

FIRST REGULAR SESSION

HOUSE BILL NO. 560

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CASTEEL.

1709H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 386.600, 386.754, 386.756, and 386.760, RSMo, and to enact in lieu thereof four new sections relating to the public service commission.

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

Section A. Sections 386.600, 386.754, 386.756, and 386.760, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 386.600, 386.754,
3 386.756, and 386.760, to read as follows:

386.600. An action to recover a penalty or a forfeiture under this chapter or to enforce
2 the powers of the commission under this or any other law may be brought in any circuit court
3 in this state in the name of the state of Missouri and shall be commenced and prosecuted to
4 final judgment by the general counsel to the commission **or the attorney general**. No filing
5 or docket fee shall be required of the general counsel **or the attorney general**. In any such
6 action all penalties and forfeitures incurred up to the time of commencing the same may be
7 sued for and recovered therein, and the commencement of an action to recover a penalty or
8 forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or
9 forfeiture; if the defendant in such action shall prove that during any portion of the time for
10 which it is sought to recover penalties or forfeitures for a violation of an order or decision of
11 the commission the defendant was actually and in good faith prosecuting a suit to review such
12 order or decision in the manner as provided in this chapter, the court shall remit the penalties
13 or forfeitures incurred during the pendency of such proceeding. All moneys recovered as a
14 penalty or forfeiture shall be paid to the public school fund of the state. Any such action may
15 be compromised or discontinued on application of the commission upon such terms as the
16 court shall approve and order.

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.

386.754. For the purposes of sections 386.754 to 386.764, the following terms mean:

- 2 (1) "Affiliate", any entity not regulated by the public service commission which is
3 owned, controlled by ~~[or]~~, under common control, **or acting in concert** with a utility and is
4 engaged in HVAC services;
- 5 (2) "HVAC services", the warranty, sale, lease, rental, installation, construction,
6 modernization, retrofit, maintenance or repair of heating, ventilating and air conditioning
7 equipment;
- 8 (3) "Utility", an electrical corporation, gas corporation or heating company, as
9 defined in section 386.020;
- 10 (4) "Utility contractor", a person, including an individual, corporation, firm,
11 incorporated or unincorporated association or other business or legal entity, that contracts,
12 whether in writing or not in writing, with a utility to engage in or assist any entity in engaging
13 in HVAC services, but does not include employees of a utility.

386.756. 1. ~~[Except by an affiliate,]~~ A utility may not engage in HVAC services,
2 unless otherwise provided in subsection ~~[7 or]~~ 8 of this section.

3 2. No affiliate or utility contractor may use any vehicles, service tools, instruments,
4 employees, or any other utility assets, the cost of which are recoverable in the regulated rates
5 for utility service, to engage in HVAC services unless the utility is compensated for the use of
6 such assets at cost to the utility.

7 3. A utility may not use or allow any affiliate or utility contractor to use the name of
8 such utility to engage in HVAC services unless the utility, affiliate or utility contractor
9 discloses, in plain view and in bold type on the same page as the name is used on all
10 advertisements or in plain audible language during all solicitations of such services, a
11 disclaimer that states the services provided are not regulated by the public service
12 commission.

13 4. A utility may not engage in or assist any affiliate or utility contractor in engaging in
14 HVAC services in a manner which subsidizes the activities of such utility, affiliate or utility
15 contractor to the extent of changing the rates or charges for the utility's regulated services
16 above or below the rates or charges that would be in effect if the utility were not engaged in or
17 assisting any affiliate or utility contractor in engaging in such activities.

18 5. Any affiliates or utility contractors engaged in HVAC services shall maintain
19 accounts, books and records separate and distinct from the utility.

20 6. The provisions of this section shall apply to any affiliate or utility contractor
21 engaged in HVAC services that is owned, controlled or under common control with a utility
22 providing regulated utility service in this state or any other state.

23 7. ~~[A utility engaging in HVAC services in this state five years prior to August 28,~~
24 ~~1998, may continue providing, to existing as well as new customers, the same type of services~~

25 ~~as those provided by the utility five years prior to August 28, 1998. The provisions of this~~
26 ~~section only apply to the area of service which the utility was actually supplying service to on~~
27 ~~a regular basis prior to August 28, 1993. The provisions of this section shall not apply to any~~
28 ~~subsequently expanded areas of service made by a utility through either existing affiliates or~~
29 ~~subsidiaries or through affiliates or subsidiaries purchased after August 28, 1993, unless such~~
30 ~~services were being provided in the expanded area prior to August 28, 1993.~~

31 ~~8.]~~ The provisions of this section shall not be construed to prohibit a utility from
32 providing emergency service, providing any service required by law or providing a program
33 pursuant to an existing tariff, rule or order of the public service commission **that is consistent**
34 **with this section.**

35 ~~[9.]~~ **8.** A utility that violates any provision of this section is guilty of a civil offense
36 and may be subject to a civil penalty of up to twelve thousand five hundred dollars for each
37 violation. The attorney general may enforce the provisions of this section pursuant to any
38 powers granted to him or her pursuant to any relevant provisions provided by Missouri
39 statutes or the Missouri Constitution.

40 **9.** Upon receiving information that raises a reasonable inference that any
41 **provision of sections 386.754 to 386.764 has been violated, the commission shall**
42 **investigate and upon finding reasonable cause to believe a violation has occurred,**
43 **promptly act to abate the violation and impose any required penalties. Any person**
44 **informing the commission of an apparent or actual violation of the provisions of sections**
45 **386.754 to 386.764 shall not be made a party to an action of the commission but may be**
46 **allowed to intervene without being subject to any burden of proof. The person**
47 **informing the commission of an apparent or actual violation of the provisions of sections**
48 **386.754 to 386.764, and any other interested person, shall be provided a copy of any**
49 **investigation, settlement, order, or other disposition of the complaint, but not the work-**
50 **product of the commission's general counsel.**

51 10. Any utility claiming an exemption as provided in subsection 7 of this section shall
52 comply with all applicable state and local laws, ordinances or regulations relating to the
53 installation or maintenance of HVAC systems including all permit requirements. A
54 continuing pattern of failure to comply with said requirements shall provide the basis for a
55 finding by any court of competent jurisdiction or the public service commission that the
56 utility has waived its claim of exemption pursuant to subsection 7 of this section.

386.760. 1. The public service commission shall have full authority to administer and
2 ensure compliance with sections 386.754 to 386.764, provided that the commission shall not
3 impose, by rule or otherwise, requirements regarding HVAC services that are inconsistent
4 with or in addition to those set forth in sections 386.754 to 386.764 or with requirements set
5 forth in section 386.315.

6 2. **The public service commission shall not adopt any rule, tariff, order, or other**
7 **action that allows a violation of sections 386.754 to 386.764.**

8 3. No rule or portion of a rule promulgated pursuant to the provisions of sections
9 386.754 to 386.764 shall become effective unless it has been promulgated pursuant to the
10 provisions of chapter 536.

✓