

HOUSE**AMENDMENT NO. ____****Offered by****of**

1 AMEND House Committee Substitute for Senate Bill No. 207, Page 1,
 2 In the Title, Line 11, by inserting after the word "provision"
 3 the following: "and an emergency clause for certain sections";
 4 and

5 Further amend said bill, Page 21, Section 137.115, Line 198,
 6 by inserting after all of said line the following:

7 "386.420. 1. At the time fixed for any hearing before the
 8 commission or a commissioner, or the time to which the same may
 9 have been continued, the complainant, the public counsel and the
 10 corporation, person or public utility complained of, and such
 11 corporations and persons as the commission may allow to
 12 intervene, shall be entitled to be heard and to introduce
 13 evidence. The commission shall issue process to enforce the
 14 attendance of all necessary witnesses.

15 2. Whenever an investigation shall be made by the
 16 commission, it shall be its duty, to make a report in writing in
 17 respect thereto, which shall state the conclusions of the
 18 commission, together with its decision, order or requirement in
 19 the premises. The commission or any commissioner or any party
 20 may, in any investigation or hearing before the commission, cause
 21 the deposition of witnesses residing within or without the state
 22 to be taken in the manner prescribed by law for like depositions
 23 in civil actions in the circuit courts of this state and to that
 24 end may compel the attendance of witnesses and the production of
 25 books, waybills, documents, papers, memoranda and accounts.
 26 Witnesses whose depositions are taken as provided in this section
 27 and the officer taking the same shall severally be entitled to
 28 the same fees as are paid for like services in the circuit courts
 29 of this state.

Action Taken _____ Date _____

1 3. If an order cannot, in the judgment of the commission,
2 be complied with within thirty days, the commission may grant and
3 prescribe such additional time as in its judgment is reasonably
4 necessary to comply with the order, and may, on application and
5 for good cause shown, extend the time for compliance fixed in its
6 order.

7 4. A full and complete record shall be made of all
8 proceedings before the commission or any commissioner on any
9 formal hearing had, and all testimony shall be taken down by a
10 reporter appointed by the commission, and the parties shall be
11 entitled to be heard in person or by attorney. Preparation of a
12 printed transcript may be waived by unanimous consent of all the
13 parties. In case of an action to review any order or decision of
14 the commission, a transcript of such testimony, together with all
15 exhibits or copies thereof introduced and all information secured
16 by the commission on its own initiative and considered by it in
17 rendering its order or decision, and of the pleadings, record and
18 proceedings in the cause, shall constitute the record of the
19 commission; provided, that on review of an order or decision of
20 the commission, the [petitioner] appellant and the commission may
21 stipulate that a certain question or questions alone and a
22 specified portion only of the evidence shall be certified to the
23 [circuit] reviewing court for its judgment, whereupon such
24 stipulation and the question or questions and the evidence
25 therein specified shall constitute the record on review. In any
26 proceeding resulting in the establishment of new rates for a
27 public utility, the commission shall cause to be prepared, with
28 the assistance of the parties to such proceeding, and shall
29 approve, after allowing the parties a reasonable opportunity to
30 provide written input, a detailed reconciliation containing the
31 dollar value and rate or charge impact of each contested issue
32 decided by the commission and the customer class billing
33 determinants used by the commission to calculate the rates and
34 charges approved by the commission in such proceeding. Such
35 information shall be sufficient to permit a reviewing court and
36 the commission on remand from a reviewing court to determine how
37 the public utility's rates and charges, including the rates and

1 charges for each customer class, would need to be temporarily
2 and, if applicable, permanently adjusted to provide customers or
3 the public utility with any monetary relief that may be due in
4 accordance with the procedures set forth in section 386.520. In
5 the event there is any dispute over the value of a particular
6 issue or the correctness of a billing determinant, the commission
7 shall also include in the reconciliation a quantification of the
8 dollar value and rate or charge impact associated with the
9 dispute.

10 386.490. 1. Every order of the commission shall be served
11 upon every person or corporation to be affected thereby, either
12 by personal delivery of a certified copy thereof, by electronic
13 service, or by mailing a certified copy thereof, in a sealed
14 package with postage prepaid, to the person to be affected
15 thereby, or, in the case of a corporation, to any officer or
16 agent thereof upon whom a summons may be served in accordance
17 with the provisions of the code of civil procedure.

