



State of Tennessee

PUBLIC CHAPTER NO. 995

SENATE BILL NO. 2430

By Crowe, Bowling

Substituted for: House Bill No. 2439

By Matthew Hill

AN ACT to amend Tennessee Code Annotated, Title 7, relative to municipal utilities.

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

SECTION 1. Tennessee Code Annotated, Title 7, is amended by adding the following as a new chapter:

7-41-101. This chapter shall be known and may be cited as the "Municipal Energy Authority Act".

7-41-102. As used in this chapter:

(1) "Acquire" means to construct or to acquire by purchase, lease, lease-purchase, devise, gift, exercise of the power of eminent domain, or exercise of any other mode of acquisition;

(2) "Associated municipality" means a municipality that has adopted home rule, that is located in a county having a population of one hundred fifty thousand (150,000) or less, according to the 2010 federal census or any subsequent federal census, and that, as of the date an authority is formed under this chapter, operates an electric system under the authority of title 7, chapter 52, the municipality's home rule charter, or otherwise applicable law;

(3) "Authority" means an authority created pursuant to this chapter;

(4) "Board" means the board of directors of the authority;

(5) "Bonds" means bonds, interim certificates, notes, debentures, lease-purchase agreements, and all other evidences of indebtedness either issued by or the payment of which has been assumed by the authority;

(6) "Dispose" means to sell, lease, convey, or otherwise transfer any property or any interest in property of the authority;

(7) "Electric service" means the furnishing of electric power and energy for lighting, heating, power, or any other purpose for which electric power and energy can be used;

(8) "Energy" means any and all forms of energy no matter how or where generated or produced;

(9) "Federal agency" means the United States, the president of the United States, the Tennessee Valley authority, and any other authority, agency, instrumentality, or corporation of the United States;

(10) "Governing body" means the legislative body of the associated municipality creating an authority pursuant to this chapter or, as applicable in § 7-41-110, the legislative body of another municipality;

(11) "Improve" means to construct, reconstruct, repair, extend, enlarge, or alter;

(12) "Improvement" means any extension, betterment, or addition to any system;

(13) "Municipal bonds" means bonds of the associated municipality issued to finance or refinance any of the systems;

(14) "Municipal electric system" means the electric system division or department of the associated municipality;

(15) "Municipality" means any county or incorporated city or town within or outside this state;

(16) "Person" means any natural person, firm, association, corporation, limited liability company, business trust, partnership, or governmental entity;

(17) "Refunding bonds" means bonds of the authority issued to refund all or any part of bonds of the authority or the municipal bonds;

(18) "Supervisory board" means the board of public utilities or other similar body of the associated municipality, as such board is constituted as of the date an authority is formed pursuant to this chapter;

(19) "System" means any plant, works, facility, property, or parts thereof, together with all appurtenances thereto, used or useful in connection with the furnishing of any of the services and commodities authorized to be provided in this chapter, including generation or production facilities, transmission facilities, and distribution facilities, and all real and personal property of every nature comprising part of or used or useful in connection with a "system", and all appurtenances, contracts, leases, franchises, and other intangibles relating to a "system"; and

(20) "Telecommunications service" means telephone, cable television, voice, data, or video transmissions, video programming, Internet access and related services, load control, meter reading, appliance monitoring, power exchange, and billing, or any other telecommunications services or similar or component service that may be provided, as allowed by law, including servicing and repairing related equipment, regardless of the facilities used.

7-41-103.

(a) If the governing body of an associated municipality, by appropriate resolution, duly adopted by a two-thirds (2/3) or greater vote, finds and determines that it is wise, expedient, necessary, or advisable that an authority be formed, it shall authorize the mayor of the associated municipality or other person to proceed to form an authority, and shall approve the form of certificate of incorporation proposed to be used in organizing the authority, and then the mayor or other person authorized by the resolution shall execute, acknowledge, and file a certificate of incorporation for the corporation as provided in this chapter.

(b) No authority may be formed pursuant to this chapter unless the governing body has adopted a resolution as provided in this section.

7-41-104.

(a) The certificate of incorporation shall set forth:

(1) The name of the authority;

(2) A recital that permission to organize the authority has been granted by resolution duly adopted by the governing body of the associated municipality and the date of the adoption of the resolution;

(3) The location of the principal office of the authority;

(4) The purposes for which the authority is proposed to be organized;

(5) The number of directors of the authority;

(6) The period for the duration of the authority, if other than perpetual; and

(7) Any other matter that the governing body of the associated municipality may choose to insert in the certificate of incorporation, which shall not be inconsistent with this chapter or with the laws of this state. It shall not be necessary to set forth in the certificate of incorporation the powers enumerated in this chapter.

(b) The certificate of incorporation shall be acknowledged by the mayor of the associated municipality or other person authorized by the resolution described in § 7-41-103 before an officer authorized by the laws of this state to take acknowledgments of deeds.

7-41-105.

(a) When executed and acknowledged in conformity with § 7-41-104, the certificate of incorporation shall be filed with the secretary of state. The secretary of state shall examine the certificate of incorporation and, if the secretary of state finds that the recitals contained in the certificate of incorporation are correct, that the requirements of § 7-41-104 have been complied with, and that the name is not identical with or so nearly similar to that of another entity already in existence in this state as to lead to confusion and uncertainty, then the secretary of state shall approve the certificate of incorporation and record it in an appropriate book of record in the secretary of state's office.

(b) When the certificate has been made, filed, and approved, the corporate existence shall begin, and the certificate shall be conclusive evidence that the authority has been formed pursuant to this chapter.

(c) Upon its formation, a governmental authority shall be created and constituted. The authority shall be a public corporation under the corporate name set forth in its certificate of incorporation, and shall under that name be a political subdivision of this state and a body politic and corporate. The authority shall be for the purpose of planning, acquiring, constructing, improving, furnishing, equipping, financing, owning, operating, and maintaining electric utility and telecommunications systems within or outside the corporate limits of the associated municipality and within or outside this state.

