

SENATE AMENDMENT NO. _____

Offered by _____ of _____

Amend SS/SCS/HCS/House Bill No. 271, Page 7, Section 59.100, Line 15,

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

60 394.315 shall affect the rights, privileges or duties of any
61 municipality to form or operate municipally owned or
62 operated electrical systems. Nothing in this section shall
63 be construed to make lawful any provision of service which
64 was unlawful prior to July 11, 1991. Nothing in this
65 section shall be construed to make unlawful the continued
66 lawful provision of service to any structure which may have
67 had a different supplier in the past, if such a change in
68 supplier was lawful at the time it occurred.

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

78 386.800. 1. No municipally owned electric utility may
79 provide electric energy at retail to any structure located
80 outside the municipality's corporate boundaries after July
81 11, 1991, unless:

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

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

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

90 (4) The structure is located in an area which was
91 previously served by an electrical corporation regulated
92 under chapter 386, and chapter 393, and the electrical

93 corporation's authorized service territory was contiguous to
94 or inclusive of the municipality's previous corporate
95 boundaries, and the electrical corporation's ownership or
96 operating rights within the area were acquired in total by
97 the municipally owned electrical system prior to July 11,
98 1991. In the event that a municipally owned electric
99 utility in a city with a population of more than one hundred
100 twenty-five thousand located in a county of the first class
101 not having a charter form of government and not adjacent to
102 any other county of the first class desires to serve
103 customers beyond the authorized service territory in an area
104 which was previously served by an electrical corporation
105 regulated under the provisions of chapter 386, and chapter
106 393, as provided in this subdivision, in the absence of an
107 approved territorial agreement under section 394.312 the
108 municipally owned utility shall apply to the public service
109 commission for an order assigning nonexclusive service
110 territories and concurrently shall provide written notice of
111 the application to other electric service suppliers with
112 electric facilities located in or within one mile outside of
113 the boundaries of the proposed expanded service territory.
114 The proposed service area shall be contiguous to the
115 authorized service territory which was previously served by
116 an electrical corporation regulated under the provisions of
117 chapter 386, and chapter 393, as a condition precedent to
118 the granting of the application. The commission shall have
119 one hundred twenty days from the date of application to
120 grant or deny the requested order. The commission after
121 hearing may grant the order upon a finding that granting of
122 the applicant's request is not detrimental to the public
123 interest. In granting the applicant's request the
124 commission shall give due regard to territories previously

125 granted to or served by other electric service suppliers and
126 the wasteful duplication of electric service facilities.

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

147 (1) The preference of landowners and prospective
148 electric customers;

149 (2) The rates, terms, and conditions of service of the
150 electric service suppliers;

151 (3) The economic impact on the electric service
152 suppliers;

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

156 (5) Avoiding the wasteful duplication of electric
157 facilities;

158 (6) Minimizing unnecessary encumbrances on the
159 property and landscape within the area to be annexed; and
160 (7) Preventing the waste of materials and natural
161 resources.

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

172 3. In the event an electrical corporation rather than
173 a municipally owned electric utility lawfully is providing
174 electric service in the municipality, all the provisions of
175 subsection 2 shall apply equally as if the electrical
176 corporation were a municipally owned electric utility,
177 except that if the electrical corporation and the rural
178 electric cooperative are unable to negotiate a territorial
179 agreement pursuant to section 394.312 within forty-five
180 days, then either electric service supplier may file an
181 application with the commission for an order determining
182 which electric service supplier should serve, in whole or in
183 part, the area to be annexed. The application shall be made
184 pursuant to the rules and regulations of the commission
185 governing applications for certificates of public
186 convenience and necessity. The commission after the
187 opportunity for hearing shall make its determination after
188 consideration of the factors set forth in subdivisions (1)
189 through (7) of subsection 2 of this section, and section
190 394.080 to the contrary notwithstanding, may grant its order

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

201 [3.] 4. When a municipally owned electric utility
202 desires to extend its service territory to include any
203 structure located within a newly annexed area which has
204 received permanent service from another electric service
205 supplier within ninety days prior to the effective date of
206 the annexation, it shall:

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

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

217 [4.] 5. Upon receiving approval from the
218 municipality's governing body pursuant to subsection [3] 4
219 of this section, the municipally owned electric utility and
220 the affected electric service supplier shall meet and
221 negotiate in good faith the terms of the territorial
222 agreement and any transfers or acquisitions, including, as
223 an alternative, granting the affected electric service

224 supplier a franchise or authority to continue providing
225 service in the annexed area. In the event that the affected
226 electric service supplier does not provide wholesale
227 electric power to the municipality, if the affected electric
228 service supplier so desires, the parties [shall] may also
229 negotiate, consistent with applicable law, regulations and
230 existing power supply agreements, for power contracts which
231 would provide for the purchase of power by the municipality
232 from the affected electric service supplier for an amount of
233 power equivalent to the loss of any sales to customers
234 receiving permanent service at structures within the annexed
235 areas which are being sought by the municipally owned
236 electric utility. The parties shall have no more than one
237 hundred eighty days from the date of receiving approval from
238 the municipality's governing body within which to conclude
239 their negotiations and file their territorial agreement with
240 the commission for approval under the provisions of section
241 394.312. The time period for negotiations allowed under
242 this subsection may be extended for a period not to exceed
243 one hundred eighty days by a mutual agreement of the parties
244 and a written request with the public service commission.

