

**PUBLIC CHAPTER NO. 1035**

**SENATE BILL NO. 3333**

**By McNally**

Substituted for: House Bill No. 3504

By Fitzhugh

AN ACT to amend Tennessee Code Annotated, Title 48 and Title 67, relative to electricity.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 48-69-103(6), is amended by deleting the semicolon at the end of subsection (6) and by adding the following language:

, and "governmental electric system" may, at the election of the G&T cooperative for purposes of membership in the G&T cooperative, include the Tennessee Valley Authority, all as provided in the bylaws of the G&T cooperative.

SECTION 2. Tennessee Code Annotated, Section 48-69-106(b), is amended by adding the following language as a new subdivision:

(13) Enter into one (1) or more agreements providing for the making of payments in lieu of taxation to any state or local taxing jurisdiction within or outside this state to the extent that the G&T cooperative's wholesale sale of capacity and energy to a member or patron of the G&T cooperative results in a diminution in payments in lieu of taxation from the Tennessee Valley Authority to such state and local governments. For purposes of this subdivision (b)(13), "payments in lieu of taxation" means payments made by the Tennessee Valley Authority to state and local governments on account of its gross proceeds under § 13 of the Tennessee Valley Authority Act of 1933, compiled in 16 U.S.C. § 8311. All such payments shall be ordinary operating expenses of the G&T cooperative.

SECTION 3. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following as a new part:

§ 67-4-3101.

(a) It is the intention of this part to establish an obligation to make in lieu of tax payments to help keep Tennessee and its local governments whole from any diminution in the in lieu of tax payments paid by the Tennessee Valley Authority on account of the provision of wholesale electric current to municipal utilities, electric cooperatives and other similar entities for resale within the state by sources other than the

Tennessee Valley Authority. Accordingly, each person, including each governmental and cooperatively organized person, engaged in the business of making covered wholesale sales of electric current to a municipality, electric cooperative or other similar customer shall, for the privilege of doing such business, remit to the state for state purposes a payment in lieu of tax in an amount to be calculated in accordance with subsection (b).

(b)(1) For purposes of this section:

(A) "Covered wholesale sales of electric current" means wholesale sales of electric current for resale within any area where the Tennessee Valley Authority is the primary source of wholesale power as of the effective date of this act;

(B) "Gross receipts" means the total gross receipts derived from all covered wholesale sales of electric current;

(C) "Tennessee apportioned gross receipts" means gross receipts multiplied by a ratio obtained by taking the arithmetical average of the following two ratios:

(i) The percentage by which the gross receipts derived from covered wholesale sales of electric current occurring within Tennessee bears to the total gross receipts derived from all covered wholesale sales of electric current; and

(ii) The percentage by which the book value of the power property held in Tennessee by the seller of covered wholesale sales of electric current bears to the book value of all power property held by the seller of covered wholesale sales of electric current. The book value of power property shall include that portion of the investment allocated or estimated to be allocable to power.

(2) The payment in lieu of tax required pursuant to subsection (a) shall equal five percent (5%) of the Tennessee apportioned gross receipts of the person making covered wholesale sales of electric current.

(c) There shall be credited upon the in lieu of tax payments required by this section any taxes paid pursuant to Parts 3, 4, 20, or 21 of Chapter 4 of this title by or on behalf of the person engaged in a covered wholesale sale of electric current on account of the ownership or operation of electric generation facilities and other property used to generate, transmit or distribute such electric current. There shall be further credited upon the in lieu of tax payments required by this section

any ad valorem taxes or payments in lieu of ad valorem taxes paid to the State of Tennessee or local governments within the state by or on behalf of the person engaged in a covered wholesale sale of electric current on account of the ownership or operation of electric generation facilities and other property used to generate, transmit or distribute such electric current.

(d) If the person making covered wholesale sales of electric current does not make the required in lieu of tax payment calculated in accordance with subsections (b) and (c), then each municipality, electric cooperative or other similar customer engaged in making use of covered wholesale sales of electric current shall be responsible for making such payment in lieu of taxes applicable to the customer's use of such power and energy. Only one (1) in lieu of tax payment shall be required for a single sale and use of a covered wholesale sale of electric current.

(e) This section and the required in lieu of tax payments do not apply to any wholesale sale of electric current to or by the Tennessee Valley Authority or to any power property held by or attributed to the Tennessee Valley Authority.

(f) Any in lieu of tax payment collected pursuant to this section shall be added to the amounts received by the state from payments in lieu of taxes from the Tennessee Valley Authority and the combined amount shall then be distributed according to the provisions of § 67-9-101.

(g) Except as otherwise specifically provided in this section, the in lieu of tax obligations required by this section shall be administered and collected in the same manner as privilege taxes are administered and collected under Part 3 of this chapter.

SECTION 4. The Tennessee Advisory Commission on Intergovernmental Relations is directed to continue to monitor, within existing resources, whether the current wholesale power supply arrangements between the Tennessee Valley Authority and municipal utilities and electric cooperatives are likely to change in the future in a way that could affect payments in lieu of taxes from the Tennessee Valley Authority to the state and to its local governments. No later than February 1, 2011, and annually thereafter, the Tennessee Advisory Commission on Intergovernmental Relations shall report written findings to the Commerce, Labor and Agriculture Committee of the Senate; the Commerce Committee of the House of Representatives; the Finance, Ways and Means Committee of the Senate; and the Finance, Ways and Means Committee of the House of Representatives. The report shall include recommendations, if any, on adjustments to the state tax system that would keep the state and local governments whole from such future changes.

SECTION 5. This act shall take effect upon becoming a law, the public welfare requiring it.

**PASSED: June 3, 2010**



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RON RAMSEY  
SPEAKER OF THE SENATE



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KENT WILLIAMS, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 11th day of June 2010



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PHIL BREDESEN, GOVERNOR