(d) An authority may elect to adopt one (1) or more assumed corporate names other than its true corporate name. Before conducting affairs in this state under an assumed corporate name or names, the authority shall, for each assumed corporate name, pursuant to resolution by its board of directors, execute and file an application with the secretary of state setting forth the true corporate name of the authority as stated in its certificate of incorporation, that the authority intends to transact business under an assumed corporate name, and the assumed corporate name which it proposes to use. An authority may, by resolution of its board of directors, amend or withdraw any of its assumed corporate names by filing notice of such amendment or withdrawal with the secretary of state.

7-41-106.

(a) The certificate of incorporation may, at any time, be amended so as to make any changes in the certificate of incorporation and add any provisions to the certificate of incorporation that might have been included in the original certificate of incorporation.

(b) An amendment to the certificate of incorporation shall be effected in the following manner:

(1) The members of the board of directors of the authority shall file with the governing body of the associated municipality an application in writing seeking permission to amend the certificate of incorporation, specifying in such application the amendment proposed to be made;

(2) The governing body shall consider the application and, if it shall, by appropriate resolution, duly find and determine that it is wise, expedient, necessary, or advisable that the proposed amendment be made and shall authorize the amendment to be made and shall approve the form of the proposed amendment, then the persons making application shall execute an

instrument embodying the amendment specified in the application, and shall file the application with the secretary of state;

(3) The proposed amendment shall be subscribed and acknowledged by each member of the board of directors before an officer authorized by the laws of this state to take acknowledgments to deeds; and

(4) The secretary of state shall examine the proposed amendment and, if the secretary of state finds that the requirements of this section have been complied with and the proposed amendment is within the scope of what might be included in an original certificate of incorporation pursuant to § 7-41-104, then the secretary of state shall approve the amendment and record it in an appropriate book in the secretary of state's office.

(c) When an amendment has been made, filed, and approved, it shall become effective and the certificate of incorporation shall be amended pursuant to subsection (b) to the extent provided in the amendment.

(d) No certificate of incorporation shall be amended except in the manner provided in this section.

7-41-107. The authority is authorized, effective immediately upon the effective date of its formation, either singly or jointly with one (1) or more persons, municipalities, or federal agencies, or with this state, or with one (1) or more agencies or instrumentalities of this state or any municipality:

(1) To sue and be sued;

(2) To have a seal and alter the same at pleasure;

(3) To acquire, construct, improve, furnish, equip, finance, own, operate, and maintain within or outside the corporate limits of the associated municipality, a system for the furnishing of electrical service and to provide electric service to any person, governmental entity, or other user or consumer of electric services within or outside the associated municipality. The system shall be operated as a financially separate system independent of, and financially separate from, the other utility systems of the authority, and, except to the extent the authority succeeds to the rights and powers of the municipal electric system, the authority shall not exercise any of the powers granted in this subdivision (3) wholly or partly within the legal boundaries of an incorporated city or town or electric cooperative, except as allowed by law;

(4) To acquire, construct, improve, furnish, equip, finance, own, operate, and maintain within and outside the corporate limits of the associated municipality, a system for the furnishing of telecommunications service and to provide telecommunications service to any person, governmental entity, or other user or consumer of telecommunications services within or outside the associated municipality. The system shall be operated as a financially separate system independent of, and financially separate from, the other utility systems of the authority; provided:

(A) To the extent that the authority, or any joint venture, partnership, or cooperative arrangement of which the authority is a party, or any limited liability company or not-for-profit corporation of which the authority is a member provides telephone or telegraph services, the authority, or such other entity, shall be subject to regulation by the Tennessee regulatory authority in the same manner and to the same extent as other certified providers of such services, including, but not limited to, rules or orders governing anticompetitive practices, and shall be considered as and have the duties of a public utility, as defined in § 65-4-101, but only to the extent necessary to effect such duties and only with respect to the authority's provision of telephone and telegraph services;

(B) The authority shall have all the powers and authority conferred upon municipalities by §§ 7-52-401; 7-52-402; 7-52-403; 7-52-405; 7-52-406; 7-52-601 – 7-52-605, but excluding any requirement under § 7-52-603(a)(1)(A) to create multiple divisions for telecommunications services; and §§ 7-52-609 – 7-52-611. In the exercise of such powers, the authority shall be subject to all the obligations, restrictions, and limitations imposed upon municipalities by those sections and imposed upon providers of the services described in those sections by federal law. All actions authorized by those

sections to be taken by the board or supervisory body having responsibility for a municipal electric plant shall be authorized to be taken by the board of directors of the authority and all powers granted to a municipal electric system under those statutes shall be exercised by the electric division of the authority;

(C) Nothing in this subdivision (4) shall operate to restrict or impair in any way the ability of the authority to acquire, construct, improve, furnish, equip, finance, own, operate, and maintain a telecommunications system or to offer or provide telecommunications services through its electric system, if such system and services are related to the provision of electric service or the operation of the electric system, including, without limitation, load control, meter reading, appliance monitoring, power exchange, billing, or any other similar or component service; and

(D) Notwithstanding this chapter to the contrary, the authority shall be subject to the territorial limitations set forth in § 7-52-601 in the same manner and to the same extent as such limitations apply from time to time to a municipal electric system providing services pursuant to § 7-52-601;

(5) To fix, levy, charge, and collect fees, rents, tolls, or other charges for the use of, or in connection with, any system of the authority as shall be consistent with the provision of the services pursuant to this chapter or sale or other disposition of the commodities provided by the various utilities authorized in this section based on cost, sound economy, public good, and prudent business operations, which fees, rents, tolls, or charges shall be established by the board without the necessity of review or approval by any other municipality, the state, or any commission or authority thereof or any federal agency other than as provided in federal statutes or contracts and other than as provided in subdivision (4). Whenever any fees, rents, tolls, or other charges for telephone or telegraph services regulated pursuant to subdivision (4) are to change, such fees, rents, tolls, or charges shall be established by the board and be subject to review and approval by the Tennessee regulatory authority in the same manner and to the same extent as other certified providers of such services;

(6) To acquire, hold, own, and dispose of property, real and personal, tangible and intangible, or interests therein, in its own name, subject to mortgages or other liens or otherwise and to pay for property in cash or on credit through installment payments, and to secure the payment of all or any part of any installment obligations in connection with any acquisition;

(7) To have complete control and supervision of any system of the authority and to make such rules governing the rendering of service thereby as may be just and reasonable;