18 2. [It shall be the duty of every person and corporation to
19 notify the commission forthwith, in writing, of the receipt of
20 the certified copy of every order so served, and in the case of a
21 corporation such notification must be signed and acknowledged by
22 a person or officer duly authorized by the corporation to admit
23 such service. Within a time specified in the order of the
24 commission every person and corporation upon whom it is served
25 must if so required in the order notify the commission in like
26 manner whether the terms of the order are accepted and will be
27 obeyed.

28 3.] Every order or decision of the commission shall of its
29 own force take effect and become operative thirty days after the
30 service thereof, except as otherwise provided, and shall continue
31 in force either for a period which may be designated therein or
32 until changed or abrogated by the commission, unless such order
33 be unauthorized by this law or any other law or be in violation
34 of a provision of the constitution of the state or of the United
35 States.

36 386.510. With respect to commission orders or decisions
37 issued on and after August 28, 2011, within thirty days after the

1 application for a rehearing is denied, or, if the application is
2 granted, then within thirty days after the rendition of the
3 decision on rehearing, the applicant may [apply to] file a notice
4 of appeal with the [circuit court of] commission, which shall
5 also be served on the parties to the commission proceeding in
6 accordance with section 386.515, and which shall also be filed
7 with the appellate court with the territorial jurisdiction over
8 the county where the hearing was held or in which the commission
9 has its principal office [for a writ of certiorari or review
10 (herein referred to as a writ of review)] for the purpose of
11 having the reasonableness or lawfulness of the original order or
12 decision or the order or decision on rehearing inquired into or
13 determined. [The writ shall be made returnable not later than
14 thirty days after the date of the issuance thereof, and shall
15 direct the commission to certify its record in the case to the
16 court. On the return day the cause shall be heard by the circuit
17 court, unless for a good cause shown the same be continued.]
18 Except with respect to a stay or suspension under subsection 1 of
19 section 386.520, no new or additional evidence may be introduced
20 [upon the hearing] in the [circuit] appellate court but the cause
21 shall be heard by the court without the intervention of a jury on
22 the evidence and exhibits introduced before the commission and
23 certified to by it. The notice of appeal shall include the
24 appellant's application for rehearing, a copy of the
25 reconciliation required by subsection 4 of section 386.420, a
26 concise statement of the issues being appealed, a full and
27 complete list of the parties to the commission proceeding, and
28 any other information specified by the rules of the court.
29 Unless otherwise ordered by the court of appeals, the commission
30 shall, within thirty days of the filing of the notice of appeal,
31 certify its record in the case to the court of appeals. The
32 commission and each party to the action or proceeding before the
33 commission shall have the right to [appear] intervene and
34 participate fully in the review proceedings. Upon the [hearing
35 the circuit] submission of the case to the court of appeals, the
36 court of appeals shall [enter judgment] render its opinion either

1 affirming or setting aside, in whole or in part, the order or
2 decision of the commission under review. In case the order or
3 decision is reversed by reason of the commission failing to
4 receive testimony properly proffered, the court shall remand the
5 cause to the commission, with instructions to receive the
6 testimony so proffered and rejected, and enter a new order or
7 render a new decision based upon the evidence theretofore taken,
8 and such as it is directed to receive. The court may, in its
9 discretion, remand any cause which is reversed by it to the
10 commission for further action. No court in this state, except
11 [the circuit courts to the extent herein specified and] the
12 supreme court or the court of appeals [on appeal], shall have
13 jurisdiction or authority to review, reverse, correct or annul
14 any order or decision of the commission or to suspend or delay
15 the executing or operation thereof, or to enjoin, restrain or
16 interfere with the commission in the performance of its official
17 duties. The [circuit] appellate courts of this state shall
18 always be deemed open for the trial of suits brought to review
19 the orders and decisions of the commission as provided in the
20 public service commission law and the same shall where necessary
21 be tried and determined as suits in equity.

22 386.515. [Prior to August 28, 2001, in proceedings before
23 the Missouri public service commission, consistent with the
24 decision of the supreme court of Missouri in State ex rel.
25 Anderson Motor Service Co., Inc. v. Public Service Commission, 97
26 S.W.2d 116 (Mo. banc 1936) the review procedure provided for in
27 section 386.510 is exclusive to any other procedure.] With
28 respect to commission orders or decisions issued on and after
29 August 28, 2011, an application for rehearing is required to be
30 served on all parties and is a prerequisite to the filing of an
31 [application for writ of review] appeal under section 386.510.
32 The application for rehearing puts the parties to the proceeding
33 before the commission on notice that [a writ of review] an appeal
34 can follow and any such review under the appeal may proceed
35 [without formal notification or summons to] provided that a copy
36 of the notice of appeal is served on said parties. With respect

1 to commission orders or decisions issued on and after August 28,
2 [2001] 2011, the review procedure provided for in section 386.510
3 continues to be exclusive except that a copy of [any such writ of
4 review] the notice of appeal required by section 386.510 shall be
5 [provided to] served on each party to the proceeding before the
6 commission[, or his or her attorney of record, by hand delivery
7 or by registered mail, and proof of such delivery or mailing
8 shall be filed in the case as provided by subsection 2 of section
9 536.110] by the appellant according to the rules established by
10 the court in which the appeal is filed.

