

# SENATE AMENDMENT NO. \_\_\_\_\_

Offered by \_\_\_\_\_ Of \_\_\_\_\_

Amend SS/SCS/HCS/House Bill No. 734, Page 1, Section 67.309, Line 12,

2 by inserting after all of said line the following:

3 "91.025. 1. As used in this section, the following  
4 terms mean:

5 (1) "Municipally owned or operated electric power  
6 system", a system for the distribution of electrical power  
7 and energy to the inhabitants of a municipality which is  
8 owned and operated by the municipality itself, whether  
9 operated under authority pursuant to this chapter or under a  
10 charter form of government;

11 (2) "Permanent service", electrical service provided  
12 through facilities which have been permanently installed on  
13 a structure and which are designed to provide electric  
14 service for the structure's anticipated needs for the  
15 indefinite future, as contrasted with facilities installed  
16 temporarily to provide electrical service during  
17 construction. Service provided temporarily shall be at the  
18 risk of the electrical supplier and shall not be  
19 determinative of the rights of the provider or recipient of  
20 permanent service;

21 (3) "Structure" or "structures", an agricultural,  
22 residential, commercial, industrial or other building or a  
23 mechanical installation, machinery or apparatus at which  
24 retail electric energy is being delivered through a metering  
25 device which is located on or adjacent to the structure and  
26 connected to the lines of an electrical corporation, rural

27 electric cooperative, municipally owned or operated electric  
28 power system, or joint municipal utility commission. Such  
29 terms shall include any contiguous or adjacent additions to  
30 or expansions of a particular structure. Nothing in this  
31 section shall be construed to confer any right on an  
32 electric supplier to serve new structures on a particular  
33 tract of land because it was serving an existing structure  
34 on that tract.

35       2. Once a municipally owned or operated electrical  
36 system, or its predecessor in interest, lawfully commences  
37 supplying retail electric energy to a structure through  
38 permanent service facilities, it shall have the right to  
39 continue serving such structure, and other suppliers of  
40 electrical energy shall not have the right to provide  
41 service to the structure except as might be otherwise  
42 permitted in the context of municipal annexation, pursuant  
43 to section 386.800 or pursuant to a territorial agreement  
44 approved under section 394.312. The public service  
45 commission, upon application made by a customer, may order a  
46 change of suppliers on the basis that it is in the public  
47 interest for a reason other than a rate differential, and  
48 the commission is hereby given jurisdiction over municipally  
49 owned or operated electric systems to accomplish the purpose  
50 of this section. The commission's jurisdiction under this  
51 section is limited to public interest determinations and  
52 excludes questions as to the lawfulness of the provision of  
53 service, such questions being reserved to courts of  
54 competent jurisdiction. Except as provided in this section,  
55 nothing in this section shall be construed as otherwise  
56 conferring upon the commission jurisdiction over the  
57 service, rates, financing, accounting or management of any  
58 such municipally owned or operated electrical system, and  
59 nothing in this section, section 393.106, and section

394.315 shall affect the rights, privileges or duties of any municipality to form or operate municipally owned or operated electrical systems. Nothing in this section shall be construed to make lawful any provision of service which was unlawful prior to July 11, 1991. Nothing in this section shall be construed to make unlawful the continued lawful provision of service to any structure which may have had a different supplier in the past, if such a change in supplier was lawful at the time it occurred.

3. Notwithstanding the provisions of this section, section 393.106, section 394.080, and section 394.315 to the contrary, in the event that a retail electric supplier is providing service to a structure located within a city, town, or village that has ceased to be a rural area, and such structure is demolished and replaced by a new structure, such retail electric supplier may provide permanent service to the new structure upon the request of the owner of the new structure."; and

Further amend said bill, page 4, section 386.370, line 77, by inserting after all of said line the following:

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

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

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

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

(4) The structure is located in an area which was previously served by an electrical corporation regulated under chapter 386, and chapter 393, and the electrical corporation's authorized service territory was contiguous to or inclusive of the municipality's previous corporate boundaries, and the electrical corporation's ownership or operating rights within the area were acquired in total by the municipally owned electrical system prior to July 11, 1991. In the event that a municipally owned electric utility in a city with a population of more than one hundred twenty-five thousand located in a county of the first class not having a charter form of government and not adjacent to any other county of the first class desires to serve customers beyond the authorized service territory in an area which was previously served by an electrical corporation regulated under the provisions of chapter 386, and chapter 393, as provided in this subdivision, in the absence of an approved territorial agreement under section 394.312, the municipally owned utility shall apply to the public service commission for an order assigning nonexclusive service territories and concurrently shall provide written notice of the application to other electric service suppliers with electric facilities located in or within one mile outside of the boundaries of the proposed expanded service territory. The proposed service area shall be contiguous to the authorized service territory which was previously served by an electrical corporation regulated under the provisions of chapter 386, and chapter 393, as a condition precedent to the granting of the application. The commission shall have one hundred twenty days from the date of application to grant or deny the requested order. The commission after a hearing may grant the order upon a finding that granting of the applicant's request is not detrimental to the public