(8) To contract debts, borrow money, issue bonds, and enter into lease-purchase agreements to acquire, construct, improve, furnish, equip, extend, operate, or maintain any system, or any part thereof, or to provide the authority's share of the funding for any joint undertaking or project, and to assume and agree to pay any indebtedness incurred for any of the purposes described in this subdivision (8);

(9) To accept gifts or grants of money or property, real or personal, and voluntary and uncompensated services or other financial assistance from any person, state agency, federal agency, or municipality, for, or in aid of, the acquisition or improvement of any system;

(10) To accept and distribute voluntary contributions for bona fide economic development or community assistance purposes pursuant to programs approved by the board, which programs may include, but shall not be limited to, programs in which bills to customers are rounded up to the next dollar when such contribution is shown as a separate line on the bill, and contributions accepted pursuant to such programs shall not be considered revenue to the authority and such contributions shall be used only for economic development or community assistance purposes;

(11) To condemn either the fee or such right, title, interest, or easement in property as the board may deem necessary for any of the purposes mentioned in this chapter, 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 corporations, associations, or persons having the power of eminent domain, or otherwise held or used for public purposes, and such power of condemnation may be exercised in the method of procedure prescribed by title 29, chapter 16, or in the method of procedure prescribed

by any other applicable statutory provisions for the exercise of the power of eminent domain; provided, however, that where title to any property sought to be condemned is defective, it shall be passed by decree of court. Where condemnation proceedings become necessary, the court in which such proceedings are filed shall, upon application by the authority and upon the posting of a bond with the clerk of the court in such amount as the court may deem commensurate with the value of the property, order that the right of possession shall issue immediately or as soon and upon such terms as the court, in its discretion, may deem proper and just;

(12) To make and execute any contract and instrument necessary or convenient for the full exercise of the powers granted in this section, and in connection therewith to stipulate and agree to such covenants, terms, and conditions, and such term or duration as shall be appropriate, including, without limitation, contracts for the purchase or sale of any of the commodities or services authorized in this section to be provided by the authority, and carry out and perform the covenants, terms, and conditions of such contracts and instruments. In connection with any contract to acquire or sell any of the commodities or services authorized in this section, the authority may enter into commodity price exchange or swap agreements, agreements establishing price floors or ceilings, or both, or other price hedging contracts with any person or entity under such terms and conditions as the authority may determine, including, without limitation, provisions permitting the authority to indemnify or otherwise pay any person or entity for any loss of benefits under such agreement upon early termination thereof or default thereunder. When entering into any such contract or arrangement or any such swap, exchange, or hedging agreement evidencing a transaction bearing a reasonable relationship to this state and also to another state or nation, the authority may agree in the written contract or agreement that the rights and remedies of the parties thereto shall be governed by the laws of this state or the laws of such other state or nation; provided, that jurisdiction over the authority shall lie solely in the courts sitting in the county where the authority's principal office is located. Nothing in the selection of laws of another state or nation shall alter, impair, or modify the rights, privileges, and obligations of the authority as a governmental entity under this chapter and under the laws of this state;

(13) To sell, exchange, or interchange any of the commodities or services authorized to be provided in this section either within or outside this state and to establish prices to be paid for such commodities or services, and establish pricing structures with respect thereto, including provision for price rebates, discounts, and dividends; and, in connection with any such sales, exchanges, or interchanges, to act as agent for such consumers, to secure contracts and arrangements with other entities or persons, to make contracts for the sale, exchange, interchange, pooling, transmission, or distribution of any of the commodities or services authorized to be provided in this section, inside or outside this state, and to transmit, transport, and distribute any such commodities or services both for itself and on behalf of others;

(14) To make contracts and execute instruments containing such covenants, terms, and conditions as may be necessary, proper, or advisable for the purpose of obtaining loans from any source, or grants, loans, or other financial assistance from the state or any federal agency, and to carry out and perform the covenants and terms and conditions of all such contracts and instruments;

(15) To enter on any lands, waters, and premises for the purpose of making surveys, soundings, and examinations in connection with the acquisition, improvement, operation, or maintenance of any system and the furnishing of any of the services authorized to be provided in this section;

(16) To use any right-of-way, easement, or other similar property right necessary or convenient in connection with the acquisition, improvement, operation, or maintenance of one (1) or more systems, held by this state, the associated municipality, or any other municipality; provided, that such other municipality shall consent to such use;

(17) To provide to any municipality, person, federal agency, this state, or any agency or instrumentality thereof, transmission or transportation capacity for any of the commodities or services authorized in this section, and management and purchasing services associated therewith;

(18) To employ, engage, retain, and pay compensation to such officers, agents, consultants, professionals, and employees of the authority as shall be

necessary to operate the systems, manage the affairs of the authority, and otherwise further the purposes of the authority and the exercise of the powers thereof, and to fix their compensation and to establish a program of employee benefits, including a retirement system;

(19) To establish a retirement system for all employees of the authority and to maintain all rights and benefits of employees as they existed under the retirement system of the municipal electric system without diminution;

(20) To enter into joint ventures and cooperative arrangements with one (1) or more persons, including the formation of a partnership, limited liability company, or not-for-profit corporation to accomplish any of the purposes set forth in this section or to exercise any of the powers set forth in this section;

(21) Upon proper action by the associated municipality, to commence operating the systems and to exercise exclusive control and direction of the systems and, upon proper action by the associated municipality, to accept title to the assets and assume the liabilities of the systems, and upon such action to hold all the rights as existed with the municipal electric system without diminution;

(22) To do business under one (1) or more assumed corporate names pursuant to § 7-41-105(d);

(23) To manage and operate utility systems owned by other persons. Such management or operating agreements shall be consistent with subdivision (3), as applicable;

(24) To enter into mutual aid agreements with other utility systems and other persons;

(25) To assist persons to whom electric power, energy, or telecommunications is sold in installing fixtures, appliances, apparatus, and equipment of all kinds and character and, in connection therewith, to purchase, acquire, lease, sell, distribute, make loans, provide service contracts, and repair such fixtures, appliances, apparatus, and equipment and sell, assign, transfer, endorse, pledge, and otherwise dispose of notes or other evidences of indebtedness any and all type of security therefor;

(26) To have such powers as are now or hereafter authorized for electric systems of municipalities within this state; and

(27) To do any act authorized in this section or necessary or convenient to carry out the powers expressly given in this chapter under, through, or by means of its own officers, agents, and employees, or by contracts with any person, federal agency, or municipality.

