

FIRST REGULAR SESSION

HOUSE BILL NO. 551

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SCHLOTTACH, LOEHNER, SCHAD, HOBBS, WHORTON, JONES, CUNNINGHAM (145), BRUNS, QUINN, COOPER (158), THRELKELD, GOODMAN, SHOEMYER, MUNZLINGER, McGHEE, HENKE, SUTHERLAND, KUESSNER, BARNITZ, JOHNSON (47), GUEST, ERVIN, DETHROW AND BEARDEN (Co-sponsors).

Read 1st time February 15, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1470L.01H

AN ACT

To repeal section 394.312, RSMo, and to enact in lieu thereof two new sections relating to electrical cooperatives, with an emergency clause.

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

Section A. Sections 394.312, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 394.312 and 394.313, to read as follows:

394.312. 1. Competition to provide retail electric service, as between rural electric cooperatives, electrical corporations and municipally owned utilities may be displaced by written territorial agreements, but only to the extent hereinafter provided for in this section.

2. Such territorial agreements shall specifically designate the boundaries of the electric service area of each electric service supplier subject to the agreement, any and all powers granted to a rural electric cooperative by a municipality, pursuant to the agreement, to operate within the corporate boundaries of that municipality, notwithstanding the provisions of section 394.020 and of section 394.080 to the contrary, and any and all powers granted to a municipally owned utility, pursuant to the agreement, to operate in areas beyond the corporate municipal boundaries of its municipality. Where the parties cannot agree, they may, by mutual consent of all parties involved, petition the public service commission to designate the boundaries of the electric service areas to be served by each party and such designations by the commission shall be binding on all such parties. **A city, town, or village that has a pending annexation, may**

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.

14 **petition the public service commission to designate, within the area to be annexed, the**
15 **boundaries of the electric service areas to be served by either the municipal utility, electric**
16 **corporation, or electric cooperative and such designations by the commission shall be**
17 **binding on all such electric suppliers. The commission shall determine and rule on such**
18 **applications by annexing municipalities within ninety days of the filing by the municipality.**
19 **In all other respects** petitions shall be made pursuant to the rules and regulations of the
20 commission governing applications for certificates of public convenience and necessity and the
21 commission shall be required to hold evidentiary hearings on all petitions so received. The
22 commission shall base its final determination upon a finding that the commission's designation
23 of electric service areas is in the public interest.

24 3. The provisions of sections 386.310, RSMo, and 393.106, RSMo, and sections 394.160
25 and 394.315 to the contrary notwithstanding, before becoming effective, all territorial agreements
26 entered into under the provisions of this section, including any subsequent amendments to such
27 agreements, or the transfer or assignment of the agreement or any rights or obligations of any
28 party to an agreement, shall receive the approval of the public service commission by report and
29 order. Applications for commission approval shall be made and notice of such filing shall be
30 given to other electrical suppliers pursuant to the rules and regulations of the commission
31 governing applications for certificates of public convenience and necessity. Unless otherwise
32 ordered by the commission for good cause shown, the commission shall rule on such applications
33 not later than one hundred twenty days after the application is properly filed with the secretary
34 of the commission.

35 4. The commission shall hold evidentiary hearings to determine whether such territorial
36 agreements should be approved or disapproved **except in those instances where the matter is**
37 **resolved by a stipulation and agreement submitted to the commission by all the parties**
38 **such hearings may be waived by agreement of the parties.** The commission may approve the
39 application if it [shall after hearing determine] **determines** that approval of the territorial
40 agreement in total is not detrimental to the public interest. Review of commission decisions
41 under this section shall be governed by the provisions of sections 386.500 to 386.550, RSMo.

42 5. Commission approval of any territorial agreement entered into under the provisions
43 of this section shall in no way affect or diminish the rights and duties of any supplier not a party
44 to the agreement or of any electrical corporation authorized by law to provide service within the
45 boundaries designated in such territorial agreement. In the event any electrical corporation which
46 is not a party to the territorial agreement and which is subject to the jurisdiction, control and
47 regulation of the commission under chapters 386, RSMo, and 393, RSMo, has heretofore sought
48 or hereafter seeks authorization from the commission to render electric service or construct,
49 operate and maintain electric facilities within the boundaries designated in any such territorial

50 agreement, the commission, in making its determination regarding such requested authority, shall
51 give no consideration or weight to the existence of any such territorial agreement and any actual
52 rendition of retail electric service by any of the parties to such territorial agreement will not
53 preclude the commission from granting the requested authority.

