

Substitute for SENATE BILL No. 323

AN ACT concerning utilities; relating to the retail electric suppliers act; concerning termination of service territory; relating to the state corporation commission; concerning regulation of municipal energy agencies; relating to electric cooperatives, regulation of certain transmission services; amending K.S.A. 12-8,111 and 66-1,176 and K.S.A. 2017 Supp. 66-104d and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 12-8,111 is hereby amended to read as follows: 12-8,111. (a) The provisions of K.S.A. 12-885 ~~to through 12-8,109, inclusive, and any provisions amendatory or supplemental amendments~~ thereto, shall constitute a certificate of public convenience, and any municipal energy agency is authorized to operate as a public utility pursuant to such provisions without obtaining a certificate described in K.S.A. 66-131 ~~or any, and amendments thereto, except a municipal energy agency shall be required to file for a certificate for transmission rights for any electric facilities used to transmit electricity that are constructed in the certificated territory of a retail electric supplier, as defined in K.S.A. 66-1,170, and amendments thereto, after the effective date of this section. In determining public convenience and necessity, the state corporation commission shall apply the provisions of K.S.A. 66-1,170 et seq., and amendments thereto, to a municipal energy agency to the same extent it does to a retail electric supplier, as defined in K.S.A. 66-1,170, and amendments thereto.~~

(b) Except with respect to such certificate described in subsection (a), any municipal energy agency created under the provisions of K.S.A. 12-885 ~~to through 12-8,109, inclusive, and any provisions amendatory or supplemental amendments~~ thereto, shall be subject to the jurisdiction of the state corporation commission in the same manner as a public utility.

(c) *Except as otherwise provided in subsection (g), a municipal energy agency may elect to be exempt from the jurisdiction, regulation, supervision and control of the state corporation commission by complying with the provisions of subsection (d).*

(d) *To be exempt under subsection (c), a municipal energy agency shall have an election of its voting members as established in the governing documents of the municipal energy agency as follows:*

(1) *An election under this subsection may be called by the governing body of the municipal energy agency or shall be called not less than 180 days after receipt of a valid petition signed by not less than 10% of the members of the municipal energy agency.*

(2) *The proposition for deregulation shall be presented to a meeting of the members, the notice of which shall set forth the proposition for deregulation and the time and place of the meeting. Notice to the members shall be written and delivered not less than 21 nor more than 45 days before the date of the meeting.*

(3) *If the municipal energy agency mails information to its members regarding the proposition for deregulation other than notice of the election, the municipal energy agency shall also include in such mailing any information in opposition to the proposition that is submitted by petition signed by not less than 1% of the municipal energy agency's members. All expenses incidental to mailing the additional information, including any additional postage required to mail such additional information, shall be paid by the signatories to the petition.*

(4) *If the proposition for deregulation is approved by the affirmative vote of not less than a majority of the members voting on the proposition, the municipal energy agency shall notify the state corporation commission in writing of the results within 10 days after the date of the election.*

(5) *Voting on the proposition for deregulation shall be in accordance with the governing documents of the municipal energy agency.*

(e) *A municipal energy agency exempt under this section may elect to terminate its exemption in the same manner as prescribed in subsection (d).*

(f) *An election under subsection (d) or (e) may be held not more than once every two years.*

(g) *Nothing in this section shall be construed to affect the authority of the state corporation commission, as otherwise provided by law, over a municipal energy agency with regard to: (1) Service territory; (2) charges, fees or tariffs for transmission services, other than charges, fees or tariffs to its own members or those charges, fees or tariffs for transmission services that are recovered through an open access transmission tariff of a regional transmission organization which has its rates approved*

by the federal energy regulatory commission; (3) sales of power for resale, other than sales to its own members; and (4) wire stringing, transmission line siting and the extension of electric facilities used to transmit electricity pursuant to K.S.A. 66-131, 66-183, 66-1,170 et seq. or 66-1,177 et seq., and amendments thereto. Nothing in this subsection shall be construed to affect the authority of the commission pursuant to K.S.A. 66-144, and amendments thereto.

(h) (1) Notwithstanding a municipal energy agency's election to be exempt under this section, the commission shall investigate all rates, joint rates, tolls, charges and exactions, classifications and schedules of charges or rates of such municipal energy agency if there is filed with the commission, not more than one year after a change in such municipal energy agency's rates, joint rates, tolls, charges and exactions, classifications or schedules of charges or rates, a petition signed by not less than 20% of the municipal energy agency's voting members as established in the governing documents of the municipal energy agency. If, after investigation, the commission finds that such rates, joint rates, tolls, charges or exactions, classifications or schedules of charges or rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, the commission shall have the power to fix and order substituted therefor such rates, joint rates, tolls, charges and exactions, classifications or schedules of charges or rates as are just and reasonable.

