary for the proper and reliable operation of electric service and shall create a**  
35 **rebuttable presumption, in claims for property damage, that the electric supplier acted**  
36 **with reasonable care, operated within its rights regarding the operation and maintenance**  
37 **of its electricity lines, and has not committed a trespass;**

38           **(3) An electric supplier may trim, remove, and control trees and other vegetation**  
39 **outside the provisions in subdivision (2) of this subsection if such actions are necessary to**  
40 **maintain the continued safe and reliable operation of its electric lines;**

41           **(4) An electric supplier may secure from the owner or occupier of land greater**  
42 **authority to trim, remove, and control trees and other vegetation than the provisions set**  
43 **forth in subdivision (2) of this subsection and may exercise any and all rights regarding the**  
44 **trimming, removing, and controlling of trees and other vegetation granted in any easement**  
45 **held by the electric supplier;**

46           **(5) An electric supplier may trim or remove any tree of sufficient height outside the**  
47 **provisions of subdivision (2) of this subsection when such tree, if it were to fall, would**  
48 **threaten the integrity and safety of any electric transmission or distribution line and would**  
49 **pose a hazard to the continued safe and reliable operation thereof;**

50           **(6) Prior to the removal of any tree under the provisions of subdivision (5) of this**  
51 **subsection, an electric supplier shall notify the owner or occupier of land, if available, at**  
52 **least fourteen days prior to such removal, unless either the electric supplier deems the**  
53 **removal to be immediately necessary to continue the safe and reliable operation of its**  
54 **electricity lines, or the electric supplier is trimming or removing trees and other vegetation**  
55 **following a major weather event or other emergency situation;**

56           **(7) If any tree which is partially trimmed by an electric supplier dies within three**  
57 **months as a result of such trimming, the owner or occupier of land upon which the tree**  
58 **was trimmed may request in writing that the electric supplier remove such tree at the**  
59 **electric supplier's expense. The electric supplier shall respond to such request within**  
60 **ninety days;**

61           **(8) Nothing in this subsection shall be interpreted as requiring any electric supplier**  
62 **to fully exercise the authorities granted in this subsection.**

63           **3. For purposes of this section, the term "electric supplier" means any rural**  
64 **cooperative that is subject to the provisions of chapter 394, RSMo, and any electric**  
65 **corporation which is required by its bylaws to operate on the not-for-profit cooperative**  
66 **business plan, with its consumers who receive service as the stockholders of such**  
67 **corporation and that holds a certificate of public convenience and necessity to serve a**  
68 **majority of its customer-owners in counties of the third classification as of August 28, 2003.**

**570.055. Any person who steals or appropriates, without consent of the owner, any**  
2 **wire, electrical transformer, metallic wire associated with transmitting**  
3 **telecommunications, or any other device or pipe that is associated with conducting**  
4 **electricity or transporting natural gas or other combustible fuels shall be guilty of a class**  
5 **C felony.**

**570.056. Any person who steals or appropriates, without consent of the owner, any**  
2 **property located on the premises of electrical cooperatives or municipal utilities or utilities**  
3 **regulated under chapter 386, RSMo, shall be guilty of a class D felony.**

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