54 6. The commission shall have jurisdiction to entertain and hear complaints involving any
55 commission-approved territorial agreement. Such complaints shall be brought and prosecuted
56 in the same manner as other complaints before the commission. [After hearing,] **The**
57 **commission shall hold an evidentiary regarding such complaints except in those instances**
58 **where the matter is resolved by a stipulation and agreement submitted to the commission**
59 **by all the parties, such hearings may be waived by agreement of the parties.** If the
60 commission determines that [the] a territorial agreement [is not] **that is the subject of a**
61 **complaint is no longer** in the public interest, it shall have the authority to suspend or revoke the
62 territorial agreement. If the commission determines that the territorial agreement is still in the
63 public interest, such territorial agreement shall remain in full force and effect. Except as
64 provided in this section, nothing in this section shall be construed as otherwise conferring upon
65 the commission jurisdiction over the service, rates, financing, accounting, or management of any
66 rural electric cooperative or municipally owned utility, or to amend, modify, or otherwise limit
67 the rights of electrical suppliers to provide service as otherwise provided by law.

68 7. Notwithstanding the provisions of section 386.410, RSMo, the commission shall by
69 rule set a schedule of fees based upon its costs in reviewing proposed territorial agreements for
70 approval or disapproval. Responsibility for payment of the fees shall be that of the parties to the
71 proceeding as ordered by the commission in each case. The fees shall be paid to the director of
72 revenue who shall remit such payments to the state treasurer. The state treasurer shall credit such
73 payments to the public service commission fund, or its successor fund, as established in section
74 33.571, RSMo. Nothing in this section shall be construed as otherwise conferring upon the
75 commission jurisdiction over the service, rates, financing, accounting or management of any
76 rural electric cooperative or municipally owned utility and except as provided in this section
77 nothing shall affect the rights, privileges or duties of rural electric cooperatives, electrical
78 corporations or municipally owned utilities.

394.313. 1. Prior to any annexation, every city, town, or village shall ensure that
2 **there is an adequate supply of electric service to the area to be annexed. The city, town,**
3 **or village may satisfy this requirement by making a determination that there is a municipal**
4 **utility or electrical corporation authorized and capable of serving the annexed area or by**
5 **granting authority to an electric cooperative to serve all or part of the annexed area.**
6 **Alternatively, the city, town, or village may satisfy this requirement by requiring all**
7 **electric suppliers serving within the area to be annexed to enter into a territorial agreement**

8 under section 394.312. Any grant of authority to a rural electric cooperative to serve in the
9 annexed area shall be contained in the annexation ordinance. No member of the governing
10 body of the city, town, or village, having personal or financial interest, direct or indirect,
11 in any rural electric cooperative, electrical corporation, or municipal electric system
12 providing service in the annexed area, shall vote on the annexation ordinance. Any
13 violation of this requirement shall render the annexation ordinance void. The electric
14 cooperative's property and operations in the annexed area shall be subject to taxation by
15 the city, town, or village as provided by other applicable law or ordinance.

16 2. Notwithstanding section 394.080, any rural electric cooperative granted authority
17 by a city, town, or village to provide electric service within an annexed area may generate,
18 manufacture, purchase, acquire, accumulate, and transmit electric energy, and distribute,
19 sell, supply, and dispose of electric energy within the area designated by the city, town, or
20 village in addition to any other authority or powers the rural electric cooperative may have
21 to generate, manufacture, purchase, acquire, accumulate, and transmit electric energy, and
22 distribute, sell, supply, and dispose of electric energy under any other law. Any such grant
23 of authority to an electric cooperative to serve all or part of the annexed area shall not
24 affect, amend, modify, or diminish in any way the rights of any other electric suppliers to
25 provide service in the annexed area as otherwise provided by any other law.

26 3. In complying with its obligations under this section, no city, town, or village shall
27 demand or require that a municipal utility, electrical corporation, or an electric
28 cooperative be required to transfer any of its electric facilities or customers to another
29 electric provider.

30 4. Nothing contained in this section shall prohibit a municipal utility, electric
31 corporation, or an electric cooperative from continuing to serve its existing customers and
32 structures in the annexed area as provided in sections 91.025, RSMo, 393.106, RSMo, and
33 394.315.

34 5. If the city, town, or village requires electric suppliers to provide street lighting,
35 the rural electric cooperative shall provide street lighting in that portion of the annexed
36 area that it is granted authority to serve by the annexation ordinance under the same
37 terms, conditions, and standards required of other electric suppliers.

Section B. Because immediate action is necessary to aid cities, towns, and villages in
2 orderly annexations, section A of this act is deemed necessary for the immediate preservation
3 of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act
4 within the meaning of the constitution, and section A of this act shall be in full force and effect
5 upon its passage and approval.