7-41-108. Each utility system of the authority shall operate independently of the others and shall be self-sustaining, except as otherwise provided in this chapter.

7-41-109.

(a) The affairs of the authority and the exercise of the powers of the authority shall be vested in the board of directors. The following powers shall be exercised directly by the board by resolution of the board:

(1) Selection and employment of the president, who shall serve as the chief executive officer of the authority, who shall serve at the pleasure of the board, and whose compensation shall be set by the board. Nothing in this chapter shall prevent the board from entering into an employment contract with the president. The president shall select, employ, and discharge all employees and fix their duties and compensation;

(2) Issuance of bonds of the authority and the encumbering of assets of the authority, to the extent authorized in this chapter, to secure any such bonds;

(3) Approval of rates of each of the systems;

(4) Approval of the annual budget of each of the systems;

(5) Adoption of bylaws for the conduct of the business of the board;

(6) Selection of any certified public accountant to perform audits of the books and affairs of the authority; and

(7) Adoption of a purchasing policy for the authority and the approval of purchases and disposition of property in accordance with the terms thereof.

(b) All other powers of the authority shall be exercised by the president of the authority and the officers, agents, and employees of the authority, except as otherwise provided in this chapter.

7-41-110.

(a) The initial board of directors of the authority shall be composed of the members of the board of directors of the supervisory board, who shall serve as directors for the unexpired terms of their appointment to the board of directors of the supervisory board and who shall take office and begin exercising the powers granted in this section immediately upon the registration date of the certificate of incorporation.

(b) All subsequent appointments shall be for four-year terms, or such other term length as may be set forth in the certificate of incorporation, commencing upon the expiration of the prior director's specific term. Except as otherwise provided in the certificate of incorporation, the board of directors shall fill vacancies, subject to the approval of the governing body of the associated municipality, or such governing body of another municipality having appointment power for a member of the supervisory board at the time the authority is formed. In the event the applicable governing body does not approve the person thus appointed by the board of directors, the board of directors shall appoint some other person, subject to the approval of the applicable governing body. The composition and manner of the appointment for members of the board of directors set forth in this section may be modified pursuant to the certificate of incorporation or an amendment to the certificate of incorporation; provided, that the applicable governing body having a power of appointment shall approve any provision of the certificate of incorporation or amendment that eliminates its power of appointment. The associated municipality shall, at all times, have authority to approve no less than a majority of the members of the board of directors.

(c) The board of directors and the applicable governing body shall, as applicable and in accordance with this section, within ninety (90) days, fill each vacancy created by the death, resignation, or removal of any director and gain approval of the applicable governing body, and such director shall serve for the remaining unexpired term of the former director.

(d) Except as provided in subsection (g), each director shall hold office until the director's successor is appointed, approved, and qualified, and each director shall be eligible for reappointment unless otherwise provided in the certificate of incorporation.

(e) Immediately upon their qualification as a board, and at least annually thereafter, the board of directors shall select from the board's membership a chair and a vice chair. No additional compensation shall be paid to a director for serving as a chair or vice chair. The board shall have a recording secretary, who need not be a member of the board and who shall be appointed by the president, subject to the approval of the board. The recording secretary shall record all minutes of the board, keep and maintain all books and records of the board, and perform other duties as the president shall determine.

(f) The board shall hold regular monthly meetings and special meetings as may be necessary for the transaction of the business of the authority. Special meetings of the board may be called by the chair or, in the absence or disability of the chair, by any board member. No meeting of the board shall be held unless a majority of the directors are present. All acts of the board shall be by a vote of at least a majority of the directors eligible to vote on a matter. Resolutions of the board shall be effective upon adoption after one (1) reading and may be adopted at the same meeting at which the resolutions are introduced. The time and place of all meetings will be set by the board. The board of directors shall be allowed necessary traveling and other expenses while engaged in the business of the board, plus an allowance

for attendance at meetings in the same manner and to the same extent as is provided for directors of municipal electric systems under § 7-52-110(e). Such expenses shall constitute a cost of operation and maintenance of the authority.

(g) Any director may be removed from office for cause upon a vote of two-thirds (2/3) of the members of the governing body of the applicable approving governing body, but only after preferment of formal charges by resolution of a majority of the members of the governing body.

7-41-111.

(a) The board shall appoint a president, as provided in § 7-41-109(a)(1), who shall be chief executive officer of the authority. The salary of the president shall be fixed by the board, and the board may enter into an employment contract with the president for a term of no more than five (5) years containing such terms as the board may deem advisable. The president may be removed by the board, subject to any provisions contained in an employment contract with the president.

(b) Within the limits of the funds available, and subject to exercise by the board of the powers reserved to it pursuant to § 7-41-109, all powers of the authority granted in this chapter shall be exercised by the president and the various officers and employees of the authority.

(c) The president shall have charge of the management and operation of the systems and the enforcement and execution of all rules, regulations, programs, plans, and decisions made or adopted by the board.

(d) The president shall appoint each system division head and all officers of the authority, and the president or the president's designee shall hire all employees of the authority. All officers and employees of the authority shall serve at the pleasure of the president, and the president shall be responsible for maintaining an adequate workforce for the authority.

(e) Subject to §§ 7-41-109 and 7-41-112, the president is authorized to acquire and dispose of all property, real and personal, necessary to effectuate this chapter. The title of such property shall be taken in the name of the authority.

(f) All contracts, agreements, indentures, trust agreements, and other instruments necessary or proper in carrying out the purposes and powers of the authority or in conducting the affairs of the authority or in operating the systems of the authority shall be executed by the president, the president's designee, or such other officer or person as may be authorized by the board, the signature thereof to be binding upon the authority. The execution by the president, the president's designee, or such other officer or person as may be authorized by the board of any such contract, agreement, indenture, trust agreement, or instrument implementing or evidencing the exercise of powers reserved to the board pursuant to § 7-41-109 shall first be approved by resolution of the board.

