



State of Tennessee
PUBLIC CHAPTER NO. 419

SENATE BILL NO. 1239

By Southerland

Substituted for: House Bill No. 1434

By Don Miller

AN ACT to amend Tennessee Code Annotated, Title 64.

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

SECTION 1. Tennessee Code Annotated, Section 64-10-101, is amended by deleting subsection (c) in its entirety and by substituting instead the following:

(c) The purposes of the East Tennessee regional agribusiness marketing authority are to:

(1) Establish and operate a market for agricultural products of the region through a food distribution center, to provide farmers of the region with a ready market for agricultural products and to provide the citizens of the region and other buyers a convenient place to purchase these products; and

(2) Further the economy and growth of the region served by the authority by planning, acquiring, constructing, improving, extending, furnishing, equipping, financing, owning, operating and maintaining a system or systems within the region served by the authority as provided in this chapter.

SECTION 2. Tennessee Code Annotated, Section 64-10-102, is amended by deleting the language "and" at the end of subdivision (5), by deleting the period at the end of subdivision (6), and by adding the following language as new subdivisions at the end of the section:

(7) "System" means a wastewater treatment and collection system that includes, but is not limited to, all devices and systems used in the storage, treatment, recycling and reclamation of sewage or residential, commercial and industrial wastes of a liquid nature to restore and maintain the chemical, physical and biological integrity of the state's waters; and

(8) "Wastewater board" means a board of commissioners established by the board pursuant to the provisions of § 64-10-104(b) to oversee the operations of a system.

SECTION 3. Tennessee Code Annotated, Section 64-10-104, is amended by designating the existing language as subsection (a) and by adding the following language as subsection (b):

(b)(1) The board is authorized to establish a wastewater board composed of members of the board of the authority and other commissioners appointed by the board. The appointed commissioners shall be representatives of any city or utility district that:

(A) Has entered into an agreement with the authority pursuant to which the authority agrees to collect or treat wastewater generated within such city or utility district; or

(B) Certifies to the authority that it intends to enter into an agreement with the authority pursuant to which the authority agrees to collect or treat wastewater generated within such city or utility district.

(2) The authority is authorized to adopt policies and procedures, including bylaws, for the conduct of business of the wastewater board and is authorized to establish the terms of office of the commissioners of the wastewater board. Except as is expressly reserved by the authority, the wastewater board shall have the full authority and right to undertake all powers of the authority relating to a system,

except that the wastewater board is not authorized to commit the authority to borrow money or undertake any condemnation without the approval of the board.

SECTION 4. Tennessee Code Annotated, Section 64-10-106, is amended by redesignating the existing subsection (c) as subsection (d) and by inserting the following language as a new subsection (c):

(c) Without limiting the foregoing, the authority shall have the following powers with respect to a system:

(1) To plan, establish, acquire, whether by purchase, exchange, gift, devise, lease, the exercise of the power of eminent domain or otherwise, and to construct, equip, furnish, improve, repair, extend, maintain and operate one (1) or more systems within the region, including all real and personal property, facilities and appurtenances that the board of directors of the authority deems necessary in connection therewith and regardless of whether or not such system shall then be in existence;

(2) To enter into agreements with any county, city or utility district for the orderly transfer of any part of the system of such county, city or utility district and, to the extent permitted by law and contract, to assume, to reimburse or to otherwise agree to pay outstanding obligations or liability of such county, city or utility district incurred to acquire, extend or equip the system;

(3) To enter into agreements with any county, city or utility district to acquire by lease, gift, purchase or otherwise any system or property related to the system, of any county, city or utility district and operate such system separately or as a part of its system or enter into agreements with any county, city or utility district providing for the operation by the authority of a system, or any portion of the system, owned by any county, city or utility district;

(4) To acquire, whether by purchase, exchange, gift, devise, lease, the exercise of the power of eminent domain, or otherwise, any and all types of property, franchises, assets and liabilities, whether real, personal or mixed, tangible or intangible, and whether or not subject to mortgages, liens, charges or other encumbrances and to hold, sell, lease, exchange, donate or convey its property, facilities or services for the purpose of continuing operation of any system by the authority;

