

SECOND REGULAR SESSION

# HOUSE BILL NO. 3364

103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE COSTLOW.

7308H.011

JOSEPH ENGLER, Chief Clerk

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## AN ACT

To repeal section 394.080, RSMo, and to enact in lieu thereof seven new sections relating to use of resources by industrial users.

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

Section A. Section 394.080, RSMo, is repealed and seven new sections enacted in lieu thereof, to be known as sections 91.015, 91.016, 247.222, 393.403, 393.1780, 394.080, and 640.640, to read as follows:

**91.015. A municipally owned utility shall develop a service tariff schedule applicable to customers reasonably projected to have an annual peak demand of fifty megawatts or more. The tariff schedule shall ensure that customers' rates reasonably reflect the representative share of the costs incurred to serve the customers and prevent other customer classes' rates from reflecting unjust or unreasonable costs arising from service to customers with an annual peak demand of fifty megawatts or more.**

**91.016. A municipally owned utility shall develop a service tariff schedule applicable to customers reasonably projected to exceed two million gallons per day or eighty percent of the available capacity for that system per day. The tariff schedule shall ensure that customers' rates reasonably reflect the representative share of the costs incurred to serve the customers and prevent other customer classes' rates from reflecting unjust or unreasonable costs arising from service to customers reasonably projected to exceed either two million gallons per day or eighty percent of the available capacity for that system per day.**

**247.222. A public water supply district shall develop a service tariff schedule applicable to customers reasonably projected to exceed either two million gallons per**

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.

3 day or eighty percent of the available capacity for that system per day. The tariff  
4 schedule shall ensure that customers' rates reasonably reflect the representative share of  
5 the costs incurred to serve the customers and prevent other customer classes' rates from  
6 reflecting unjust or unreasonable costs arising from service to customers with either two  
7 million gallons per day or eighty percent of the available capacity for that system per  
8 day.

393.403. A water corporation shall enter into a commission-approved contract  
2 with customers whose water usage is reasonably projected to exceed either two million  
3 gallons per day or eighty of the available capacity for that system per day. The contract  
4 shall reasonably reflect the customer's representative share of costs incurred to serve  
5 the customer and prevent other customer classes' rates from reflecting any unjust or  
6 unreasonable costs arising from service to such customer. The water corporation shall  
7 submit such contracts for approval by the commission.

393.1780. 1. As used in this section, the term "large-load customer" shall mean:

2 (1) For an electrical provider with more than two hundred fifty thousand  
3 customers, any electrical customer with an annual peak demand of one hundred  
4 megawatts or more; and

5 (2) For an electrical provider with two hundred fifty thousand customers or  
6 fewer, any electrical customer with an annual peak demand of more than fifty  
7 megawatts but less than one hundred megawatts.

8 2. All electric providers shall establish a load-shedding plan with each large-load  
9 customer for the protection or restoration of system operations. Load-shedding plans  
10 shall prioritize continuation of service for critical facilities and residential services.

394.080. 1. A cooperative shall have power:

2 (1) To sue and be sued, in its corporate name;

3 (2) To have succession by its corporate name for the period stated in its articles of  
4 incorporation or, if no period is stated in its articles of incorporation, to have such succession  
5 perpetually;

6 (3) To adopt a corporate seal and alter the same at pleasure;

7 (4) Except as provided in section 386.800, to generate, manufacture, purchase,  
8 acquire, accumulate and transmit electric energy, and to distribute, sell, supply, and dispose of  
9 electric energy in rural areas to its members, to governmental agencies and political  
10 subdivisions, and to other persons not in excess of ten percent of the number of its members;  
11 provided, however, that where a cooperative has been transmitting, distributing, selling,  
12 supplying or disposing of electric energy in a rural area which, by reason of increase in its  
13 population, its inclusion in a city, town or village, or by reason of any other circumstance  
14 ceases to be a rural area, such cooperative shall have the power to continue to transmit,