125 interest. In granting the applicant's request the  
126 commission shall give due regard to territories previously  
127 granted to or served by other electric service suppliers and  
128 the wasteful duplication of electric service facilities.

129 2. Any municipally owned electric utility may extend,  
130 pursuant to lawful annexation, its electric service  
131 territory to include [any structure located within a newly  
132 annexed area which has not received permanent service from  
133 another supplier within ninety days prior to the effective  
134 date of the annexation] areas where another electric  
135 supplier currently is not providing permanent service to a  
136 structure. If a rural electric cooperative has existing  
137 electric service facilities with adequate and necessary  
138 service capability located in or within one mile outside the  
139 boundaries of the area proposed to be annexed, a majority of  
140 the existing developers, landowners, or prospective electric  
141 customers in the area proposed to be annexed may, anytime  
142 within forty-five days prior to the effective date of the  
143 annexation, submit a written request to the governing body  
144 of the annexing municipality to invoke mandatory good faith  
145 negotiations under section 394.312 to determine which  
146 electric service supplier is best suited to serve all or  
147 portions of the newly annexed area. In such negotiations  
148 the following factors shall be considered, at a minimum:

149 (1) The preference of landowners and prospective  
150 electric customers;

151 (2) The rates, terms, and conditions of service of the  
152 electric service suppliers;

153 (3) The economic impact on the electric service  
154 suppliers;

155 (4) Each electric service supplier's operational  
156 ability to serve all or portions of the annexed area within  
157 three years of the date the annexation becomes effective;

158       (5) Avoiding the wasteful duplication of electric  
159 facilities;

160       (6) Minimizing unnecessary encumbrances on the  
161 property and landscape within the area to be annexed; and

162       (7) Preventing the waste of materials and natural  
163 resources.

164 If the municipally owned electric utility and rural electric  
165 cooperative are unable to negotiate a territorial agreement  
166 pursuant to section 394.312 within forty-five days, then  
167 they may submit proposals to those submitting the original  
168 written request, whose preference shall control, section  
169 394.080 to the contrary notwithstanding, and the governing  
170 body of the annexing municipality shall not reject the  
171 petition requesting annexation based on such preference.

172 This subsection shall not apply to municipally-owned  
173 property in any newly annexed area.

174       3. In the event an electrical corporation rather than  
175 a municipally owned electric utility lawfully is providing  
176 electric service in the municipality, all the provisions of  
177 subsection 2 of this section shall apply equally as if the  
178 electrical corporation were a municipally owned electric  
179 utility, except that if the electrical corporation and the  
180 rural electric cooperative are unable to negotiate a  
181 territorial agreement pursuant to section 394.312 within  
182 forty-five days, then either electric service supplier may  
183 file an application with the commission for an order  
184 determining which electric service supplier should serve, in  
185 whole or in part, the area to be annexed. The application  
186 shall be made pursuant to the rules and regulations of the  
187 commission governing applications for certificates of public  
188 convenience and necessity. The commission after the  
189 opportunity for hearing shall make its determination after  
190 consideration of the factors set forth in subdivisions (1)

191 through (7) of subsection 2 of this section, and section  
192 394.080 to the contrary notwithstanding, may grant its order  
193 upon a finding that granting of the applicant's request is  
194 not detrimental to the public interest. The commission  
195 shall issue its decision by report and order no later than  
196 one hundred twenty days from the date of the application  
197 unless otherwise ordered by the commission for good cause  
198 shown. Review of such commission decisions shall be  
199 governed by sections 386.500 to 386.550. If the applicant  
200 is a rural electric cooperative, the commission shall charge  
201 to the rural electric cooperative the appropriate fees as  
202 set forth in subsection 9 of this section.

