

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1316
96TH GENERAL ASSEMBLY

4791L.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

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

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

Section A. Sections 386.370, 393.135, and 620.010, RSMo, are repealed and five new
2 sections enacted in lieu thereof, to be known as sections 386.370, 386.715, 393.135, 620.010,
3 and 1, to read as follows:

386.370. 1. The commission shall, prior to the beginning of each fiscal year beginning
2 with the fiscal year commencing on July 1, 1947, make an estimate of the expenses to be
3 incurred by it during such fiscal year reasonably attributable to the regulation of public utilities
4 as provided in chapters 386, 392 and 393 and shall also separately estimate the amount of such
5 expenses directly attributable to such regulation of each of the following groups of public
6 utilities: Electrical corporations, gas corporations, water corporations, heating companies and
7 telephone corporations, telegraph corporations, sewer corporations, and any other public utility
8 as defined in section 386.020, as well as the amount of such expenses not directly attributable
9 to any such group.

10 2. The commission shall allocate to each such group of public utilities the estimated
11 expenses directly attributable to the regulation of such group and an amount equal to such
12 proportion of the estimated expenses not directly attributable to any group as the gross intrastate
13 operating revenues of such group during the preceding calendar year bears to the total gross
14 intrastate operating revenues of all public utilities subject to the jurisdiction of the commission,
15 as aforesaid, during such calendar year. The commission shall then assess the amount so
16 allocated to each group of public utilities, subject to reduction as herein provided, to the public
17 utilities in such group in proportion to their respective gross intrastate operating revenues during

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.

18 the preceding calendar year, except that the total amount so assessed to all such public utilities
19 shall not exceed [one-fourth] **twenty-three hundredths** of one percent of the total gross
20 intrastate operating revenues of all utilities subject to the jurisdiction of the commission.

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

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

40 5. In order to enable the commission to make the allocations and assessments herein
41 provided for, each public utility subject to the jurisdiction of the commission as aforesaid shall
42 file with the commission, within ten days after August 28, 1996, and thereafter on or before
43 March thirty-first of each year, a statement under oath showing its gross intrastate operating
44 revenues for the preceding calendar year, and if any public utility shall fail to file such statement
45 within the time aforesaid the commission shall estimate such revenue which estimate shall be
46 binding on such public utility for the purpose of this section.

**386.715. 1. The public counsel shall, prior to the beginning of each fiscal year,
2 make available to the commission an estimate of the expenses to be incurred by the public
3 counsel during such fiscal year, reasonably attributable to his or her responsibilities under
4 sections 386.700 and 386.710 and shall also separately estimate the amount of such
5 expenses directly attributable to such responsibilities with respect to each of the following
6 groups of public utilities: electrical corporations, gas corporations, water corporations,
7 heating companies, telephone corporations, telegraph corporations, sewer corporations,**

8 and any other public utility as defined in section 386.020, as well as the amount of such
9 expenses not directly attributable to any such group.

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

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

37 4. The state treasurer shall credit such payments to a special fund, which is hereby
38 created, to be known as "The Public Counsel Fund", which fund, or its successor fund
39 created under section 33.571, shall be devoted solely to the payment of expenditures
40 actually incurred by the public counsel and attributable to his or her responsibilities under
41 sections 386.700 and 386.710. Any amount remaining in such special fund or its successor
42 fund at the end of any fiscal year shall not revert to the general revenue fund, but shall be
43 applicable to the payment of such expenditures of the public counsel in the succeeding

44 **fiscal year and shall be applied by the public counsel to the reduction of the amount to be**
45 **assessed to such public utilities in such succeeding fiscal year, such reduction to be**
46 **allocated to each group of public utilities in proportion to the respective gross intrastate**
47 **operating revenues of the respective groups during the preceding calendar year.**

48 **5. In order to enable the public counsel to make the allocations and assessments**
49 **provided for in this section, each public utility subject to the jurisdiction of the commission**
50 **shall file with the commission on or before March thirty-first of each year, a statement**
51 **under oath showing its gross intrastate operating revenues for the preceding calendar year,**
52 **and if any public utility shall fail to file such statement within the time established in this**
53 **subsection, the commission shall estimate such revenue. Such estimate shall be binding on**
54 **such public utility for the purpose of this section.**