15 distribute, sell, supply or dispose of electric energy therein until such time as the municipality,  
16 or the holder of a franchise to furnish electric energy in such municipality, may purchase the  
17 physical property of such cooperative located within the boundaries of the municipality,  
18 pursuant to law, or until such time as the municipality may grant a franchise in the manner  
19 provided by law to a privately owned public utility to distribute electric power within the  
20 municipality and such privately owned public utility shall purchase the physical property of  
21 such cooperative located within the boundaries of the municipality. In case any of the parties  
22 to such purchase, as herein provided, cannot agree upon the fair and reasonable price to be  
23 paid for the physical property of such cooperative within the municipality, or if either party  
24 refuses to negotiate for the sale of such property upon the request of the other, the fair and  
25 reasonable value of such property for such purchase shall be fixed by the public service  
26 commission upon application of any one or more of the interested parties;

27 (5) To make loans to persons to whom electric energy is or will be supplied by the  
28 cooperative for the purpose of, and otherwise to assist such persons in, wiring their premises  
29 and installing therein electric and plumbing fixtures, appliances, apparatus and equipment of  
30 any and all kinds and character, and in connection therewith, to purchase, acquire, lease, sell,  
31 distribute, install and repair such electric and plumbing fixtures, appliances, apparatus and  
32 equipment, and to accept or otherwise acquire, and to sell, assign, transfer, endorse, pledge,  
33 hypothecate and otherwise dispose of notes, bonds and other evidences of indebtedness and  
34 any and all types of security therefor;

35 (6) To make loans to persons to whom electric energy is or will be supplied by the  
36 cooperative for the purpose of, and otherwise to assist such persons in, constructing,  
37 maintaining and operating electric refrigeration plants;

38 (7) To construct, purchase, take, receive, lease as lessee, or otherwise acquire, and to  
39 own, hold, use, equip, maintain, and operate, and to sell, assign, transfer, convey, exchange,  
40 lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission  
41 and distribution lines or systems, electric generating plants, electric refrigeration plants, lands,  
42 buildings, structures, dams, plants and equipment, and any and all kinds and classes of real or  
43 personal property whatsoever, which shall be deemed necessary, convenient or appropriate to  
44 accomplish the purpose for which the cooperative is organized. For the purposes of this  
45 section, "electric transmission and distribution lines or systems" includes, but is not limited  
46 to, cooperative-owned or cooperative subsidiary-owned copper and fiber optic cable, facilities  
47 and technology, or any combination thereof, that carries, or has the capacity to carry, light  
48 signals and data beyond or in addition to the light signals and data necessary for the  
49 transmission and distribution of electricity;

50 (8) To purchase or otherwise acquire, and to own, hold, use and exercise and to sell,  
51 assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber,  
52 franchises, rights, privileges, licenses, rights-of-way and easements;

53 (9) To borrow money and otherwise contract indebtedness, and to issue notes, bonds,  
54 and other evidences of indebtedness therefor, and to secure the payment thereof by mortgage,  
55 pledge, deed of trust, or any other encumbrance upon any or all of its then-owned or after-  
56 acquired real or personal property, assets, franchises, revenues or income;

57 (10) To construct, maintain and operate electric transmission and distribution lines  
58 along, upon, under and across all public thoroughfares, including without limitation, all roads,  
59 highways, streets, alleys, bridges and causeways, and upon, under and across all publicly  
60 owned lands, subject, however, to the requirements in respect of the use of such thoroughfares  
61 and lands that are imposed by the respective authorities having jurisdiction thereof upon  
62 corporations constructing or operating electric transmission and distribution lines or systems;

63 (11) To exercise the power of eminent domain in the manner provided by the laws of  
64 this state for the exercise of that power by corporations constructing or operating electric  
65 transmission and distribution lines or systems. If a property owner prevails against a rural  
66 electric cooperative or a cooperative subsidiary in a suit in trespass or in inverse  
67 condemnation filed after August 28, 2018, the trespass shall be deemed permanent and the  
68 actual damages awarded shall be the fair market value, which, notwithstanding any other  
69 provision of law, shall always be greater than zero, as defined and calculated in subdivision  
70 (1) of section 523.001 and determined in accordance with section 523.039. In no case filed  
71 after August 28, 2018, may evidence of revenues or profits derived, nor the rental value of an  
72 assembled communications corridor, be admissible in determining fair market value. Such  
73 actual damages shall be fixed at the time of the initial trespass, shall not be deemed to  
74 continue, accumulate, or accrue, and upon payment of damages the defendant shall be granted  
75 a permanent easement for the trespass litigated. If a property owner prevails in such suits,  
76 punitive damages may be assessed and the property owner may be awarded additional  
77 compensation for any physical damages to the property directly resulting from the trespass, if  
78 any, and reasonable attorneys' fees, costs, and expenses consistent with subsection 4 of  
79 section 523.283;

80 (12) To conduct its business and exercise any or all of its powers within or without  
81 this state;

82 (13) To adopt, amend and repeal bylaws; and

83 (14) To do and perform any and all other acts and things, and to have and exercise any  
84 and all other powers which may be necessary, convenient or appropriate to accomplish the  
85 purpose for which the cooperative is organized.

