

SECOND REGULAR SESSION

HOUSE BILL NO. 2467

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BROMLEY.

5413H.02I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

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

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

Section A. Sections 88.770, 91.550, 386.800, and 394.315, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 88.770, 91.550, 386.800, and 394.315, to read as follows:

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

2. The board of aldermen may provide for and regulate the lighting of streets and the erection of lamp posts, poles and lights therefor, and may make contracts with any person, association or corporation, either private or municipal, for the lighting of the streets and other public places of the city with gas, electricity or otherwise, except that each initial contract shall be ratified by a majority of the voters of the city voting on the question and any renewal contract or extension shall be subject to voter approval of the majority of the voters voting on the question, pursuant to the provisions of section 88.251. The board of aldermen may erect, maintain and operate gas works, electric light works, or light works of any other kind or name, and to erect lamp posts, electric light poles, or any other apparatus or appliances necessary to light the streets, avenues, alleys or other public places, and to supply private lights for the use of the inhabitants of the city and its suburbs, and may regulate the same, and may prescribe and regulate the rates to be paid by the consumers thereof, and may acquire by purchase, donation

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.

17 or condemnation suitable grounds within or without the city upon which to erect such works and
18 the right-of-way to and from such works, and also the right-of-way for laying gas pipes, electric
19 wires under or above the grounds, and erecting posts and poles and such other apparatus and
20 appliances as may be necessary for the efficient operation of such works. The board of aldermen
21 may, in its discretion, grant the right to any person, persons or corporation, to erect such works
22 and lay the pipe, wires, and erect the posts, poles and other necessary apparatus and appliances
23 therefor, upon such terms as may be prescribed by ordinance. Such rights shall not extend for
24 a longer time than twenty years, but may be renewed for another period or periods not to exceed
25 twenty years per period. Every initial grant shall be approved by a majority of the voters of the
26 municipality voting on the question, and each renewal or extension of such rights shall be subject
27 to voter approval of the majority of the voters voting on the question, pursuant to the provisions
28 of section 88.251. Nothing herein contained shall be so construed as to prevent the board of
29 aldermen from contracting with any person, persons or corporation for furnishing the city with
30 gas or electric lights in cities where franchises have already been granted, and where gas or
31 electric light plants already exist, without a vote of the people, except that the board of aldermen
32 may sell, convey, encumber, lease, abolish or otherwise dispose of any public utilities owned by
33 the city including electric light systems, electric distribution systems or transmission lines, or any
34 part of the electric light systems, electric or other heat systems, electric or other power systems,
35 electric or other railways, gas plants, telephone systems, telegraph systems, transportation
36 systems of any kind, waterworks, equipments and all public utilities not herein enumerated and
37 everything acquired therefor, after first having passed an ordinance setting forth the terms of the
38 sale, conveyance or encumbrance and when ratified by two-thirds of the voters voting on the
39 question, except for the sale of a water or wastewater system, or the sale of a gas plant, which
40 shall be authorized by a simple majority vote of the voters voting on the question. In the event
41 of the proposed sale of a water or wastewater system, or a gas plant, the board of alderman shall
42 hold a public meeting on such proposed sale at least thirty days prior to the vote. The
43 municipality in question shall notify its customers of the informational meeting through radio,
44 television, newspaper, regular mail, electronic mail, or any combination of notification methods
45 to most effectively notify customers at least fifteen days prior to the informational meeting. In
46 advance of putting a proposed sale of a water or wastewater system or a gas plant before the
47 voters, the board of aldermen may seek an appraisal as set forth in subsections 3 and 4 of section
48 393.320. The board may also seek and provide additional reasonable analyses to inform voters
49 of such sale, including, but not limited to, the impact of such sale on all city funds and revenues,
50 other city services, and annexation. Nothing in this section shall be so construed as to discourage
51 the board of aldermen from seeking multiple bids when considering the disposal of a water or
52 wastewater system or a gas plant by sale.