245 [5.] 6. For purposes of this section, the term "fair
246 and reasonable compensation" shall mean the following:

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

250 (2) An amount equal to the reasonable and prudent cost
251 of detaching the facilities in the annexed areas and the
252 reasonable and prudent cost of constructing any necessary
253 facilities to reintegrate the system of the affected
254 electric service supplier outside the annexed area after
255 detaching the portion to be transferred to the municipally
256 owned electric utility; and

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

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

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

270 ~~6.]~~ 7. In the event the parties are unable to reach
271 an agreement under subsection ~~4~~ 5 of this section, within
272 sixty days after the expiration of the time specified for
273 negotiations, the municipally owned electric utility or the
274 affected electric service supplier may apply to the
275 commission for an order assigning exclusive service
276 territories within the annexed area and a determination of
277 the fair and reasonable compensation amount to be paid to
278 the affected electric service supplier under subsection ~~5~~
279 6 of this section. Applications shall be made and notice of
280 such filing shall be given to all affected parties pursuant
281 to the rules and regulations of the commission governing
282 applications for certificates of public convenience and
283 necessity. Unless otherwise ordered by the commission for
284 good cause shown, the commission shall rule on such
285 applications not later than one hundred twenty days after
286 the application is properly filed with the secretary of the
287 commission. The commission shall hold evidentiary hearings
288 to assign service territory between the affected electric
289 service suppliers inside the annexed area and to determine

290 the amount of compensation due any affected electric service
291 supplier for the transfer of plant, facilities or associated
292 lost revenues between electric service suppliers in the
293 annexed area. The commission shall make such determinations
294 based on findings of what best serves the public interest
295 and shall issue its decision by report and order. Review of
296 such commission decisions shall be governed by sections
297 386.500 to 386.550. The payment of compensation and
298 transfer of title and operation of the facilities shall
299 occur within ninety days after the order and any appeal
300 therefrom becomes final unless the order provides otherwise.

301 [7.] 8. In reaching its decision under subsection 6 of
302 this section, the commission shall consider the following
303 factors:

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

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

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

321 (4) Any other issues upon which the municipally owned
322 electric utility and the affected electric service supplier

323 might otherwise agree, including, but not limited to, the
324 valuation formulas and factors contained in subsections [4,
325 5 and 6] 5, 6, and 7, of this section, even if the parties
326 could not voluntarily reach an agreement thereon under those
327 subsections.

328 [8.] 9. The commission is hereby given all necessary
329 jurisdiction over municipally owned electric utilities and
330 rural electric cooperatives to carry out the purposes of
331 this section consistent with other applicable law; provided,
332 however, the commission shall not have jurisdiction to
333 compel the transfer of customers or structures with a
334 connected load greater than one thousand kilowatts. The
335 commission shall by rule set appropriate fees to be charged
336 on a case-by-case basis to municipally owned electric
337 utilities and rural electric cooperatives to cover all
338 necessary costs incurred by the commission in carrying out
339 its duties under this section. Nothing in this section
340 shall be construed as otherwise conferring upon the public
341 service commission jurisdiction over the service, rates,
342 financing, accounting, or management of any rural electric
343 cooperative or municipally owned electric utility, except as
344 provided in this section.

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

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

351 (2) Such service is conditioned upon the execution of
352 the appropriate territorial and municipal franchise
353 agreements, which may include a nondiscriminatory
354 requirement, consistent with other applicable law, that the
355 rural electric cooperative collect and remit a sales tax

356 based on the amount of electricity sold by the rural
357 electric cooperative within the municipality.