86           2. In addition to all other powers granted in this section, rural electric cooperatives  
87 shall have the power to supply electric energy at retail after August 28, 1989, in cities, towns  
88 and villages having a population in excess of fifteen hundred inhabitants under the following  
89 conditions:

90           (1) The cooperative was the predominant supplier of retail electric energy within the  
91 city, town or village at the time any official United States Census Bureau Decennial Census  
92 Report declares the population of such city, town or village to be in excess of fifteen hundred  
93 inhabitants;

94           (2) The city, town or village has granted to the cooperative a franchise to supply  
95 electric energy within the city, town or village.

96           3. In addition, the cooperative shall provide, concurrent with its application to the  
97 city, town or village for its initial franchise, written notice of its franchise application to all  
98 other providers of electric energy at retail operating within such city, town or village.

99           4. The provisions of subsections 2 and 3 of this section shall in no way affect or  
100 diminish the rights and duties of any city, town or village to grant franchises to electric  
101 suppliers in the manner provided by law or of any electrical corporation authorized by law to  
102 provide electric service at retail within such city, town or village.

103           5. Notwithstanding the provisions of subsection 2 of this section, after a public  
104 hearing upon a complaint, the public service commission may order that service be provided  
105 by another supplier if it finds that service from another supplier of electricity is in the public  
106 interest for a reason other than rate differential. Nothing in this section shall be construed as  
107 conferring upon the public service commission jurisdiction over the rates, financing,  
108 accounting or management of any electric cooperative.

109           6. The powers conferred upon rural electric cooperatives under this section and  
110 section 394.085 shall be subject to the provisions of section 416.031.

111           **7. A cooperative shall develop a service tariff schedule applicable to customers**  
112 **reasonably projected to have an annual peak demand of fifty megawatts or more. The**  
113 **tariff schedule shall ensure that customers' rates reasonably reflect the representative**  
114 **share of the costs incurred to serve the customers and prevent other customer classes'**  
115 **rates from reflecting unjust or unreasonable costs arising from service to customers**  
116 **with an annual peak demand of fifty megawatts or more.**

**640.640. 1. For the purposes of this section, the following terms mean:**

2           **(1) "Applicant", any person applying for a major industrial water-user permit;**

3           **(2) "Beneficial uses", water uses that include, but are not limited to, domestic,**  
4 **agricultural, industrial, recreational, and other legitimate beneficial uses;**

5           **(3) "Department", the Missouri department of natural resources;**

6           **(4) "Director", the director of the department of natural resources;**

7           (5) "Major industrial water user permit", a permit issued by the department  
8 granting the withdrawal of water from a water resource in the amount of two million  
9 gallons or more per day;

10           (6) "Person", any individual, partnership, copartnership, firm, company, public  
11 or private corporation, association, joint stock company, trust, estate, political  
12 subdivision, water district, or any agency, board, department, or bureau of the  
13 federal or any state government, or any other legal entity that is recognized by law as  
14 the subject of rights and duties;

15           (7) "Water resources", any Missouri water source occurring on the surface, in  
16 natural or artificial channels, lakes, reservoirs, or impoundments, or in subsurface  
17 aquifers that are available or that may be made available.

18           2. In order to protect the access, use, and enjoyment of Missouri's water  
19 resources, it shall be unlawful for any person to withdraw and use more than two  
20 million gallons of water per day on average in a single month unless such person holds a  
21 major industrial water user permit issued by the department, is a public water system  
22 as defined in section 640.102, or such water is used for agricultural purposes.