203       **[3.] 4.** When a municipally owned electric utility  
204 desires to extend its service territory to include any  
205 structure located within a newly annexed area which has  
206 received permanent service from another electric service  
207 supplier within ninety days prior to the effective date of  
208 the annexation, it shall:

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

215           (2) Within six months after the effective date of the  
216 annexation receive the approval of the municipality's  
217 governing body to begin negotiations pursuant to section  
218 394.312 with **[any]** the affected electric service supplier.

219       **[4.] 5.** Upon receiving approval from the  
220 municipality's governing body pursuant to subsection **[3] 4**  
221 of this section, the municipally owned electric utility and  
222 the affected electric service supplier shall meet and  
223 negotiate in good faith the terms of the territorial

agreement and any transfers or acquisitions, including, as an alternative, granting the affected electric service supplier a franchise or authority to continue providing service in the annexed area. In the event that the affected electric service supplier does not provide wholesale electric power to the municipality, if the affected electric service supplier so desires, the parties [shall] may also negotiate, consistent with applicable law, regulations and existing power supply agreements, for power contracts which would provide for the purchase of power by the municipality from the affected electric service supplier for an amount of power equivalent to the loss of any sales to customers receiving permanent service at structures within the annexed areas which are being sought by the municipally owned electric utility. The parties shall have no more than one hundred eighty days from the date of receiving approval from the municipality's governing body within which to conclude their negotiations and file their territorial agreement with the commission for approval under the provisions of section 394.312. The time period for negotiations allowed under this subsection may be extended for a period not to exceed one hundred eighty days by a mutual agreement of the parties and a written request with the public service commission.

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

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

(2) An amount equal to the reasonable and prudent cost of detaching the facilities in the annexed areas and the reasonable and prudent cost of constructing any necessary facilities to reintegrate the system of the affected electric service supplier outside the annexed area after



detaching the portion to be transferred to the municipally owned electric utility; and

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

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

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

~~6.~~ 7. In the event the parties are unable to reach an agreement under subsection ~~4~~ 5 of this section, within sixty days after the expiration of the time specified for negotiations, the municipally owned electric utility or the affected electric service supplier may apply to the commission for an order assigning exclusive service territories within the annexed area and a determination of the fair and reasonable compensation amount to be paid to the affected electric service supplier under subsection ~~5~~ 6 of this section. Applications shall be made and notice of such filing shall be given to all affected parties pursuant to the rules and regulations of the commission governing applications for certificates of public convenience and necessity. Unless otherwise ordered by the commission for good cause shown, the commission shall rule on such applications not later than one hundred twenty days after the application is properly filed with the secretary of the commission. The commission shall hold evidentiary hearings

to assign service territory between the affected electric service suppliers inside the annexed area and to determine the amount of compensation due any affected electric service supplier for the transfer of plant, facilities or associated lost revenues between electric service suppliers in the annexed area. The commission shall make such determinations based on findings of what best serves the public interest and shall issue its decision by report and order. Review of such commission decisions shall be governed by sections 386.500 to 386.550. The payment of compensation and transfer of title and operation of the facilities shall occur within ninety days after the order and any appeal therefrom becomes final unless the order provides otherwise.

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

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

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

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

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

[8.] 9. The commission is hereby given all necessary jurisdiction over municipally owned electric utilities and rural electric cooperatives to carry out the purposes of this section consistent with other applicable law; provided, however, the commission shall not have jurisdiction to compel the transfer of customers or structures with a connected load greater than one thousand kilowatts. The commission shall by rule set appropriate fees to be charged on a case-by-case basis to municipally owned electric utilities and rural electric cooperatives to cover all necessary costs incurred by the commission in carrying out its duties under this section. Nothing in this section shall be construed as otherwise conferring upon the public service commission jurisdiction over the service, rates, financing, accounting, or management of any rural electric cooperative or municipally owned electric utility, except as provided in this section.