(g) The president shall cause to be kept full and proper books and records of all operations and affairs of the authority and shall cause to be kept separate books and accounts for each system, so that these books and accounts will reflect the financial condition of each division separately, and may require that the moneys and securities of each division be placed in separate funds to the end that each division shall be self-sustaining. All divisions shall be audited annually by an independent certified public accountant selected by the board.

7-41-112.

(a) The board shall adopt a policy governing all purchases of services or property, whether real or personal, all leases and lease-purchases, and the disposition of all property of the authority. The policy shall authorize the president, the president's designee, or such other officer or person as may be authorized by the board, to enter into contracts and agreements for the purchase of services or property, real or personal, leases and lease-purchases, disposition of property of the authority with a value not exceeding an amount from time to time established by the board but not less than fifty thousand dollars (\$50,000), and providing for board approval for such purchases, leases, lease-purchases, and dispositions in excess of such amount. Subject to the terms of the purchasing policy relating to board approval, the president, the president's designee, or such other officer or person as may be authorized by the board, on behalf of the authority, shall be authorized to execute all

contracts, purchase orders, and other documents necessary in connection with the purchase of property or services and the disposition of property of the authority, including deeds of conveyance of real property. The policy authorized by this subsection (a) shall provide for competitive bidding, but may provide exceptions to any competitive bidding requirements where exceptions are provided to municipalities, municipal electric systems, municipal utilities, or energy acquisition corporations under the general law. The purchasing policy may also provide procedures for documentation of compliance with purchasing procedures and such other provisions and terms as the board deems necessary.

(b) Notwithstanding this chapter to the contrary, the authority shall not have any power to dispose of all or substantially all of the electric plant of the authority, except upon the concurrence and consent of the governing body of the associated municipality and upon approval of a majority of those voting in a referendum called by the governing body of the associated municipality in accordance with § 7-52-132. For purposes of establishing compliance with § 7-52-132, the board shall be deemed the "supervisory body," the electric plant of the authority shall be deemed an "electric plant," and such compliance shall be determined in the same manner and to the same extent as if the authority were operated as the electric system of the associated municipality.

7-41-113.

(a) The authority shall have power and is authorized to issue its bonds for the construction, acquisition, reconstruction, improvement, betterment, or extension of any system of the authority or to assume and to agree to pay any indebtedness incurred for any of the foregoing purposes. The proceeds of the sale of any bonds may be applied to:

- (1) The payment of the costs of such construction, acquisition, reconstruction, improvement, betterment, or extension;
- (2) The payment of the costs associated with any such construction, acquisition, reconstruction, improvement, betterment, or extension, including engineering, architectural, inspection, legal, and accounting expenses;
- (3) The payment of the costs of issuance of such bonds, including underwriter's discount, financial advisory fee, preparation of the definitive bonds, preparation of all public offering and marketing materials, advertising, credit enhancement, and legal, accounting, fiscal, and other similar expenses;
- (4) The payment of interest during the period of construction and for six (6) months thereafter on any money borrowed or estimated to be borrowed;
- (5) Reimbursement of the authority for moneys previously spent by the authority for any of the purposes described in subdivisions (a)(1) – (4);
- (6) The establishment of reasonable reserves for the payment of debt service on such bonds, or for repair and replacement to the system of the authority for whose benefit the financing is being undertaken, or for such other purposes as the board deems necessary in connection with the issuance of any bonds and operation of the system for whose benefit the financing is being undertaken;
- (7) The contribution of the authority's share of the funding for any joint undertaking for the purposes set forth in this subsection (a); and
- (8) The contribution by the authority to any subsidiary or separate entity controlled by the authority for the purposes set forth in this subsection (a).

(b) The authority shall have the power and is authorized to issue its bonds to refund and refinance outstanding bonds of the authority hereafter issued or lawfully assumed by the authority. The proceeds of the sale of the bonds may be applied to:

- (1) The payment of the principal amount of the bonds being refunded and refinanced;
- (2) The payment of the redemption premium thereon, if any;

(3) The payment of unpaid interest on the bonds being refunded, including interest in arrears, for the payment of which sufficient funds are not available, to the date of delivery or exchange of the refunding bonds;

(4) The payment of interest on the bonds being refunded and refinanced from the date of delivery of the refunding bonds to maturity or to, and including, the first or any subsequent available redemption date or dates on which the bonds being refunded may be called for redemption;

(5) The payment of the costs of issuance of the refunding bonds, including underwriter's discount, financial advisory fee, preparation of the definitive bonds, preparation of all public offering and marketing materials, advertising, credit enhancement, and legal, accounting, fiscal, and other similar expenses, and the costs of refunding the outstanding bonds, including the costs of establishing an escrow for the retirement of the outstanding bonds, trustee, and escrow agent fees in connection with any escrow, and accounting, legal, and other professional fees in connection therewith; and

(6) The establishment of reasonable reserves for the payment of debt service on the refunding bonds, or for repair and replacement to the system of the authority for whose benefit the financing is being undertaken, or for such other purposes as shall be deemed necessary in connection with the issuance of the refunding bonds and operation of the system for whose benefit the financing is being undertaken. Refunding bonds may be issued to refinance and refund more than one (1) issue of outstanding bonds, notwithstanding that such outstanding bonds may have been issued at different times. Refunding bonds may be issued jointly with other refunding bonds or other bonds of the authority. The principal proceeds from the sale of refunding bonds may be applied either to the immediate payment and retirement of the bonds being refunded or, to the extent not required for the immediate payment of the bonds being refunded, to the deposit in escrow with a bank or trust company to provide for the payment and retirement at a later date of the bonds being refunded.

(c) The authority shall have the power and is authorized to issue its bonds to retire all bonds of the associated municipality issued to finance or refinance any of the systems, and, to the extent permitted by contracts with any of the owners of the municipal bonds, to assume and agree to pay when due the municipal bonds, retire the municipal bonds, or deposit in escrow funds sufficient, together with earnings thereon, to retire the municipal bonds at maturity or upon redemption. The proceeds of such bonds may be used in the same manner and to the same extent as permitted under subsection (b).