393.135. **1. Any charge made or demanded by an electrical corporation for service, or**
2 **in connection therewith, which is based on the costs of construction in progress upon any**
3 **existing or new facility of the electrical corporation, or any other cost associated with owning,**
4 **operating, maintaining, or financing any property before it is fully operational and used for**
5 **service, is unjust and unreasonable, and is prohibited.**

6 **2. Notwithstanding the provisions of subsection 1 of this section, whenever an**
7 **electrical corporation obtains an early site permit granted by the United States Nuclear**
8 **Regulatory Commission or a successor organization, the commission shall allow recovery**
9 **of the electrical corporation's cost of obtaining the early site permit in the manner provided**
10 **for in subsection 3 of this section, for the prudently incurred costs directly incurred by the**
11 **electrical corporation to apply for and obtain such permit. The electrical corporation shall**
12 **take reasonable steps to minimize the cost of applying for and obtaining such permit.**

13 **3. Notwithstanding the provisions of subsection 1 of this section, an electrical**
14 **corporation that has obtained an early site permit shall be entitled to recover through rates**
15 **charged to ratepayers all costs the electrical corporation has prudently incurred directly**
16 **related to applying for and obtaining the early site permit, from the first dollar through**
17 **the cap outlined below, in an amount not to exceed forty-five million dollars for such site**
18 **permit. The forty-five million dollar cost cap applicable to electrical corporations shall be**
19 **reduced by the amount of funding provided to the electrical corporation toward its costs**
20 **of applying for and obtaining the early site permit from other sources, including but not**
21 **limited to rural electric cooperatives or their organizations and municipal electric utilities**
22 **or their organizations. Any electrical corporation that, as part of a partnership or other**
23 **group formed for such purpose, contributes or otherwise bears any portion of the costs**
24 **incurred to obtain an early site permit shall also be entitled to recover its share of such**
25 **costs. The electrical corporation's costs of applying for and obtaining the early site permit,**

26 plus interest on the unrecovered balance at a rate per annum equal to the applicable
27 electrical corporation's short-term borrowing rate, shall be recovered through each
28 applicable electrical corporation's rates charged to its ratepayers ratably over a period not
29 to exceed six years. Such rate recovery shall commence with the effective date of tariffs
30 approved by the commission in each applicable electrical corporation's first general rate
31 proceeding filed after the date on which the early site permit is obtained and the Nuclear
32 Regulatory Commission's grant of the early site permit is final and unappealable.
33 Recovery shall be allowed only for expenditures directly incurred by the electrical
34 corporation to apply for and obtain such permit that the commission has found to be
35 prudent and reasonable in the general rate case where recovery is sought, plus interest on
36 the unrecovered balance as aforesaid. The recovery provided for in this section shall only
37 apply to the electrical corporation's prudently incurred expenditures directly incurred by
38 the electrical corporation to apply for and obtain such permit plus interest on the
39 unrecovered balance as aforesaid and shall not serve as precedent for the commission to
40 allow similar recovery of other types of costs. The electrical corporation shall have the
41 burden of proof regarding the prudence of those early site permit costs about which a
42 reasonable doubt is created by a party to such general rate case. Any party who challenges
43 the prudence of the decision to apply for and obtain the early site permit shall bear the
44 burden of proof regarding any allegation that the decision to apply for and obtain such
45 permit was imprudent.

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

50 5. If an electrical corporation has recovered from ratepayers expenditures for an
51 early site permit pursuant to subsection 3 of this section and then subsequently sells or
52 transfers some or all of its interest in the early site permit or subsequently receives
53 reimbursement or other proceeds for all or part of its costs from another source, the
54 commission shall return such proceeds to ratepayers with interest to the extent such
55 expenditures have been recovered in rates. If the amount of such proceeds exceeds the
56 amount paid by customers the commission may in its discretion award up to twenty-five
57 percent of such excess proceeds to the electrical corporation.