358 393.106. 1. As used in this section, the following
359 terms mean:

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

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

382 2. Once an electrical corporation or joint municipal
383 utility commission, or its predecessor in interest, lawfully
384 commences supplying retail electric energy to a structure
385 through permanent service facilities, it shall have the
386 right to continue serving such structure, and other
387 suppliers of electrical energy shall not have the right to
388 provide service to the structure except as might be

389 otherwise permitted in the context of municipal annexation,
390 pursuant to section 386.800 and section 394.080, or pursuant
391 to a territorial agreement approved under section 394.312.
392 The public service commission, upon application made by an
393 affected party, may order a change of suppliers on the basis
394 that it is in the public interest for a reason other than a
395 rate differential. The commission's jurisdiction under this
396 section is limited to public interest determinations and
397 excludes questions as to the lawfulness of the provision of
398 service, such questions being reserved to courts of
399 competent jurisdiction. Except as provided in this section,
400 nothing contained herein shall affect the rights, privileges
401 or duties of existing corporations pursuant to this
402 chapter. Nothing in this section shall be construed to make
403 lawful any provision of service which was unlawful prior to
404 July 11, 1991. Nothing in this section shall be construed
405 to make unlawful the continued lawful provision of service
406 to any structure which may have had a different supplier in
407 the past, if such a change in supplier was lawful at the
408 time it occurred. However, those customers who had
409 cancelled service with their previous supplier or had
410 requested cancellation by May 1, 1991, shall be eligible to
411 change suppliers as per previous procedures. No customer
412 shall be allowed to change electric suppliers by
413 disconnecting service between May 1, 1991, and July 11, 1991.

414 3. Notwithstanding the provisions of this section,
415 section 91.025, section 394.080, and section 394.315 to the
416 contrary, in the event that a retail electric supplier is
417 providing service to a structure located within a city,
418 town, or village that ceased to be a rural area, and such
419 structure is demolished and replaced by a new structure,
420 such retail electric service supplier may provide permanent

421 service to the new structure upon the request of the owner
422 of the new structure.

423 394.020. In this chapter, unless the context otherwise
424 requires,

425 (1) "Member" means each incorporator of a cooperative
426 and each person admitted to and retaining membership
427 therein, and shall include a husband and wife admitted to
428 joint membership;

429 (2) "Person" includes any natural person, firm,
430 association, corporation, business trust, partnership,
431 federal agency, state or political subdivision or agency
432 thereof, or any body politic; and

433 (3) "Rural area" shall be deemed to mean any area of
434 the United States not included within the boundaries of any
435 city, town or village having a population in excess of
436 fifteen hundred inhabitants, and such term shall be deemed
437 to include both the farm and nonfarm population thereof.____

438 The number of inhabitants specified in this subsection shall
439 be increased by six percent every ten years after each
440 decennial census beginning in 2030.

441 394.315. 1. As used in this section, the following
442 terms mean:

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

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

465 2. Once a rural electric cooperative, or its
466 predecessor in interest, lawfully commences supplying retail
467 electric energy to a structure through permanent service
468 facilities, it shall have the right to continue serving such
469 structure, and other suppliers of electrical energy shall
470 not have the right to provide service to the structure
471 except as might be otherwise permitted in the context of
472 municipal annexation, pursuant to section 386.800 and
473 section 394.080, or pursuant to a territorial agreement
474 approved under section 394.312. The public service
475 commission, upon application made by an affected party, may
476 order a change of suppliers on the basis that it is in the
477 public interest for a reason other than a rate differential,
478 and the commission is hereby given jurisdiction over rural
479 electric cooperatives to accomplish the purpose of this
480 section. The commission's jurisdiction under this section
481 is limited to public interest determinations and excludes
482 questions as to the lawfulness of the provision of service,
483 such questions being reserved to courts of competent
484 jurisdiction. Except as provided herein, nothing in this
485 section shall be construed as otherwise conferring upon the

486 commission jurisdiction over the service, rates, financing,
487 accounting or management of any such cooperative, and except
488 as provided in this section, nothing contained herein shall
489 affect the rights, privileges or duties of existing
490 cooperatives pursuant to this chapter. Nothing in this
491 section shall be construed to make lawful any provision of
492 service which was unlawful prior to July 11, 1991. Nothing
493 in this section shall be construed to make unlawful the
494 continued lawful provision of service to any structure which
495 may have had a different supplier in the past, if such a
496 change in supplier was lawful at the time it occurred.
497 However, those customers who had cancelled service with
498 their previous supplier or had requested cancellation by May
499 1, 1991, shall be eligible to change suppliers as per
500 previous procedures. No customer shall be allowed to change
501 electric suppliers by disconnecting service between May 1,
502 1991, and July 11, 1991.

503 3. Notwithstanding the provisions of this section,
504 section 91.025, section 393.106, and section 394.080 to the
505 contrary, in the event that a retail electric supplier is
506 providing service to a structure located within a city,
507 town, or village that has ceased to be a rural area, and
508 such structure is demolished and replaced by a new
509 structure, such retail electric service supplier may provide
510 permanent service to the new structure upon the request of
511 the owner of the new structure."; and

512 Further amend the title and enacting clause accordingly.