53 ~~[2-]~~ 3. The board of aldermen's determination of the fair market value of a water or
54 wastewater system or a gas plant for the purposes of this section shall not be dispositive of the
55 price of a water or wastewater system, or a gas plant, which may be subject to negotiation by the
56 board of aldermen.

57 ~~[3-]~~ 4. The board of aldermen may consider alternatives to disposing of a water or
58 wastewater system or a gas plant by sale, including entering into a finance agreement, purchase
59 agreement, management agreement, or lease agreement with another entity.

60 ~~[4-]~~ 5. The board of aldermen may make available on its internet site, if such internet
61 site exists, at least forty-five days prior to submitting a proposal for election pursuant to this
62 section, a copy of the appraisal or additional reasonable analyses under subsection ~~[4]~~ 2 of this
63 section and the fair market value of a water or wastewater system or a gas plant. Such
64 information may also be posted in the building where the board of aldermen has its monthly
65 meetings.

66 ~~[5-]~~ 6. The board of aldermen may make a good-faith effort to notify each property
67 owner of the city and each ratepayer of a water or wastewater system or a gas plant of the
68 proposal to dispose of the water or wastewater system, or a gas plant, by sale through radio,
69 television, newspaper, regular mail, electronic mail, or any combination of such notification
70 methods. Such notice may also include instructions for locating a summary of the proposal and
71 a summary of any appraisal and analyses as under subsection 1 of this section on the board of
72 aldermen's internet site, if such internet site exists. In the event the board of aldermen does not
73 have an internet site, the notice may inform the recipient that written copies of such information
74 may be made available at the building where the board of aldermen has its monthly meetings.

75 ~~[6-]~~ 7. Nothing in this section shall be construed as a violation of section 115.646,
76 relating to the use of public funds to advocate, support, or oppose the ballot measure prescribed
77 in subsection ~~[7]~~ 8 of this section.

78 ~~[7-]~~ 8. The ballots shall be substantially in the following form and shall indicate the
79 property, or portion thereof, and whether the same is to be sold, leased or encumbered:

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

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

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

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

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

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

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

10 (4) The structure is located in an area which was previously served by an electrical
11 corporation regulated under chapter 386, and chapter 393, and the electrical corporation's
12 authorized service territory was contiguous to or inclusive of the municipality's previous
13 corporate boundaries, and the electrical corporation's ownership or operating rights within the
14 area were acquired in total by the municipally owned electrical system prior to July 11, 1991.
15 In the event that a municipally owned electric utility in a city with a population of more than one
16 hundred twenty-five thousand located in a county of the first class not having a charter form of
17 government and not adjacent to any other county of the first class desires to serve customers
18 beyond the authorized service territory in an area which was previously served by an electrical
19 corporation regulated under the provisions of chapter 386, and chapter 393, as provided in this
20 subdivision, the municipally owned utility shall apply to the public service commission for an
21 order assigning nonexclusive service territories. The proposed service area shall be contiguous
22 to the authorized service territory which was previously served by an electrical corporation
23 regulated under the provisions of chapter 386, and chapter 393, as a condition precedent to the
24 granting of the application. The commission shall have one hundred twenty days from the date
25 of application to grant or deny the requested order. The commission may grant the order upon
26 a finding that granting of the applicant's request is not detrimental to the public interest. In
27 granting the applicant's request the commission shall give due regard to territories previously
28 granted to other electric suppliers.

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

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

46 **4.** When a municipally owned electric utility desires to extend its service territory to
47 include any structure located within a newly annexed area which has received permanent service
48 from another supplier within ninety days prior to the effective date of the annexation, it shall:

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

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

56 ~~[4.]~~ **5.** Upon receiving approval from the municipality's governing body pursuant to
57 subsection ~~[3]~~ **4** of this section, the municipally owned electric utility and the affected electric
58 supplier shall meet and negotiate in good faith the terms of the territorial agreement and any
59 transfers or acquisitions, including, as an alternative, granting the affected electric supplier a
60 franchise or authority to continue providing service in the annexed area. In the event that the
61 affected electric supplier does not provide wholesale electric power to the municipality, if the
62 affected electric supplier so desires, the parties shall also negotiate, consistent with applicable
63 law, regulations and existing power supply agreements, for power contracts which would provide
64 for the purchase of power by the municipality from the affected electric supplier for an amount
65 of power equivalent to the loss of any sales to customers receiving permanent service at
66 structures within the annexed areas which are being sought by the municipally owned electric
67 utility. The parties shall have no more than one hundred eighty days from the date of receiving
68 approval from the municipality's governing body within which to conclude their negotiations and

69 file their territorial agreement with the commission for approval under the provisions of section
70 394.312. The time period for negotiations allowed under this subsection may be extended for
71 a period not to exceed one hundred eighty days by a mutual agreement of the parties and a
72 written request with the public service commission.

73 ~~[5-]~~ 6. For purposes of this section, the term "fair and reasonable compensation" shall
74 mean the following:

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

77 (2) An amount equal to the reasonable and prudent cost of detaching the facilities in the
78 annexed areas and the reasonable and prudent cost of constructing any necessary facilities to
79 reintegrate the system of the affected electric supplier outside the annexed area after detaching
80 the portion to be transferred to the municipally owned electric utility; and

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

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

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

90 ~~[6-]~~ 7. In the event the parties are unable to reach an agreement under subsection ~~[4]~~ 5
91 of this section, within sixty days after the expiration of the time specified for negotiations, the
92 municipally owned electric utility may apply to the commission for an order assigning exclusive
93 service territories within the annexed area and a determination of the fair and reasonable
94 compensation amount to be paid to the affected electric supplier under subsection ~~[5]~~ 6 of this
95 section. Applications shall be made and notice of such filing shall be given to all affected parties
96 pursuant to the rules and regulations of the commission governing applications for certificates
97 of public convenience and necessity. Unless otherwise ordered by the commission for good
98 cause shown, the commission shall rule on such applications not later than one hundred twenty
99 days after the application is properly filed with the secretary of the commission. The
100 commission shall hold evidentiary hearings to assign service territory between affected electric
101 suppliers inside the annexed area and to determine the amount of compensation due any affected
102 electric supplier for the transfer of plant, facilities or associated lost revenues between electric
103 suppliers in the annexed area. The commission shall make such determinations based on
104 findings of what best serves the public interest and shall issue its decision by report and order.

105 Review of such commission decisions shall be governed by sections 386.500 to 386.550. The
106 payment of compensation and transfer of title and operation of the facilities shall occur within
107 ninety days after the order and any appeal therefrom becomes final unless the order provides
108 otherwise.

109 ~~[7-]~~ **8.** In reaching its decision under subsection ~~[6]~~ **7** of this section, the commission
110 shall consider the following factors:

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

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

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

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

125 ~~[8-]~~ **9.** The commission is hereby given all necessary jurisdiction over municipally
126 owned electric utilities and rural electric cooperatives to carry out the purposes of this section
127 consistent with other applicable law; provided, however, the commission shall not have
128 jurisdiction to compel the transfer of customers or structures with a connected load greater than
129 one thousand kilowatts. The commission shall by rule set appropriate fees to be charged on a
130 case-by-case basis to municipally owned electric utilities and rural electric cooperatives to cover
131 all necessary costs incurred by the commission in carrying out its duties under this section.

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

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

8 (2) "Structure" or "structures", an agricultural, residential, commercial, industrial or other
9 building or a mechanical installation, machinery or apparatus at which retail electric energy is

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

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

38 **3. Notwithstanding the provisions of this section and section 394.080 to the**
39 **contrary, in the event that a rural electric cooperative is providing service to a structure**
40 **located within a city, town, or village in excess of one thousand fifteen hundred inhabitants**
41 **and such structure is demolished and replaced by a new structure, the rural electric**
42 **cooperative may provide permanent service to the new structure upon the request of the**
43 **owner of the new structure.**

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