(5) To collect and provide treatment for wastewater from, with or to any county, city, utility district, or other governmental unit of the state, or any agency thereof, or the United States, or any agency thereof, and to enter into contracts, agreements or other arrangements with any county, city, utility district, or other persons in connection therewith, provided, however, that the authority shall not enter into any agreement to collect or provide treatment for wastewater from any private person except with the prior consent of any county, city, utility district, or other governmental entity that is authorized to provide wastewater treatment services to such private person;

(6) To make and enter into all contracts, trust instruments, agreements and other instruments with any county, city or utility district, the state, or agency thereof, the United States, or any agency thereof, or any person, including, without limitation, bonds, notes, loan agreements with the Tennessee local development authority or the Tennessee Department of Environment and Conservation and other forms of indebtedness as if the authority were a local government as such term is defined in applicable statutes governing grants and loans, to construct, equip or extend the system and to enter into contracts for the management and operation of a system or any facilities or service of the authority for the treatment, processing, collection, distribution, storage, transfer or disposal of wastewater;

(7) To incur debts, to borrow money, to issue bonds and to provide for the rights of the holders of such debts, notes, and bonds as provided in this chapter;

(8) To apply for, accept and pledge donations, contributions, loans, guarantees, financial assistance, capital grants or gifts from any county, city or utility district, the state, or any agency thereof, the United States, or any agency thereof, or any person, whether public or private, for, or in aid of, the purposes of the authority and to enter into agreements in connection with such donations, contributions, loans, guarantees, financial assistance, capital grants or gifts;

(9) To pledge all or any part of the revenues, receipts, donations, contributions, loans, guarantees, financial assistance, capital grants or gifts of the authority, to mortgage and pledge one (1) or more of its systems, or any part or parts thereof, whether owned at the time the pledge is entered into, or acquired after the pledge is entered into, and to assign and pledge all or any part of its interest in and rights under contracts and other instruments relating thereto as security for the payment of the principal, premium, if any and interest on bonds, notes or other obligations issued by the authority with respect to a system;

(10) To have control of its systems, facilities and services with the right and duty to establish and charge rates, fees, rental, tolls, deposits and other charges for the use of the facilities and services of the authority and to collect revenues and receipts therefrom, not inconsistent with the rights of holders of its bonds, notes or other obligations;

(11) To enter onto any lands, waters and premises for the purposes of making surveys, soundings and examinations in and for the furtherance of the powers of the authority under this subsection (c);

(12) To use any right-of-way, easement or other similar property right necessary or convenient in connection with a system held by the state or any political subdivision thereof, provided the state or the governing body of such political subdivision consents to such use;

(13) To employ and pay compensation to such agents, including attorneys, accountants, engineers, architects and financial advisors, as the board deems necessary for the business of the authority;

(14) To employ and pay compensation to such employees, including a general manager, who shall have such authority, duties and responsibilities as the board deems necessary; and

(15) To procure and enter into contracts for any type of insurance or indemnity against loss or damage to property from any cause, including loss of use and occupancy, against death or injury of any act of any member, officer or employee of the authority in the performance of the duties of the office or employment or any other insurance risk, including the payment of its bonds, notes or other obligations, as the board deems necessary.

SECTION 5. Tennessee Code Annotated, Section 64-10-107, is amended by adding the following language as a new subsection (j):

(j)(1)(A) Without limiting the foregoing, the authority is authorized to issue its bonds, notes or other obligations from time to time for the purpose of paying in whole or in part the cost of constructing, acquiring, extending, improving or equipping a system, which shall be considered a project for purposes of this section.