(2) The municipal energy agency's rates, joint rates, tolls, charges and exactions, classifications or schedules of rates complained of shall remain in effect subject to change or refund pending the state corporation commission's investigation and final order.

(i) (1) If a municipal energy agency is exempt under this section, not less than 10 days' notice of the time and place of any meeting of the voting members as established in the governing documents of the municipal energy agency at which rate changes or charges are to be discussed and voted on shall be given to all members of the municipal energy agency and such meeting shall be open to all members.

(2) Violations of this subsection shall be subject to civil penalties and enforcement in the same manner as provided for by K.S.A. 75-4320 and 75-4320a, and amendments thereto, for violations of K.S.A. 75-4317 et seq., and amendments thereto.

(j) (1) Any municipal energy agency exempt under this section shall maintain a schedule of rates and charges at the municipal energy agency headquarters and shall make copies of such schedule of rates and charges available to the general public during regular business hours.

(2) Any municipal energy agency which fails, neglects or refuses to maintain such copies of schedule of rates and charges under this subsection shall be subject to a civil penalty of not more than \$500.

(k) A municipal energy agency that has elected to be exempt under the provisions of subsection (d) shall include a provision in its notice to its members, either before or after a rate change, of the member's right to request the commission to review the rate change, as allowed in subsection (h).

(l) Nothing in this section shall be construed to affect the single certificated retail service territory of any retail electric supplier, as defined in K.S.A. 66-1,170, and amendments thereto.

Sec. 2. K.S.A. 2017 Supp. 66-104d is hereby amended to read as follows: 66-104d. (a) As used in this section, "cooperative" means any: (1) Corporation organized under the electric cooperative act, K.S.A. 17-4601 et seq., and amendments thereto, or which becomes subject to the electric cooperative act in the manner therein provided; ~~or any~~ (2) limited liability company or corporation providing electric service at wholesale in the state of Kansas that is owned by four or more electric cooperatives that provide retail service in the state of Kansas; ~~or any~~ (3) member-owned corporation formed prior to 2004.

(b) Except as otherwise provided in subsection (f), a cooperative may elect to be exempt from the jurisdiction, regulation, supervision and control of the state corporation commission by complying with the provisions of subsection (c).

(c) To be exempt under subsection (b), a cooperative shall poll its members as follows:

(1) An election under this subsection may be called by the board of

trustees or shall be called not less than 180 days after receipt of a valid petition signed by not less than 10% of the members of the cooperative.

(2) The proposition for deregulation shall be presented to a meeting of the members, the notice of which shall set forth the proposition for deregulation and the time and place of the meeting. Notice to the members shall be written and delivered not less than 21 nor more than 45 days before the date of the meeting.

(3) If the cooperative mails information to its members regarding the proposition for deregulation other than notice of the election and the ballot, the cooperative shall also include in such mailing any information in opposition to the proposition that is submitted by petition signed by not less than 1% of the cooperative's members. All expenses incidental to mailing the additional information, including any additional postage required to mail such additional information, ~~must~~ shall be paid by the signatories to the petition.

(4) If the proposition for deregulation is approved by the affirmative vote of not less than a majority of the members voting on the proposition, the cooperative shall notify the state corporation commission in writing of the results within 10 days after the date of the election.

(5) Voting on the proposition for deregulation shall be by mail ballot.

(d) A cooperative exempt under this section may elect to terminate its exemption in the same manner as prescribed in subsection (c).

(e) An election under subsection (c) or (d) may be held not more often than once every two years.

(f) Nothing in this section shall be construed to affect the single certified service territory of a cooperative or the authority of the state corporation commission, as otherwise provided by law, over a cooperative with regard to: (1) Service territory; (2) charges, fees or tariffs for transmission services, *except those charges or fees for transmission services that are recovered through an open access transmission tariff of a regional transmission organization which has its rates approved by the federal energy regulatory commission*; (3) sales of power for resale, other than sales between a cooperative, as defined in subsection (a), that does not provide retail electric service and an owner of such cooperative; and (4) wire stringing and transmission line siting, pursuant to K.S.A. 66-131, 66-183, 66-1,170 et seq. or 66-1,177 et seq., and amendments thereto. *Nothing in this subsection shall be construed to affect the authority of the commission pursuant to K.S.A. 66-144, and amendments thereto.*

(g) (1) Notwithstanding a cooperative's election to be exempt under this section, the commission shall investigate all rates, joint rates, tolls, charges and exactions, classifications and schedules of rates of such cooperative if there is filed with the commission, not more than one year after a change in such cooperative's rates, joint rates, tolls, charges and exactions, classifications or schedules of rates, a petition in the case of a retail distribution cooperative signed by not less than 5% of all the cooperative's customers or 3% of the cooperative's customers from any one rate class, or, in the case of a generation and transmission cooperative, not less than 20% of the generation and transmission cooperative's members or 5% of the aggregate retail customers of such members. If, after investigation, the commission finds that such rates, joint rates, tolls, charges or exactions, classifications or schedules of rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, the commission shall have the power to fix and order substituted therefor such rates, joint rates, tolls, charges and exactions, classifications or schedules of rates as are just and reasonable.