58 6. There is hereby established the "Governor's Task Force on Electrical Generation
59 Options". The task force shall review evidence regarding generation options, including
60 nuclear power options other than a traditional large baseload nuclear plant, including
61 evidence regarding system benefits, rate impact, and financing options. The task force

62 **shall issue a report on or before September 30, 2012. The governor shall appoint members**
63 **on the task force, which shall include an equal number of representatives of each of the**
64 **following: the commission, the public counsel, industrial consumers, residential consumers,**
65 **commercial consumers, small investor-owned utilities, large investor-owned utilities, rural**
66 **electric cooperatives, and municipal utilities.**

620.010. 1. There is hereby created a "Department of Economic Development" to be
2 headed by a director appointed by the governor, by and with the advice and consent of the senate.
3 All of the general provisions, definitions and powers enumerated in section 1 of the Omnibus
4 State Reorganization Act of 1974 shall continue to apply to this department and its divisions,
5 agencies and personnel.

6 2. The powers, duties and functions vested in the public service commission, chapters
7 386, 387, 388, 389, 390, 392, 393, and others, and the administrative hearing commission,
8 sections 621.015 to 621.198 and others, are transferred by type III transfers to the department of
9 economic development. The director of the department is directed to provide and coordinate
10 staff and equipment services to these agencies in the interest of facilitating the work of the bodies
11 and achieving optimum efficiency in staff services common to all the bodies. Nothing in the
12 Reorganization Act of 1974 shall prevent the chairman of the public service commission from
13 presenting additional budget requests or from explaining or clarifying its budget requests to the
14 governor or general assembly.

15 3. The powers, duties and functions vested in the office of the public counsel are
16 transferred by type III transfer to the department of economic development. [Funding for the
17 general counsel's office shall be by general revenue.]

18 4. The public service commission is authorized to employ such staff as it deems
19 necessary for the functions performed by the general counsel other than those powers, duties and
20 functions relating to representation of the public before the public service commission.

21 5. All the powers, duties and functions vested in the tourism commission, chapter 258
22 and others, are transferred to the "Division of Tourism", which is hereby created, by type III
23 transfer.

24 6. All the powers, duties and functions of the department of community affairs, chapter
25 251 and others, not otherwise assigned, are transferred by type I transfer to the department of
26 economic development, and the department of community affairs is abolished. The director of
27 the department of economic development may assume all the duties of the director of community
28 affairs or may establish within the department such subunits and advisory committees as may be
29 required to administer the programs so transferred. The director of the department shall appoint
30 all members of such committees and heads of subunits.

31 7. The state council on the arts, chapter 185 and others, is transferred by type II transfer
32 to the department of economic development, and the members of the council shall be appointed
33 by the director of the department.

34 8. The Missouri housing development commission, chapter 215, is assigned to the
35 department of economic development, but shall remain a governmental instrumentality of the
36 state of Missouri and shall constitute a body corporate and politic.

37 9. All the authority, powers, duties, functions, records, personnel, property, matters
38 pending and other pertinent vestiges of the division of manpower planning of the department of
39 social services are transferred by a type I transfer to the "Division of Job Development and
40 Training", which is hereby created, within the department of economic development. The
41 division of manpower planning within the department of social services is abolished. The
42 provisions of section 1 of the Omnibus State Reorganization Act of 1974, Appendix B, relating
43 to the manner and procedures for transfers of state agencies shall apply to the transfers provided
44 in this section.

45 10. Any rule or portion of a rule, as that term is defined in section 536.010, that is
46 created under the authority delegated in this section shall become effective only if it complies
47 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.
48 This section and chapter 536 are nonseverable and if any of the powers vested with the general
49 assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and
50 annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and
51 any rule proposed or adopted after August 28, 2008, shall be invalid and void.

**Section 1. If any section, subsection, subdivision, paragraph, sentence, or clause of
2 sections 386.370, 386.715, or 393.135 is held to be invalid or unconstitutional, such decision
3 shall not affect any remaining portion, section, or part thereof which can be given effect
4 without the invalid provision.**

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

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