(B) No bond or note authorized by subdivision (j)(1)(A) shall be issued until the resolution authorizing the issuance of bonds or notes, together with a statement as of the beginning of the then current fiscal year is submitted to the comptroller of the treasury or the comptroller's designee for review and approval. The statement submitted shall show in detail the total outstanding bonds, notes, warrants, refunding bonds, and other evidences of indebtedness of the authority, together with the maturity dates of the bonds, notes, warrants, refunding bonds, and other evidences of indebtedness, interest rates, special provisions for payment, the project to be funded by the bonds or notes, the current operating financial statement of the authority and any other pertinent financial information. The comptroller of the treasury or the comptroller's designee shall immediately acknowledge receipt in writing of the proposed bond or note issue statement and information. The comptroller of the treasury, or the comptroller's designee, shall report to the authority within fifteen (15) days from the date the plan is received by the comptroller of the treasury or the comptroller's designee.

(C) Upon receipt of the report as provided in subdivision (j)(1)(B), the authority shall cause the report to be published once in a newspaper of general circulation in the county of the principal office of the authority, and any other county, city, or utility district that it serves and in any city or utility district that have entered into an agreement with the authority pursuant to § 64-10-

104(b)(1), during the week following the report's receipt. After receiving the report of the comptroller of the treasury or the comptroller's designee, and after publication of such report, or after the expiration of fifteen (15) days from the date the statement and information are received by the comptroller of the treasury or the comptroller's designee, whichever date is earlier, the authority may take such action with reference to the proposed bond or note issue as the authority deems advisable. The report of the comptroller of the treasury or the comptroller's designee shall also be made a part of the bond transcript.

(2) The principal and premium, if any, and interest on any bonds, refunding bonds, notes or other obligations issued pursuant to subdivision (j)(1) may be secured by a pledge of revenues and receipts of all or part of the system. The proceedings under which the bonds, notes, or other obligations are authorized to be issued may contain any agreements, provisions and covenants respecting the maintenance of such system or other facilities covered thereby, the fixing and collection of rents, fees or payments with respect to any system or portions thereof covered by such proceedings, the creation and maintenance of special funds from such revenues and from the proceeds of such bonds, notes or other obligations and the rights and remedies available in the event of default, all as the board deems advisable and not in conflict with the provision of this chapter. To the extent provided in the proceedings authorizing any bonds, notes or other obligations, each pledge and agreement made for the benefit of security of any of the bonds, notes or other obligations shall continue in effect until the principal of and interest on the bonds, notes or other obligations for the benefit of which the same were made shall have been fully paid or adequate provision for the payment thereof shall have been made by the authority. In the event of a default in such payment or in any agreements of the authority made as part of the proceedings under which the bonds, notes or other obligations were issued, such payment or agreement may be enforced by suit, mandamus or the appointment of a receiver in equity, or the proceedings under which the bonds, notes or other obligations are issued.

(3) The board may designate the appropriate officials to execute all documents necessary to provide for the issuance of, or secure the payment of, the bonds, notes or other obligations issued pursuant to subdivision (j)(1).

(4) Bonds, notes or other obligations issued pursuant to subdivision (j)(1) may constitute a joint obligation of the authority, any county that is a member of the authority, and any city or utility district that have entered into an agreement with the authority as provided in § 64-10-104(b)(1). Any such bonds, notes or other obligations upon which a county or city is jointly obligated with the authority may be secured by the full faith and credit and unlimited ad valorem taxing power of such county or city. Bonds, notes, or other obligations issued as a joint obligation of the authority and a county or city shall be issued in the form and manner of Title 9, Chapter 21, Parts 1, 2, and 9, where applicable, and in the event of a conflict between this chapter and Title 9, Chapter 21, Parts 1, 2, and 9, then the provisions of Title 9, Chapter 21, Parts 1, 2, and 9 shall prevail. Notes issued as a joint obligation of the authority and a county or city shall be issued in the form and manner of Title 9, Chapter 21, Parts 1, 4, and 5, where applicable, and in the event of a conflict between this chapter and the provisions of Title 9, Chapter 21, Parts 1, 4, and 5, then the provisions of Title 9, Chapter 21, Parts 1, 4, and 5 shall prevail. Bonds, notes, or other obligations issued as a joint obligation of the authority and a utility district shall be issued in the form and manner of Title 7, Chapter 82, Part 5, where applicable, and in the event of a conflict between this chapter and Title 7, Chapter 82, Part 5, then the provisions of Title 7, Chapter 82, Part 5 shall prevail.