(2) The cooperative's rates, joint rates, tolls, charges and exactions, classifications or schedules of rates complained of shall remain in effect subject to change or refund pending the state corporation commission's investigation and final order.

(3) Any customer of a cooperative wishing to petition the commission pursuant to subsection (g)(1) may request from the cooperative the names, addresses and rate classifications of all the cooperative's customers or of the cooperative's customers from any one or more rate classes. The cooperative, within 21 days after receipt of the request, shall furnish to the customer the requested names, addresses and rate classifications and may require the customer to pay the reasonable costs thereof.

(h) (1) If a cooperative is exempt under this section, not less than 10 days' notice of the time and place of any meeting of the board of trustees

at which rate changes are to be discussed and voted on shall be given to all members of the cooperative and such meeting shall be open to all members.

(2) Violations of *this* subsection ~~(h)(1)~~ shall be subject to civil penalties and enforcement in the same manner as provided by K.S.A. 75-4320 and 75-4320a, and amendments thereto, for violations of K.S.A. 75-4317 et seq., and amendments thereto.

(i) (1) Any cooperative exempt under this section shall maintain a schedule of rates and charges at the cooperative headquarters and shall make copies of such schedule of rates and charges available to the general public during regular business hours.

(2) Any cooperative which fails, neglects or refuses to maintain such copies of schedule of rates and charges under this subsection shall be subject to a civil penalty of not more than \$500.

(j) A cooperative that has elected to be exempt under the provisions of subsection (b) shall include a provision in its notice to customers, either before or after a rate change, of the customer's right to request the commission to review the rate change, as allowed in subsection (g).

(k) Notwithstanding any provision of law to the contrary, a cooperative, as defined in subsection (a), shall be subject to the provisions of the renewable energy standards act.

Sec. 3. K.S.A. 66-1,176 is hereby amended to read as follows: 66-1,176. (a) (1) Whenever a city proposes to annex land that is located within the certified territory of a retail electric supplier, the city shall provide notice to the retail electric supplier ~~in the manner prescribed by K.S.A. 12-520a, and amendments thereto~~ *no less than 30 days prior to the city making a selection pursuant to subsection (a)(2)*. All rights of a retail electric supplier to provide electric service in an area annexed by a city shall terminate 180 days from the date of annexation, unless such electric supplier is then holding a valid franchise for service in the area granted by the annexing city. Such period of 180 days shall be extended to 210 days from the date of annexation if a franchise is granted to the retail electric supplier pursuant to referendum conducted according to applicable franchise laws of the state of Kansas within such period of 210 days.

(2) Whenever the city annexes land that is located within the certified territory of a retail electric supplier, the city shall negotiate for the issuance of a franchise agreement pursuant to K.S.A. 12-2001, et seq., and amendments thereto, with a retail electric supplier holding a certificate within the annexed area. Nothing herein shall be construed to require a supplier holding both a certificate of convenience and a franchise for the area annexed to obtain a new franchise. The city shall ~~have the final~~ *make the* selection of which supplier receives a franchise to operate within the annexed area. When making such selection, the city shall consider certain factors including, but not limited to: ~~(1) (A) The public convenience and necessity; (2) (B) rates of various suppliers; (3) (C) desires of the customer or customers to be served; (4) (D) economic impact on the suppliers; (5) (E) economic impact on the customers of the suppliers; (6) (F) the utility's supplier's operational ability to serve the annexed area; (7) (G) avoiding the wasteful duplication of facilities; (8) (H) avoiding unnecessary encumbrance on the landscape; and (9) (I) preventing the waste of materials and natural resources; (J) proposals from any retail electric supplier holding a certificate in the annexed area; and (K) whether the selection is in the public interest as it relates to all the factors considered by the city.~~ *Within 30 days after the final decision of the city, any supplier aggrieved thereby may file an appeal in the district court of the county in which the annexed area is located to determine the reasonableness of the final decision. In the event that an appeal of the decision is filed in the district court, the retail electric supplier providing service at the time of annexation shall continue to provide service until such time as the appeal has been concluded. In the event service rights are terminated pursuant to this section, the commission shall certify such annexed area as a single certified territory to the supplier holding a franchise for or then providing retail electric service in the city immediately prior to the annexation.*

(b) *When considering the factors contained in subsection (a)(2), or any other factors, the city shall produce a record of the city's deliberations and findings upon each factor and the basis for the city's selection. Such*

*record shall be available as a public record within 10 days after the city makes a selection.*