23           3. The director shall review each major industrial water user permit application  
24 and all supporting materials to ensure all the following conditions have been met prior  
25 to approving a major industrial water user permit application:

26           (1) There are water resources available in the volumes and withdrawal rates  
27 requested by the applicant;

28           (2) The volume and withdrawal rates requested by the applicant shall not exceed  
29 eighty percent of the capacity of the water resource;

30           (3) The volume and withdrawal rates requested by the applicant shall not  
31 interfere with existing and projected in-state beneficial uses; and

32           (4) The applicant has demonstrated that water in the amounts and rates  
33 requested can feasibly be withdrawn.

34           4. Whenever a person applies for a major industrial water user permit or major  
35 industrial water user permit renewal, the department shall send a written notice to the  
36 county commission of the county where the water resource is located within thirty  
37 business days after receiving the permit application.

38           5. (1) Within one hundred twenty days after the receipt of a complete  
39 application, the director shall determine whether the applicant complied with the  
40 provisions of subsection 3 of this section. The director shall, after making such  
41 determination, hold a thirty-day public comment period regarding the director's  
42 determination. Within sixty days after the comment period, the director shall approve  
43 or deny the permit.

44           **(2) To renew a valid major industrial water user permit, an applicant shall file a**  
45 **renewal application for a major industrial water user permit with the department no**  
46 **later than two hundred seventy-one days prior to the expiration of the existing permit.**  
47 **The applicant and director shall follow the same procedures and timelines as required**  
48 **for the issuance of a new major industrial water user permit under this section. The**  
49 **director may impose additional conditions to address any substantial or material change**  
50 **in factors under subsection 3 of this section or may deny a renewal application as**  
51 **necessary to comply with this section based on any such substantial or material changes**  
52 **in factors under subsection 3 of this section. If the director is in the process of reviewing**  
53 **the renewal application before the final decision is made and the existing applicant's**  
54 **major industrial water user permit expires, such applicant shall be able to operate**  
55 **under the terms of the expired permit until a final decision is made by the director on**  
56 **the renewal of such permit.**

57           **(3) In the absence of an appeal as provided under chapter 536, the decision of the**  
58 **director shall be final.**

59           **6. A major industrial water user permit shall be in effect for five years from the**  
60 **date of issuance. The permit holder shall annually report the water use volumes and**  
61 **withdrawal rates to the department in a manner and on timelines determined by the**  
62 **department. Such report shall be made available to the public on the department's**  
63 **website.**

64           **7. The major industrial water user permit may be approved in whole or in part**  
65 **by the director.**

66           **8. Any other major water user, as defined in section 256.400, may request the**  
67 **department to reevaluate any existing major industrial water user permit using the**  
68 **criteria under subsection 3 of this section. The department shall create a mechanism for**  
69 **a major water user to submit a request for reevaluation and shall provide the major**  
70 **water user with the director's findings within one hundred twenty days of the request**  
71 **for reevaluation. After reevaluating the permit, the director shall impose additional**  
72 **conditions necessary for the continued withdrawal if the director determines that the**  
73 **existing permit is negatively impacting the requesting major water user's beneficial use**  
74 **of his or her water resources. The director's decision to modify or to decline to modify**  
75 **the conditions in an existing permit pursuant to this subsection shall be subject to**  
76 **approval by the commission.**

77           **9. If the attorney general receives a complaint that provisions of this section have**  
78 **been violated, or at the request of the department, the attorney general shall bring an**  
79 **injunctive action or other appropriate action in the name of the people of the state to**  
80 **enforce provisions of this section. Suit may be brought in Cole County, or in any county**

81 where the defendant's principal place of business is located or where the withdrawal of  
82 water occurred in violation of this section. Any member of the commission deemed to  
83 have violated any provision of this section shall forfeit their office upon such finding of a  
84 violation.

85 10. Whenever a state of emergency is declared by the governor under section  
86 44.100 for all or any part of the state based on drought conditions, the department shall  
87 reevaluate any existing major industrial water user permit. Any reevaluation  
88 completed under this section shall use the criteria under subsection 3 of this section.  
89 After reevaluation of the permit is complete, the department shall have the authority to  
90 impose additional conditions or revoke the permit if necessary for the continued  
91 withdrawal of water if the director determines that the existing permit negatively  
92 impacts beneficial use of water resources.

93 11. If any provision of subsection 3 of this section or the application thereof to  
94 anyone or to any circumstance is held invalid, the remainder of those sections and the  
95 application of such provisions to others or other circumstances shall not be affected  
96 thereby.

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