11 386.520. 1. The pendency of [a writ of review] an appeal
12 under section 386.510 shall not of itself stay or suspend the
13 operation of the order or decision of the commission, but [during
14 the pendency of such writ, the circuit court in its discretion
15 may stay or suspend, in whole or in part, the operation of the
16 commission's order or decision. No order so staying or
17 suspending an order or decision of the commission shall be made
18 by any circuit court otherwise than on three days' notice and
19 after hearing, and if the order or decision of the commission is
20 suspended the same shall contain a specific finding based upon
21 evidence submitted to the court and identified by reference
22 thereto, that great or irreparable damage would otherwise result
23 to the petitioner and specifying the nature of the damage. In
24 case the order or decision of the commission is stayed or
25 suspended, the order or judgment of the court shall not become
26 effective until a suspending bond shall first have been executed
27 and filed with, and approved by, the circuit court, payable to
28 the state of Missouri, and sufficient in amount and security to
29 secure the prompt payment, by the party petitioning for the
30 review, of all damages caused by the delay in the enforcement of
31 the order or decision of the commission, and of all moneys which
32 any person or corporation may be compelled to pay, pending the
33 review proceedings, for transportation, transmission, product,
34 commodity or service in excess of the charges fixed by the order
35 or decision of the commission, in case such order or decision is
36 sustained.

1 2. The circuit court, in case it stays or suspends the
2 order or decision of the commission in any manner affecting
3 rates, fares, tolls, rentals, charges or classifications, shall
4 also by order direct the corporation, person or public utility
5 affected to pay into court, from time to time, there to be
6 impounded until the final decision of the case, or into some bank
7 or trust company paying interest on deposits, under such
8 conditions as the court may prescribe, all sums of money which it
9 may collect from any corporation or person in excess of the sum
10 such corporation or person would have been compelled to pay if
11 the order or decision of the commission had not been stayed or
12 suspended.

13 3. In case any circuit court stays or suspends any order or
14 decision of the commission lowering any rate, fare, toll, rental,
15 charge or classification, upon the execution and approval of said
16 suspending bond, shall forthwith require the corporation, person
17 or public utility affected, under penalty of the immediate
18 enforcement of the order or decision of the commission, pending
19 the review and notwithstanding the suspending order, to keep such
20 accounts, verified by oath, as may, in the judgment of the court,
21 suffice to show the amounts being charged or received by such
22 corporation, person or public utility, pending the review, in
23 excess of the charges allowed by the order or decision of the
24 commission, together with the names and addresses of the
25 corporations and persons to whom overcharges will be refundable
26 in case the charges made by the corporation, person or public
27 utility, pending the review, be not sustained by the circuit
28 court; provided, that street railroad corporations shall not be
29 required to keep a record of the names and addresses of such
30 persons paying such overcharge of fares, but such street railroad
31 corporations shall give to such persons printed receipts showing
32 such overcharges of fares, the form of such printed receipts to
33 be approved by the commission.

34 4. The court may, from time to time, require said party
35 petitioning for a review to give additional security on, or to
36 increase, the said suspending bond, whenever in the opinion of
37 the court the same may be necessary to secure the prompt payment

1 of said damages or said overcharges.

2 5. Upon the decision of the circuit court, all moneys which
3 the corporation, person or public utility may have collected
4 pending the appeal, in excess of those authorized by such
5 decision, together with interest, in case the court ordered the
6 deposit of such moneys in a bank or trust company, shall be
7 promptly paid to the corporations or persons entitled thereto, in
8 such manner and through such methods of distribution as may be
9 prescribed by the court, unless an appeal be granted such
10 corporation, person or public utility, as herein provided] with
11 respect to commission orders or decisions issued on and after
12 August 28, 2011, that do not involve the establishment of new
13 rates and charges for a public utility, the appellate court may
14 in its discretion, or upon the recommendation of a special master
15 appointed for such purpose, and after the posting of an
16 appropriate appeal bond, stay or suspend the operation of the
17 order or decision of the commission, in whole or in part, if in
18 its discretion it determines that great or irreparable damage
19 would otherwise result to the appellant.