*(c) Within 30 days after the city makes its selection, any supplier aggrieved thereby may file an appeal of such selection in the district court of the county in which the annexed area is located. Such appeal shall be to determine whether the city met the requirements of subsections (a) and (b) and whether the city's selection is based upon substantial, competent evidence. The appeal shall be docketed as a new civil action and the docket fee collected. The district court may take additional evidence on the factors in section (a)(2). The review of the city's selection shall be limited to the record produced and supplemented by any additional evidence received by the court pursuant to this section.*

*(d) (1) In the event that an appeal of the selection is filed in the district court, the retail electric supplier providing service at the time of annexation shall continue to provide service at its ordinary rates until such time as the appeal has been concluded and service rights terminated.*

*(2) If the service rights of a supplier are terminated pursuant to this section, the commission shall certify such annexed area as a single certified territory to the supplier holding a franchise for or then providing retail electric service in the city immediately prior to the annexation.*

~~*(b)(e) In the event the supplier holding a franchise or then providing retail electric service that a new retail electric supplier does not effect the assumption of electric service to the annexed area at the termination of the applicable 180-day or 210-day period as provided in a retail electric service provider's service rights pursuant to subsection (a), then the originally certified supplier shall have the right to continue service to the annexed area and charge its ordinary rates therefor until such supplier does assume service to the annexed area. Such service shall be free of any franchise fee or other compensation to the city or the electric supplier holding the franchise. If the supplier holding a franchise has not assumed service to the annexed area within 180 days following the applicable 180-day or 210-day period provided in subsection (a), the city may require the originally certified supplier to obtain a franchise in order to continue service to the annexed area. Unless otherwise mutually agreed upon by the affected suppliers, no assumption of electric service shall occur within 15 days following notice to the originally certified supplier of the intended changeover time.*~~

~~*(e)(f) Whenever the service rights of a retail electric supplier are terminated pursuant to subsection (a), fair and reasonable compensation shall be paid to such retail electric supplier by the supplier subsequently authorized to provide electric service. Such compensation shall be an amount mutually agreed upon by the affected suppliers or the sum of the following:*~~

~~*(1) The depreciated replacement cost for the electric utility facilities in the territory in which the service rights have been terminated pursuant to subsection (a). As used in this paragraph, "depreciated replacement cost" shall mean the original installed cost of the facilities, adjusted to present value by utilizing a nationally recognized index of utility construction costs, less accumulated depreciation based on the book depreciation rates of the selling utility as filed with and approved by the state corporation commission, which are in effect at the time of acquisition;*~~

~~*(2) all reasonable and prudent costs of detaching the electric system facilities to be sold and all reasonable and prudent costs of reintegrating the remaining electric system facilities of the retail electric supplier whose service rights are terminated pursuant to subsection (a);*~~

~~*(3) an amount equal to two times the gross revenues attributable to the customers in the terminated territory during the 12 months next preceding the date of transfer of the service pursuant to subsection (a); and*~~

~~*(4) an amount equal to the state and federal tax liability created by the taxable income pursuant to the provisions of this paragraph and paragraphs (1), (2) and (3) and (5) by the retail electric supplier whose service rights are terminated pursuant to subsection (a), calculated without regard to any tax deductions or benefits not related to the sale of assets covered herein; and*~~

~~*(5) an amount equal to 8.5% of the gross revenues of total retail sales attributable to new customers in the territory in which service rights have been terminated for a period of 10 years following the date of termination of service rights of the retail electric supplier. Payments shall be made in*~~

*annual installments to the retail electric supplier whose service rights are terminated pursuant to subsection (a). Gross revenues shall be determined based on the rates charged and billed at the time each annual payment is made. Such retail electric supplier shall have the right to review, audit or cause to be audited the subsequent supplier's financial records with respect to retail electric service in the territory in which service rights have been terminated to determine the amount payable pursuant to this paragraph.*

~~(d)(g)~~ In the event that the parties are unable to agree upon an amount of compensation to be paid *compensation due* pursuant to subsection ~~(e)~~ (f) is disputed, after 60 days following the date of termination of service rights, either party may apply to the district court having jurisdiction where any portion of the facilities are located, for determination of compensation. Such determination shall be made by the court sitting without a jury.

(h) *Notwithstanding the provisions of K.S.A. 66-1,176b, and amendments thereto, a retail electric supplier shall be entitled to compensation pursuant to subsections (f) and (g) if a franchise agreement between a city and a retail electric supplier was agreed to pursuant to this section and K.S.A. 12-2001 et seq., and amendments thereto, but was terminated pursuant to K.S.A. 66-1,176b, and amendments thereto, within 10 years after such franchise agreement was effectuated by the parties.*

Sec. 4. K.S.A. 12-8,111 and 66-1,176 and K.S.A. 2017 Supp. 66-104d are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body

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\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*