(d) The authority shall have the power to issue notes in anticipation of the collection of revenues from the system for whose benefit the financing is undertaken for the purpose of financing electrical power purchases, including transmission costs. Any such notes shall be secured solely by a pledge of, and lien on, the revenues of the electric system. The principal amount of notes which may be issued during any twelve-month period shall not exceed sixty percent (60%) of total electrical power purchases for the same period, and all notes issued during such period shall be retired and paid in full on, or before, the end of such period. The notes shall be sold in such manner, at such price, and upon such terms and conditions as may be determined by the board. No notes shall be issued under this subsection (d) unless the electric system has positive retained earnings as shown in the most recent audited financial statements of the system, and the system has produced positive net income in at least one (1) fiscal year out of the three (3) fiscal years next preceding the issuance of the notes as shown on the audited financial statements of the system. No notes issued under this subsection (d) shall be issued without first being approved by the comptroller of the treasury. If revenues of such system are insufficient to pay all such notes at maturity, any unpaid notes may be renewed one (1) time for a period not to exceed one (1) year or otherwise liquidated as approved by the comptroller of the treasury.

(e) The authority shall have the power and is authorized to issue its bonds to finance in whole or in part the cost of the acquisition of electrical power purchased from the Tennessee Valley authority on a current or long-term prepaid purchase basis and pledge to the punctual payment of any such bonds and interest thereon its rights in such contracts and an amount of the revenues from its electric system, or of any part of such system, sufficient to pay the bonds and interest as the same shall

become due and create and maintain reasonable reserves therefor. Such amount shall consist of all or any part or portion of such revenue; and the board in determining the cost of the acquisition of electrical power under this subsection (e) may include all costs and estimated costs of the issuance of the bonds, and all engineering, inspection, fiscal, and legal expenses.

(f) Bonds issued under this section as a part of an issue the last maturity of which is not later than five (5) years following the date of issue shall be issued, and referred to, as notes.

7-41-114.

(a) No bonds shall be issued or assumed under this chapter unless authorized to be issued or assumed by resolution of the board, which resolution may be adopted at the same meeting at which it is introduced by a majority of all members then in office, and shall take effect immediately upon adoption. Bonds authorized to be issued under this chapter may be issued in one (1) or more series, may bear such date, mature at such time, not exceeding forty (40) years from their respective dates, bear interest at such rate, payable at such time, be in such denominations, be in such form, either coupon or registered, be executed in such manner, be payable in such medium of payment, at such place, and be subject to such terms of redemption, with or without premium, as such resolution may provide. Bonds may be issued for money or property at competitive or negotiated sale for such price as the board, or its designee, shall determine.

(b) Bonds may be repurchased by the authority out of any available funds at a price not to exceed the principal amount of the outstanding bonds and accrued interest, and all bonds so repurchased shall be cancelled or held as an investment of the authority as the board may determine.

(c) Pending the preparation or execution of definitive bonds, interim receipts or certificates or temporary bonds may be delivered to the purchasers of bonds.

(d)(1) With respect to all or any portion of any issue of bonds issued under this chapter, at any time during the term of the bonds, and upon receipt of a report of the comptroller of the treasury or the comptroller's designee finding that the contracts and agreements authorized in this subsection (d) are in compliance with the guidelines or rules promulgated by the state funding board, as set forth in § 7-34-109(h), the authority, by resolution of the board, may authorize and enter into interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, and other interest rate hedging agreements under such terms and conditions as the board may determine, including, without limitation, provisions permitting the authority to pay to, or receive from, any person or entity any loss of benefits under such agreement upon early termination thereof or default under such agreement.

(2) The authority may enter into an agreement to sell bonds, other than its refunding bonds, under this chapter providing for delivery of its bonds on a date greater than ninety (90) days and not greater than five (5) years, or such greater period of time if approved by the comptroller of the treasury or the comptroller's designee, from the date of execution of such agreement or to sell its refunding bonds providing for delivery thereof on a date greater than ninety (90) days from the date of execution of the agreement and not greater than the first optional redemption date on which the bonds being refunded can be optionally redeemed resulting in cost savings or at par, whichever is earlier, only upon receipt of a report of the comptroller of the treasury, or the comptroller's designee, finding that the agreement or contract of the authority to sell its bonds as authorized in this subsection (d) is in compliance with rules promulgated by the state funding board in accordance with § 7-34-109(h). Agreements to sell bonds and refunding bonds for delivery ninety (90) days or less from the date of execution of the agreement do not require a report of the comptroller of the treasury or the comptroller's designee.

(3) Prior to the adoption by the board of a resolution authorizing a contract or agreement described in subdivision (d)(1) or (2), a request shall be submitted to the comptroller of the treasury, or the comptroller's designee, for a report finding that such contract or agreement is in compliance with the guidelines or rules of the state funding board. Within fifteen (15) days of receipt of the request, the comptroller of the treasury, or the comptroller's

designee, shall determine whether the contract or agreement substantially complies with the guidelines or rules and shall report such compliance to the authority. If the report of the comptroller of the treasury, or the comptroller's designee, finds that the contract or agreement complies with the guidelines or rules of the state funding board, or the comptroller of the treasury, or the comptroller's designee, fails to report within the fifteen-day period, then the authority may take such action with respect to the proposed contract or agreement as it deems advisable in accordance with this section and the guidelines or rules of the state funding board. If the report of the comptroller of the treasury, or the comptroller's designee, finds that such contract or agreement is not in compliance with the guidelines or rules, then the authority is not authorized to enter into such contract or agreement. The rules shall provide for an appeal process upon a determination of noncompliance.

(4) When entering into any contract or agreement facilitating the issuance and sale of bonds, including contracts or agreements providing for liquidity and credit enhancement and reimbursement agreements relating thereto, interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, other interest rate hedging agreements, and agreements with the purchaser of the bonds, evidencing a transaction bearing a reasonable relationship to this state and also to another state or nation, the authority may agree in the written contract or agreement that the rights and remedies of the parties thereto shall be governed by the laws of this state or the laws of such other state or nation; provided, that jurisdiction over the authority shall lie solely in the courts sitting in the county where the authority's principal office is located. Nothing in the selection of laws of another state or nation shall alter, impair, or modify the rights, privileges, and obligations of the authority as a governmental entity under this chapter and under the laws of this state.