20 2. With respect to orders or decisions issued on and after
21 August 28, 2011, that involve the establishment of new rates or
22 charges, there shall be no stay or suspension of the commission's
23 order or decision, however:

24 (1) In the event a final and unappealable judicial decision
25 determines that a commission order or decision unlawfully or
26 unreasonably decided an issue or issues in a manner affecting
27 rates, then the court shall instruct the commission to provide
28 temporary rate adjustments and, if new rates and charges have not
29 been approved by the commission before the judicial decision
30 becomes final and unappealable, prospective rate adjustments.
31 Such adjustments shall be calculated based on the record evidence
32 in the proceeding under review and the information contained in
33 the reconciliation and billing determinants provided by the
34 commission under subsection 4 of section 386.420 and in
35 accordance with the procedures set forth in subdivisions (2) to
36 (5) of this subsection;

37 (2) If the effect of the unlawful or unreasonable

1 commission decision issued on and after August 28, 2011, was to
2 increase the public utility's rates and charges in excess of what
3 the public utility would have received had the commission not
4 erred or to decrease the public utility's rates and charges in a
5 lesser amount than would have occurred had the commission not
6 erred, then the commission shall be instructed on remand to
7 approve temporary rate adjustments designed to flow through to
8 the public utility's then existing customers the excess amounts
9 that were collected by the utility plus interest at the higher of
10 the prime bank lending rate minus two percentage points or zero.
11 Such amounts shall be calculated for the period commencing with
12 the date the rate increase or decrease took effect until the
13 earlier of the date when new rates and charges consistent with
14 the court's opinion became effective or when new rates or charges
15 otherwise approved by the commission as a result of a general
16 rate case filing or complaint became effective. Such amounts
17 shall then be reflected as a rate adjustment over a like period
18 of time. The commission shall issue its order on remand within
19 sixty days unless the commission determines that additional time
20 is necessary to properly calculate the temporary or any
21 prospective rate adjustment, in which case the commission shall
22 issue its order within one hundred twenty days;

23 (3) If the effect of the unlawful or unreasonable
24 commission decision issued on and after August 28, 2011, was to
25 increase the public utility's rates and charges by a lesser
26 amount than what the public utility would have received had the
27 commission not erred or to decrease the public utility's rates
28 and charges in a greater amount than would have occurred had the
29 commission not erred, then the commission shall be instructed on
30 remand to approve temporary rate adjustments designed to allow
31 the public utility to recover from its then existing customers
32 the amounts it should have collected plus interest at the higher
33 of the prime bank lending rate minus two percentage points or
34 zero. Such amounts shall be calculated for the period commencing
35 with the date the rate increase or decrease took effect until the
36 earlier of the date when new permanent rates and charges
37 consistent with the court's opinion became effective or when new

1 permanent rates or charges otherwise approved by the commission
2 as a result of a general rate case filing or complaint became
3 effective. Such amounts shall then be reflected as a rate
4 adjustment over a like period of time. The commission shall
5 issue its order on remand within sixty days unless the commission
6 determines the additional time is necessary to properly calculate
7 the temporary or any prospective rate adjustment, in which case
8 the commission shall issue its order within one hundred twenty
9 days;

10 (4) If the effect of the unlawful or unreasonable
11 commission decision issued on and after August 28, 2011, was to
12 allocate too much of a rate increase or too little of a rate
13 decrease to a customer class or classes, then the commission
14 shall be instructed on remand to approve temporary rate
15 adjustments for each customer class as necessary to ensure that
16 each customer class is charged the amounts that would have been
17 charged had the commission not erred. Such amounts shall be
18 calculated for the period commencing with the date the rate
19 increase or decrease took effect until the earlier of the date
20 when new rates and charges consistent with the court's opinion
21 became effective or when new rates or charges otherwise approved
22 by the commission as a result of a general rate case filing or
23 complaint became effective. Such amounts shall then be reflected
24 as a rate adjustment over a like period of time. The commission
25 shall issue its order on remand within sixty days unless the
26 commission determines that additional time is necessary to
27 properly calculate the temporary or any prospective rate
28 adjustment, in which case the commission shall issue its order
29 within one hundred twenty days;