10. Notwithstanding sections 394.020 and 394.080 to the contrary, a rural electric cooperative may provide electric service within the corporate boundaries of a municipality if such service is provided:

(1) Pursuant to subsections 2 through 9 of this section; and

(2) Such service is conditioned upon the execution of the appropriate territorial and municipal franchise agreements, which may include a nondiscriminatory

356 requirement, consistent with other applicable law, that the  
357 rural electric cooperative collect and remit a sales tax  
358 based on the amount of electricity sold by the rural  
359 electric cooperative within the municipality."; and

360 Further amend said bill, page 10, section 393.106, line  
361 85, by inserting after all of said line the following:

362 "4. Notwithstanding the provisions of this section,  
363 section 91.025, section 394.080, and section 394.315 to the  
364 contrary, in the event that a retail electric supplier is  
365 providing service to a structure located within a city,  
366 town, or village that ceased to be a rural area, and such  
367 structure is demolished and replaced by a new structure,  
368 such retail electric service supplier may provide permanent  
369 service to the new structure upon the request of the owner  
370 of the new structure."; and

371 Further amend said bill, page 62, section 393.1715,  
372 line 150, by inserting after all of said line the following:

373 "394.020. In this chapter, unless the context  
374 otherwise requires,

375 (1) "Member" means each incorporator of a cooperative  
376 and each person admitted to and retaining membership  
377 therein, and shall include a husband and wife admitted to  
378 joint membership;

379 (2) "Person" includes any natural person, firm,  
380 association, corporation, business trust, partnership,  
381 federal agency, state or political subdivision or agency  
382 thereof, or any body politic; and

383 (3) "Rural area" shall be deemed to mean any area of  
384 the United States not included within the boundaries of any  
385 city, town or village having a population in excess of  
386 ~~[fifteen]~~ sixteen hundred inhabitants, and such term shall  
387 be deemed to include both the farm and nonfarm population  
388 thereof. The number of inhabitants specified in this

subsection shall be increased by six percent every ten years  
after each decennial census beginning in 2030."; and

Further amend said bill, page 63, section 394.120, line  
57, by inserting after all of said line the following:

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

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

(2) "Structure" or "structures", an agricultural,  
residential, commercial, industrial or other building or a  
mechanical installation, machinery or apparatus at which  
retail electric energy is being delivered through a metering  
device which is located on or adjacent to the structure and  
connected to the lines of an electrical supplier. Such  
terms shall include any contiguous or adjacent additions to  
or expansions of a particular structure. Nothing in this  
section shall be construed to confer any right on [a rural  
electric cooperative] an electric supplier to serve new  
structures on a particular tract of land because it was  
serving an existing structure on that tract.

2. Once a rural electric cooperative, or its  
predecessor in interest, lawfully commences supplying retail  
electric energy to a structure through permanent service  
facilities, it shall have the right to continue serving such  
structure, and other suppliers of electrical energy shall

422 not have the right to provide service to the structure  
423 except as might be otherwise permitted in the context of  
424 municipal annexation, pursuant to section 386.800 and  
425 section 394.080, or pursuant to a territorial agreement  
426 approved under section 394.312. The public service  
427 commission, upon application made by an affected party, may  
428 order a change of suppliers on the basis that it is in the  
429 public interest for a reason other than a rate differential,  
430 and the commission is hereby given jurisdiction over rural  
431 electric cooperatives to accomplish the purpose of this  
432 section. The commission's jurisdiction under this section  
433 is limited to public interest determinations and excludes  
434 questions as to the lawfulness of the provision of service,  
435 such questions being reserved to courts of competent  
436 jurisdiction. Except as provided herein, nothing in this  
437 section shall be construed as otherwise conferring upon the  
438 commission jurisdiction over the service, rates, financing,  
439 accounting or management of any such cooperative, and except  
440 as provided in this section, nothing contained herein shall  
441 affect the rights, privileges or duties of existing  
442 cooperatives pursuant to this chapter. Nothing in this  
443 section shall be construed to make lawful any provision of  
444 service which was unlawful prior to July 11, 1991. Nothing  
445 in this section shall be construed to make unlawful the  
446 continued lawful provision of service to any structure which  
447 may have had a different supplier in the past, if such a  
448 change in supplier was lawful at the time it occurred.  
449 However, those customers who had cancelled service with  
450 their previous supplier or had requested cancellation by May  
451 1, 1991, shall be eligible to change suppliers as per  
452 previous procedures. No customer shall be allowed to change  
453 electric suppliers by disconnecting service between May 1,  
454 1991, and July 11, 1991.

455       3. Notwithstanding the provisions of this section,  
456 section 91.025, section 393.106, and section 394.080 to the  
457 contrary, in the event that a retail electric supplier is  
458 providing service to a structure located within a city,  
459 town, or village that has ceased to be a rural area, and  
460 such structure is demolished and replaced by a new  
461 structure, such retail electric service supplier may provide  
462 permanent service to the new structure upon the request of  
463 the owner of the new structure."; and

464       Further amend the title and enacting clause accordingly.