(5) Any bond, note or other obligation issued pursuant to subdivision (j)(1) may be secured by a mortgage or deed of trust covering any or all parts of the property, real or personal, of the system. Any pledge or lien on revenues, fees, rents, toll or other charges received or receivable by the authority to secure the payment of any bonds, notes or other obligations issued pursuant to subdivision (j)(1) and the interest thereon shall be valid and binding from the time that the pledge or lien is created and granted and shall inure to the benefit of the holder or holders of any such bonds, notes or other obligations of the authority until payment in full of the principal, premium and interest thereon. Neither the resolution nor any other instrument granting, creating or giving notice of the pledge or a lien or other such security interest need be filed or recorded to preserve or protect the validity or priority of such pledge or lien.

SECTION 6. Tennessee Code Annotated, Section 64-10-112, is amended by adding the following language at the end of the section:

The authority is authorized to invest any funds of the authority in any investment that would be an eligible investment of a county.

SECTION 7. Tennessee Code Annotated, Section 64-10-113, is amended by deleting subsection (a) and by substituting instead the following language:

(a) The board of directors of the authority shall cause an annual audit to be made of the books and records of the authority. Within thirty (30) days after receipt by the authority, a copy of the annual audit shall be filed with the board, and if the Department of Audit has not prepared the audit, with the comptroller of the treasury or comptroller's designee. The comptroller of the treasury, through the Department of Audit, shall be responsible for determining that such audits are prepared in accordance with generally accepted governmental auditing standards and that such audits meet the minimum standards prescribed by the comptroller of the treasury. The comptroller of the treasury shall promulgate such rules and regulations as are required to assure that the books and records are kept in accordance with generally accepted accounting principles and that audit standards prescribed by the comptroller of the treasury are met.

SECTION 8. Tennessee Code Annotated, Section 64-10-113, is amended by adding the following language as a new subsection (d):

(d) The current operating financial statements of the authority, and any other pertinent information as required by the comptroller, or the comptroller's designee, shall be submitted annually with the copy of the annual audit, or upon request, to the comptroller, or the comptroller's designee.

SECTION 9. Tennessee Code Annotated, Title 64, Chapter 10, is amended by adding the following language as a new section:

64-10-118.

The authority may condemn in its own name any land, rights in land, easements, and/or rights-of-way that in the judgment of the wastewater board are necessary for the purposes of acquiring property for the operation, improvement and expansion of a system, and such property or interest in such property may be so acquired whether or not the same is owned or held for public use by persons having the power of eminent domain, or otherwise held or used for public purposes; provided, however, that such prior public use will not be interfered with by the use to which such property will be put by the authority; and provided further, that the exercise of eminent domain power shall be approved by a majority of those present and voting of the board of directors of the authority. Such power of condemnation may be exercised in the manner prescribed by any applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain.

SECTION 10. Tennessee Code Annotated, Title 64, Chapter 10, is amended by adding the following language as a new section:

64-10-119.

(a) The authority, its properties at any time owned by it and the income and revenues derived from such properties shall be exempt from all state, county and municipal taxation. All bonds, notes and other obligations issued by the authority and the income from such bonds, notes, and other obligations shall be exempt from all state, county and municipal taxation, except inheritance, transfer and estate taxes or except as otherwise provided by state law. Bonds issued by the authority shall be deemed to be securities issued by a public instrumentality or a political subdivision of the state.

(b) Neither the Tennessee Regulatory Authority nor any board or commission of like character hereafter created shall have jurisdiction over the authority in the management and control of a system, including the regulation of its rates, fees, tolls or charges, provided, however, the authority is subject to regulation by the Department of Environment and Conservation as a public sewerage system.