(5) Prior to the adoption or promulgation by the state funding board of rules with respect to the contracts and agreements authorized in subdivisions (d)(1) and (2), the authority may enter into such contracts or agreements to the extent otherwise authorized by the laws of this state.

7-41-115.

(a) In order to secure the payment of the principal and interest on the bonds issued under this chapter, or in connection with such bonds, the authority has the power to secure such bonds and to covenant as to the bonds as set forth in §§ 9-21-306 and 7-34-110.

(b) In connection with the issuance of bonds and in order to secure the payment of its bonds, the authority shall have power:

(1) To pledge all or any part of its revenues;

(2) To vest in any trustee the right to enforce any covenant made to secure, to pay, or in relation to its bonds, to provide for the powers and duties of such trustee, to limit the liabilities thereof, and to provide the terms and conditions upon which the trustee or the holders of bonds or any amount or proportion of them may enforce any such covenant; and

(3) To make such covenants and to do such acts as may be necessary in order to secure its bonds or which, in the absolute discretion of the board, tend to make the bonds more marketable, notwithstanding that such covenants and acts may restrict or interfere with the exercise of the powers granted in this chapter. The authority shall be given the power to do all things in the issuance of bonds, and for their security, that a private business corporation can do under the laws of this state.

7-41-116. In addition to all other rights and remedies, any holders of bonds of the authority, including a trustee for bondholders, shall have the right:

(1) By mandamus or other suit, action, or proceeding at law or in equity, to enforce the bondholder's rights against the authority and the board of the authority, including the right to require the authority and such board to fix and collect rates and charges adequate to carry out any agreement as to, or pledge of, the revenues produced by such rates or charges, and to require the authority and such board to

carry out any other covenant and agreement with such bondholders and to perform their duties under this chapter;

(2) By action or suit in equity, to enjoin any acts which may be unlawful or a violation of the rights of such holder of bonds;

(3) By suit, action, or proceeding in the chancery court sitting in the county in which the authority's principal office is located, to obtain an appointment of a receiver of any system of the authority or any part thereof. If such receiver be appointed, such receiver may enter and take possession of such system or part thereof and operate and maintain same, and collect and receive all fees, rents, tolls, or other charges arising therefrom in the same manner as the authority itself might do and shall dispose of such money in a separate account and apply the same in accordance with the obligations of the authority as the court shall direct; and

(4) By suit, action, or proceeding in the chancery court sitting in the county in which the authority's principal office is located, to require the board of the authority to account as if it were the trustee of an express trust.

7-41-117. No owner of any bonds issued under this chapter shall have the right to compel any exercise of the taxing powers of this state, the associated municipality, or any other municipality or political subdivision of this state to pay such bonds or the interest thereon. Each bond issued under this chapter shall recite in substance that such bond, including the interest thereon, is payable solely from the revenues pledged to the payment thereof, and that the bond does not constitute a debt of this state, any municipality, or any other political subdivision of this state.

7-41-118. Bonds issued under this chapter bearing the signature of the president or other authorized officer in office on the date of the signing thereof shall be valid and binding obligations; provided, that before the delivery thereof and payment therefor, any person whose signature appears thereon shall have ceased to be an officer. The validity of any bonds shall not be dependent on, or affected by, the validity or regularity of any proceedings relating to the acquisition or improvement of the system for which such bonds are issued. The resolution authorizing bonds may provide that the bonds shall contain a recital that the bonds are issued pursuant to this chapter, which recital shall be conclusive evidence of the bonds' validity and of the regularity of the bonds' issuance.

7-41-119.

(a) The authority shall not be operated for gain or profit or primarily as a source of revenue to the associated municipality or any other person or entity. The authority shall, however, prescribe and collect rates, fees, or charges for the services, facilities, and commodities made available by the authority, and shall revise such rates, fees, or charges whenever necessary so that each system shall remain self-supporting, and shall not require appropriations by the associated municipality or any other municipality, this state, or any political subdivision of this state to carry out the authority's purpose. Any one (1) system of the authority shall not subsidize any other system, and the authority shall keep such books and records as may be required to properly account for the reasonable distribution of joint or common expenses between the systems of the authority.

(b) The rates, fees, or charges prescribed for each system shall be such as will produce revenue at least sufficient:

(1) To provide for the payment of all expenses of operation and maintenance of such system;

(2) To pay when due principal of, and interest on, all bonds of the authority payable from the revenues of such system;

(3) To pay any payments in lieu of taxes authorized to be paid pursuant to this chapter; and

(4) To establish proper reserves for the system.

7-41-120.

(a) Any pledge of, or lien on, revenues, fees, rents, tolls, or other charges received or receivable by the authority to secure the payment of any bonds of the authority, and the interest thereon, shall be valid and binding from the time that the

pledge or lien is created or granted and shall inure to the benefit of any owner of any such bonds until the payment in full of the principal thereof and premium and interest thereon. The priority of any pledge or lien with respect to competing pledges or liens shall be determined by the date such pledge or lien is created or granted. Neither the resolution nor any other instrument granting, creating, or giving notice of the pledge or lien need be filed or recorded to preserve or protect the validity or priority of such pledge or lien.

(b) If a conflict arises between this section and the Perfection, Priority and Enforcement of Public Pledges and Liens Act, compiled in title 9, chapter 22, the Perfection, Priority and Enforcement of Public Pledges and Liens Act shall control.

7-41-121. So long as the authority owns any of the systems, the property and revenue of such system shall be exempt from all state, county, and municipal taxation. Any bonds issued by the authority pursuant to this chapter, and the income therefrom, shall be exempt from all state, county, and municipal taxation, except inheritance, transfer and estate taxes, and except as otherwise provided by the laws of this state.

