

Cunningham Exhibit No. 104  
Date 1/31/11 Reporter NS  
File No. ER-2010-0355

FIRST REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 376**

95TH GENERAL ASSEMBLY

2009

1744S.05T

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**AN ACT**

To repeal section 386.120, RSMo, and to enact in lieu thereof three new sections relating to energy efficiency investments by electric corporations, with an expiration date for a certain section and a penalty provision.

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

Section A. Section 386.120, RSMo, is repealed and three new sections  
2 enacted in lieu thereof, to be known as sections 8.305, 386.120, and 393.1124, to  
3 read as follows:

8.305. 1. Any appliance purchased with state moneys or a  
2 portion of state moneys shall be an appliance that has earned the  
3 Energy Star under the Energy Star program co-sponsored by the United  
4 States Department of Energy and the United States Environmental  
5 Protection Agency. For purposes of this section, the term "appliance"  
6 shall have the same meaning as in section 144.526, RSMo.

7 2. The commissioner of the office of administration may exempt  
8 any appliance from the requirements of subsection 1 of this section  
9 when the cost of compliance is expected to exceed the projected energy  
10 cost savings gained.

11 3. The provisions of this section shall expire on August 28, 2011.

386.120. 1. The principal office of the commission shall be at the state  
2 capital at the city of Jefferson City. [The commissioners shall reside within a  
3 forty-mile radius of the city of Jefferson City during their respective terms of  
4 office.] The office required by this subsection shall be provided and assigned by

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

5 the board of public buildings.

6       2. The commission shall at all times, except Saturdays, Sundays and legal  
7 holidays, be open and in session for the transaction of business and the  
8 commissioners shall devote their entire time to the duties of their office.

9       3. The commission shall have an official seal bearing the following  
10 inscription: "Public Service Commission of the State of Missouri". The seal shall  
11 be affixed to all writs and authentications of copies of records and to such other  
12 instruments as the commission shall direct. All courts shall take judicial notice  
13 of such seal.

14       4. The commission may sue and be sued in its official name. The offices  
15 of said commission shall be supplied with all necessary books, maps, charts,  
16 stationery, office furniture, telephone and telegraph connections, and all other  
17 necessary appliances and incidentals, to be paid for in the same manner as other  
18 expenses authorized by this chapter.

19       5. The offices of the commission shall be open during business hours on  
20 all days except Saturdays, Sundays and legal holidays, and one or more  
21 responsible persons, designated by the commission or by the secretary, under the  
22 direction of the commission, shall be on duty at all times, in immediate charge  
23 thereof.

24       6. Any summons or other writ issued by any court of this state or of the  
25 federal government shall be served upon the secretary of the commission or on  
26 any commissioner at the principal office of the commission in Jefferson  
27 City. Service of any summons or other writ upon the secretary of the commission,  
28 or upon any single commissioner, shall constitute service upon the entire  
29 commission.

**393.1124. 1. This section shall be known as the "Missouri Energy  
2 Efficiency Investment Act".**

**3       2. As used in this section, the following terms shall mean:**

**4       (1) "Commission", the Missouri public service commission;**

**5       (2) "Demand response", measures that decrease peak demand or  
6 shift demand to off-peak periods;**

**7       (3) "Demand-side program", any program conducted by the utility  
8 to modify the net consumption of electricity on the retail customer's  
9 side of the electric meter, including, but not limited to energy  
10 efficiency measures, load management, demand response, and  
11 interruptible or curtailable load;**

12 (4) "Energy efficiency", measures that reduce the amount of  
13 electricity required to achieve a given end use;

14 (5) "Interruptible or curtailable rate", a rate under which a  
15 customer receives a reduced charge in exchange for agreeing to allow  
16 the utility to withdraw the supply of electricity under certain specified  
17 conditions;

18 (6) "Total resource cost test", a test that compares the sum of  
19 avoided utility costs and avoided probable environmental compliance  
20 costs to the sum of all incremental costs of end-use measures that are  
21 implemented due to the program, as defined by the commission in  
22 rules.

23 3. It shall be the policy of the state to value demand-side  
24 investments equal to traditional investments in supply and delivery  
25 infrastructure and allow recovery of all reasonable and prudent costs  
26 of delivering cost-effective demand-side programs. In support of this  
27 policy, the commission shall:

28 (1) Provide timely cost recovery for utilities;

29 (2) Ensure that utility financial incentives are aligned with  
30 helping customers use energy more efficiently and in a manner that  
31 sustains or enhances utility customers' incentives to use energy more  
32 efficiently; and

33 (3) Provide timely earnings opportunities associated with cost-  
34 effective measurable and verifiable efficiency savings.

35 4. The commission shall permit electric corporations to  
36 implement commission-approved demand-side programs proposed  
37 pursuant to this section with a goal of achieving all cost-effective  
38 demand-side savings. Recovery for such programs shall not be  
39 permitted unless the programs are approved by the commission, result  
40 in energy or demand savings and are beneficial to all customers in the  
41 customer class in which the programs are proposed, regardless of  
42 whether the programs are utilized by all customers. The commission  
43 shall consider the total resource cost test a preferred cost-effectiveness  
44 test. Programs targeted to low-income customers or general education  
45 campaigns do not need to meet a cost-effectiveness test, so long as the  
46 commission determines that the program or campaign is in the public  
47 interest. Nothing herein shall preclude the approval of demand-side  
48 programs that do not meet the test if the costs of the program above the

49 level determined to be cost-effective are funded by the customers  
50 participating in the program or through tax or other governmental  
51 credits or incentives specifically designed for that purpose.