(c) Notwithstanding any provision in any other law to the contrary, the authority may acquire, construct, improve and extend a system in the region served by the authority without the consent of any county, city or utility district.

SECTION 11. Tennessee Code Annotated, Title 64, Chapter 10, is amended by adding the following language as a new section:

64-10-120.

(a) Any county, city or utility district may take all actions under this chapter by resolution of its governing body. Any county, city or utility district shall have all powers necessary in order to further the purposes of this chapter, including, without limitation, the power to sell, lease, dedicate, donate or otherwise convey to the authority any of its interest in any existing wastewater system, franchises, assets, liabilities or other related property, whether real or personal, or mixed, tangible or intangible, and whether or not subject to mortgages, liens, charges or other encumbrances, or grant easements, license or other rights or privileges therein to the authority and to contract with the authority.

(b) Any county, city or utility district may enter into agreements with the authority for the orderly transfer of all or any part of its system and to enter into agreement for the authority to assume, to pay or to refund bonds, notes or other obligations issued by a county, city or utility district entered into by the county, city or utility district to acquire, construct or equip all or any part of a system.

(c) Any county, city or utility district is authorized to advance, donate or lend money to the authority and to provide that funds available to it for a system shall be paid to the authority.

(d) Any county, city or utility district shall have the same right to enter into any agreement with the authority that the wastewater board deems necessary to carry out the purposes of this chapter as a county, city or utility district has to enter into similar agreements with wastewater treatment authorities as provided by Title 68, Chapter 221, Part 6.

SECTION 12. Tennessee Code Annotated, Title 64, Chapter 10, is amended by adding the following language as a new section:

64-10-121.

Nothing contained in this chapter shall be construed as a restriction or a limitation upon any powers that a county, city or utility district might otherwise have under any laws of this state, but shall be construed as cumulative of and supplemental to any such powers. No proceedings, notice or approval shall be required with respect to the issuance of bonds, notes or other obligations of the authority or any instrument as security for the bonds, notes or other obligations except as provided in this chapter, any law to the contrary notwithstanding; provided, that nothing in this section shall be construed to deprive the state and its governmental subdivisions of their respective police powers or to impair any power of any official or agency of the state and its governmental subdivisions that may be otherwise provided by law.

SECTION 13. Tennessee Code Annotated, Title 64, Chapter 10, is amended by adding the following language as a new section:

64-10-122.

(a) The authority is hereby authorized, whenever desirable by its board, to enter into contracts, agreements or other arrangements with any county, city or utility district regarding a system, any wastewater facility or any wastewater service of the authority. Any such contract or agreement may extend for any period not exceeding forty (40) years from the date thereof.

(b) Any county, city or utility district seeking to enter into such agreement with the authority shall have the same rights and liabilities as it would otherwise have in entering into a similar agreement with a wastewater treatment authority as provided by Title 68, Chapter 221, Part 6.

SECTION 14. Tennessee Code Annotated, Title 64, Chapter 10, is amended by adding the following language as a new section:

64-10-123.

For the purposes of this chapter, Title 4, Chapter 31, and Title 68, Chapter 221, the authority shall be deemed to be a local government unit and shall be eligible for the same

grants, loans, and other assistance, and subject to the same obligations and requirements imposed by law related to such grants, loans, and assistance as any other local government unit.

SECTION 15. Tennessee Code Annotated, Title 64, Chapter 10, is amended by adding the following language as a new section:

64-10-124.

This chapter is remedial in nature and shall be liberally construed to effect its purpose of providing for a systematic and efficient means of the provision of wastewater services to the region served by the authority and the powers granted in this chapter may be exercised without regard to requirements, restrictions or procedural provisions contained in any other law or charter except as expressly provided in this chapter.

SECTION 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 17. This act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 1239

PASSED: May 20, 2011



RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 6 day of June 2011



BILL HASLAM, GOVERNOR