7-41-122. The authority is authorized to pay or cause to be paid from the revenues of each of the systems for each fiscal year payments in lieu of taxes to the associated municipality or such other municipality as shall properly receive said payments. Payments from the electric system revenues shall be made and computed in accordance with the Municipal Electric Plant Law of 1935, compiled in chapter 52, part 1 of this title, and payments made from revenues of the telecommunications system shall be made in accordance with §§ 7-52-404 and 7-52-606. The authority shall make payments in lieu of taxes to the associated municipality, accruing from and after the effective date of the transfer of the electric system from the associated municipality, from the electric system revenues on the same basis as payments are currently being made by the supervisory board. The authority shall provide the associated municipality with a copy of its annual audited financial statements at the time each such annual payment is made and shall provide access to such financial information of the authority as is necessary for the associated municipality to review the basis for and amounts of payments required pursuant to this section. To the extent not otherwise addressed in chapter 52, parts 4 and 6 of this title, in connection with the provision of telecommunications service, the authority shall be subject to all other state and local fees and charges imposed upon private providers of such services.

7-41-123. All moneys of the authority, from whatever source derived, shall be deposited in one (1) or more banks or trust companies and, to the extent required of political subdivisions of this state, such accounts shall be continuously insured by an agency of the federal government or secured by a pledge of direct obligations of the United States or of this state having an aggregate market value, exclusive of accrued interest, at all times at least equal to the balance on deposit in any such account. Such securities shall either be deposited with the authority or held by a trustee or agent satisfactory to the authority. In lieu of any pledge of such securities, the deposits may be secured by a surety bond, which shall be in form, sufficiency, and substance satisfactory to the authority.

7-41-124. All funds of the authority are authorized to be invested as follows:

- (1) Direct obligations of the United States government or any of its agencies;
- (2) Obligations guaranteed as to principal and interest by the United States government or any of its agencies;
- (3) Certificates of deposit and other evidences of deposit at state and federally chartered banks, savings and loan institutions, or savings banks deposited and collateralized as described in § 7-41-123;
- (4) Repurchase agreements entered into with the United States or its agencies or with any bank, broker-dealer, or other such entity so long as the obligation of the obligated party is secured by a perfected pledge of full faith and credit obligations of the United States or its agencies;
- (5) Guaranteed investment contracts or similar agreements providing for a specified rate of return over a specified time period with entities rated, at the time of investment, in one (1) of the two (2) highest rating categories of a nationally recognized rating agency;
- (6) The local government investment pool created by title 9, chapter 4, part 7;

(7) Direct general obligations of a state of the United States, or a political subdivision or instrumentality thereof, having general taxing powers and rated, at the time of investment, in either of the two (2) highest rating categories by a nationally recognized rating agency of such obligations;

(8) Obligations of any state of the United States or a political subdivision or instrumentality thereof, secured solely by revenues received by, or on behalf of, the state or political subdivision or instrumentality thereof irrevocably pledged to the payment of the principal and interest on such obligations, rated, at the time of investment, in the two (2) highest rating categories by a nationally recognized rating agency of such obligations;

(9) The authority's own bonds or notes; or

(10) Any additional investments authorized to be made by a municipal electric system in this state.

7-41-125. If the authority ceases to exist, or in the event of the sale of all or substantially all of the assets of the electric system of the authority, all of its assets remaining after all of its obligations and liabilities have been satisfied or discharged shall pass to, and become the property of, the associated municipality.

7-41-126. The authority is and shall be considered a political subdivision for purposes of title 65, chapter 4.

7-41-127. The board shall be considered a governing body for purposes of the Open Meetings Act, compiled in title 8, chapter 44.

7-41-128. The authority shall be considered a governmental entity for purposes of the Tennessee Governmental Tort Liability Act, compiled in title 29, chapter 20.

7-41-129. The authority shall be considered a public agency for purposes of the Interlocal Cooperation Act, compiled in title 12, chapter 9.

7-41-130. The authority shall be considered a municipality for the purposes of the Energy Acquisition Corporations Act, compiled in chapter 39 of this title and may be an associated municipality of an energy acquisition corporation under such act, and the board shall be a governing body for purposes of such act.

7-41-131. The powers conferred by this chapter shall be in addition, and supplemental, to the powers conferred by any other law.

7-41-132.

(a) The associated municipality is authorized to transfer to an authority created pursuant to this chapter all of the associated municipality's right, title, and interest in and all the assets of the municipal electric system and the telecommunications system, if any, including all real and personal property, tangible or intangible, and any right or interest in any such property, whether or not subject to mortgages, liens, charges, or other encumbrances, and all appurtenances, contracts, leases, franchises, and other intangibles shall be transferred to the authority. The transfer shall be authorized by resolution of the governing body of the associated municipality adopted on one (1) reading and shall be accomplished through documents and instruments authorized by the resolution and executed by such officers of the associated municipality as shall be designated by the resolution. A transfer to an authority in accordance with this section (a) shall not be deemed a disposition of assets for purposes of § 7-52-132.

(b) Upon formation of an authority pursuant to this act, a franchise is granted to the authority to provide within the corporate limits of the associated municipality any and all of the electric services that it is authorized to provide under applicable law, subject to payment in lieu of taxes pursuant to § 7-41-122. Consistent with § 7-41-107(4), the associated municipality may require such franchise or franchises for the provision of telecommunications services as are permitted under state or federal law.

(c) Upon transfer of the electric system from an associated municipality to an authority and the assumption or satisfaction of all obligations of the supervisory board, the jurisdiction and control of the associated municipality and the supervisory

board over such system shall be transferred to the authority, and the supervisory board shall cease to exist.

(d) It shall be a condition of the transfer of a system from the associated municipality to the authority that upon such transfer the authority shall either retire the associated municipality's bonds associated with such system by the payment thereof in full upon transfer, defease such associated municipality's bonds by depositing funds in irrevocable escrow for the payment of these bonds, or assume and agree to pay in full principal of and interest on such bonds of the associated municipality. Upon the assumption by the authority of the associated municipality bonds and its agreement to pay those bonds when due, the authority shall be fully obligated to pay when due, principal, premium, and interest with respect to those bonds with the same force and effect as if those bonds were issued by the authority. Bonds issued pursuant to this section shall be secured by, and payable from, the revenues of the respective system in the same way as other bonds of the authority issued pursuant to this chapter. The transfer of each of the systems shall be accomplished in such a manner as not to impair the obligations of contract with reference to the associated municipality's bonds and other legal obligations of the associated municipality and to preserve and protect the contract rights vested in the owners of such bonds and other obligations.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provisions or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 2430

PASSED: April 18, 2016



RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 17th day of April 2016



BILL HASLAM, GOVERNOR