30 (5) On and after August 28, 2011, no action affecting the
31 public utility's collection of rates and charges shall be taken
32 in cases where the court cannot make a determination on the
33 merits because the commission failed to include adequate findings
34 of fact to support the commission's decision or failed to receive
35 evidence properly proffered, provided that the commission shall
36 provide such findings of fact or otherwise issue a new order
37 within ninety days of the date of the court's mandate. If such

1 new order is appealed, the period for measuring amounts subject
2 to the temporary rate adjustments process set forth in
3 subdivisions (1) to (4) of this subsection shall commence
4 beginning with the date the rate increase or decrease took
5 effect. The amendments to sections 386.500 to 386.520 shall not
6 apply to orders or decisions of the commission issued prior to
7 August 28, 2011.

8 386.530. All actions or proceedings under this or any other
9 chapter, and all actions and proceedings commenced or prosecuted
10 by order of the commission, and all actions and proceedings to
11 which the commission, the public counsel or the state may be
12 parties, and in which any question arises under this or any other
13 chapter, or under or concerning any order or decision or action
14 of the commission, shall be preferred over all other civil causes
15 except election contests in all the [circuit] appellate courts of
16 the state of Missouri, and shall be heard and determined in
17 preference to all other civil business pending therein except
18 election contests, irrespective of position on the calendar. The
19 same preference shall be granted upon application of the public
20 counsel or the commission counsel in any action or proceeding in
21 which either or both may be allowed to intervene.

22 386.540. 1. The commission and any party, including the
23 public counsel, who has participated in the [commission] court of
24 appeals proceeding [which produced the order or decision may,
25 after the entry of judgment in the circuit court in any action in
26 review, prosecute an appeal to a court having appellate
27 jurisdiction in this state. Such appeal shall be prosecuted as
28 appeals from judgment of the circuit court in civil cases except
29 as otherwise provided in this chapter] and is aggrieved by the
30 opinion of the court may seek rehearing and/or transfer to the
31 Missouri supreme court under rules established by the court. The
32 original transcript of the record and testimony and exhibits,
33 certified to by the commission and filed [in the circuit court in
34 any action to review an order or decision of the commission,
35 together with a transcript of the proceedings in the circuit
36 court,] with the court of appeals shall constitute the record on
37 appeal to the supreme court [or any court of appeals].

1 2. Where an appeal is taken to the supreme court or the
2 court of appeals, the cause shall, on the return of the papers to
3 the supreme court or court of appeals, be immediately placed on
4 the docket of the then pending term by the clerk of the court and
5 shall be assigned and brought to a hearing in the same manner as
6 other causes on the then pending term docket, but shall have
7 precedence over all civil causes of a different nature pending in
8 the court. [No appeal shall be effective when taken by a
9 corporation, person or public utility unless a cost bond of
10 appeal in the sum of five hundred dollars shall be filed within
11 ten days after the entry of judgment in the circuit court
12 appealed from.]

13 3. [The circuit court may in its discretion suspend its
14 judgment pending the hearing in the supreme court or court of
15 appeals on appeal, upon the filing of a bond by the corporation,
16 person or public utility with good and sufficient security
17 conditioned as provided for bonds upon actions for review and by
18 further complying with all terms and conditions of this law for
19 the suspension of any order or decision of the commission pending
20 the hearing or review in the circuit court. This bond shall be
21 in addition to the cost bond heretofore provided in this section.

22 4.] The general laws relating to appeals to the supreme
23 court and the court of appeals in this state shall, so far as
24 applicable and not in conflict with the provisions of this
25 chapter, apply to appeals taken under the provisions of this
26 chapter."; and

27 Further amend said bill, Page 24, Section 386.850, Line 6,
28 by inserting after all of said line the following:

29 "Section B. Because immediate action is necessary to
30 provide meaningful and equitable relief to parties who may
31 successfully pursue review of Missouri Public Service Commission
32 orders or decisions, the repeal and reenactment of sections
33 386.420, 386.490, 386.510, 386.515, 386.520, 386.530, and 386.540
34 of section A of this act are deemed necessary for the immediate
35 preservation of the public health, welfare, peace, and safety,
36 and is hereby declared to be an emergency act within the meaning
37 of the constitution and the repeal and reenactment of sections

1 386.420, 386.490, 386.510, 386.515, 386.520, 386.530, and 386.540
2 of section A of this act shall be in full force and effect upon
3 its passage and approval."; and
4 Further amend said title, enacting clause and intersectional
5 references accordingly.