52         5. To comply with this section the commission may develop cost  
53 recovery mechanisms to further encourage investments in demand-side  
54 programs including, in combination and without limitation:  
55 capitalization of investments in and expenditures for demand-side  
56 programs, rate design modifications, accelerated depreciation on  
57 demand-side investments, and allowing the utility to retain a portion  
58 of the net benefits of a demand-side program for its shareholders. In  
59 setting rates the commission shall fairly apportion the costs and  
60 benefits of demand-side programs to each customer class except as  
61 provided for in subsection 6 of this section. Prior to approving a rate  
62 design modification associated with demand-side cost recovery, the  
63 commission shall conclude a docket studying the effects thereof and  
64 promulgate an appropriate rule.

65         6. The commission may reduce or exempt allocation of demand-  
66 side expenditures to low income classes, as defined in an appropriate  
67 rate proceeding, as a subclass of residential service.

68         7. Provided that the customer has notified the electric  
69 corporation that the customer elects not to participate in demand-side  
70 measures offered by an electrical corporation, none of the costs of  
71 demand-side measures of an electric corporation offered under this  
72 section or by any other authority, and no other charges implemented  
73 in accordance with this section, shall be assigned to any account of any  
74 customer, including its affiliates and subsidiaries, meeting one or more  
75 of the following criteria:

76             (1) The customer has one or more accounts within the service  
77 territory of the electrical corporation that has a demand of five  
78 thousand kilowatts or more;

79             (2) The customer operates an interstate pipeline pumping  
80 station, regardless of size; or

81             (3) The customer has accounts within the service territory of the  
82 electrical corporation that have, in aggregate, a demand of two  
83 thousand five hundred kilowatts or more, and the customer has a  
84 comprehensive demand-side or energy efficiency program and can  
85 demonstrate an achievement of savings at least equal to those expected

86 from utility-provided programs.

87       8. Customers that have notified the electrical corporation that  
88 they do not wish to participate in demand-side programs under this  
89 section shall not subsequently be eligible to participate in demand-side  
90 programs except under guidelines established by the commission in  
91 rulemaking.

92       9. Customers who participate in demand-side programs initiated  
93 after August 1, 2009, shall be required to participate in program  
94 funding for a period of time to be established by the commission in  
95 rulemaking.

96       10. Customers electing not to participate in an electric  
97 corporation's demand-side programs under this section shall still be  
98 allowed to participate in interruptible or curtailable rate schedules or  
99 tariffs offered by the electric corporation.

100       11. The commission shall provide oversight and may adopt rules  
101 and procedures and approve corporation-specific settlements and tariff  
102 provisions, independent evaluation of demand-side programs, as  
103 necessary, to ensure that electric corporations can achieve the goals of  
104 this section. Any rule or portion of a rule, as that term is defined in  
105 section 536.010, RSMo, that is created under the authority delegated in  
106 this section shall become effective only if it complies with and is  
107 subject to all of the provisions of chapter 536, RSMo, and, if applicable,  
108 section 536.028, RSMo. This section and chapter 536, RSMo, are  
109 nonseverable and if any of the powers vested with the general assembly  
110 pursuant to chapter 536, RSMo, to review, to delay the effective date,  
111 or to disapprove and annul a rule are subsequently held  
112 unconstitutional, then the grant of rulemaking authority and any rule  
113 proposed or adopted after August 28, 2009, shall be invalid and void.

114       12. Each electric corporation shall submit an annual report to  
115 the commission describing the demand-side programs implemented by  
116 the utility in the previous year. The report shall document program  
117 expenditures, including incentive payments, peak demand and energy  
118 savings impacts and the techniques used to estimate those impacts,  
119 avoided costs and the techniques used to estimate those costs, the  
120 estimated cost-effectiveness of the demand-side programs, and the net  
121 economic benefits of the demand-side programs.

122       13. Charges attributable to demand-side programs under this:

123 section shall be clearly shown as a separate line item on bills to the  
124 electrical corporation's customers.

125       14. (1) Any customer of an electrical corporation who has  
126 received a state tax credit under sections 135.350 to 135.362, RSMo, or  
127 under sections 253.545 to 253.561, RSMo, shall not be eligible for  
128 participation in any demand-side program offered by an electrical  
129 corporation under this section if such program offers a monetary  
130 incentive to the customer.

131       (2) As a condition of participation in any demand-side program  
132 offered by an electrical corporation under this section when such  
133 program offers a monetary incentive to the customer, the commission  
134 shall develop rules that require documentation to be provided by the  
135 customer to the electrical corporation to show that the customer has  
136 not received a tax credit listed in subdivision (1) of this subsection.

137       (3) The penalty for a customer who provides false documentation  
138 under subdivision (2) of this subsection shall be a class A misdemeanor.

139       15. The commission shall develop rules that provide for  
140 disclosure of participants in all demand-side programs offered by  
141 electrical corporations under this section when such programs provide  
142 monetary incentives to the customer. The disclosure required by this  
143 subsection may include, but not be limited to, the following: the name  
144 of the participant, or the names of the principles if for a company, the  
145 property address, and the amount of the monetary incentive received.

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