

1 AN ACT relating to municipal electric authorities.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. The Kentucky General Assembly recognizes that the availability of
4 reliable, economical, and environmentally sustainable supplies of electric capacity and
5 energy is vital to the health, welfare, and economic well-being of the citizens and
6 residents of the Commonwealth. In order to promote the ability of municipal utilities to
7 generate or obtain electric capacity and energy on terms that will promote the availability
8 of electricity to consumers, it is the intent of the General Assembly to authorize the
9 creation of municipal electric authorities to:

- 10 (1) Acquire supplies of electric capacity and energy, natural gas, and other resources for
11 the purpose of providing electric capacity and energy to municipal utilities;
12 (2) Contract for the sale of electric capacity and energy to municipal utilities;
13 (3) Purchase, build, and maintain projects for the purpose of generating or supplying
14 and transmitting electricity to municipal utilities; and
15 (4) Exercise all powers necessary to enable them to accomplish these purposes.

16 Sections 2 to 6 of this Act shall be liberally construed in conformity with this intent. It is
17 determined that the provisions of this chapter are necessary to provide the continued
18 availability to customers served by municipal utilities in the Commonwealth of reliable
19 supplies of electricity at economical rates.

20 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 96 IS CREATED TO
21 READ AS FOLLOWS:

22 ***For the purposes of Sections 2 to 6 of this Act:***

- 23 ***(1) "Bond" means a bond, note, or other evidence of indebtedness issued by a***
24 ***municipal electric authority;***
25 ***(2) "Electricity" means electric capacity or energy;***
26 ***(3) "Gas" or "natural gas" means natural gas or any substitute for natural gas,***
27 ***including synthetic natural gas, liquefied natural gas, or coal gas;***

1 (4) "Multistate municipal power agency" means a political subdivision or a
2 nonprofit organization from another state which is owned and operated by
3 political subdivisions which may include Kentucky public agencies and which
4 provides joint and cooperative action in the development, generation, acquisition,
5 transmission, storage, or arrangement of electricity or natural gas, or in the
6 provision of services and functions which facilitate reliable, economical, and
7 environmentally sustainable supplies of electricity;

8 (5) "Municipal electric authority" or "authority" means a municipal electric
9 authority created pursuant to Sections 2 to 6 of this Act;

10 (6) "Municipal utility" means:

11 (a) A public agency that provides electric service to retail customers within a
12 municipal service area; or

13 (b) A public agency that provides wholesale electric supply services to public
14 agencies described in paragraph (a) of this subsection;

15 (7) "Project" means a plant, works, system, facility, or other real or personal
16 property, located inside or outside of the Commonwealth, and interests therein,
17 including purchase contracts, prepaid purchase contracts, and contractual rights
18 and interests necessary or convenient for the generation, acquisition,
19 transmission, transportation, storage, or management of electricity or natural gas
20 for the purpose of providing the electricity requirements of municipal utilities;
21 and

22 (8) "Public agency" has the same meaning as in KRS 65.230 and includes a city or a
23 city-owned utility created under this chapter.

24 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 96 IS CREATED TO
25 READ AS FOLLOWS:

26 (1) Any two (2) or more municipal utilities may enter into an agreement pursuant to
27 KRS 65.240 for the creation of a municipal electric authority to engage in:

1 (a) The generation, acquisition, transportation, transmission, storage, or
2 management of electricity or natural gas; and

3 (b) Related services and functions which are necessary or desirable to provide
4 reliable, economical, and environmentally sustainable supplies of
5 electricity.

6 (2) The agreement shall:

7 (a) Specify the matters required by KRS 65.250(1);

8 (b) Be approved by resolution of the governing body of each municipal utility
9 that is a party to the agreement and by the legislative body of any city that is
10 required to approve the rates of the municipal utility under KRS 96.535;

11 (c) Be submitted to the Department for Local Government prior to and as a
12 condition precedent to its entry into force. The agency shall make a
13 determination whether the agreement is in proper form and compatible with
14 the laws of the Commonwealth in the manner specified in KRS 65.260; and

15 (d) Be filed as provided in KRS 65.290.

16 (3) An agreement creating a municipal electric authority under Sections 2 to 6 of this
17 Act or by an amendment of an existing agreement under the Interlocal
18 Cooperation Act, KRS 65.210 to 65.300:

19 (a) Shall establish the governing body of the authority and provide direction
20 concerning the methods by which the authority shall conduct business;

21 (b) May provide for one (1) or more classes of authority membership and
22 requirements for adding municipal utilities as members; and

23 (c) Shall provide that the authority shall continue in existence until the later
24 of:

25 1. Fifty (50) years from the date of the agreement or amendment; or

26 2. One (1) year after the authority has fully discharged all of its
27 indebtedness and has fully performed all of its contractual obligations.

1 (4) A municipal electric authority shall:

2 (a) Constitute an agency and instrumentality of its members for performing
 3 essential government functions;

4 (b) Be a political subdivision and a public body corporate of the
 5 Commonwealth;

6 (c) Be a public agency within the meaning of KRS 65.230; and

7 (d) Be subject to the open meeting provisions of KRS 61.800 to 61.850 and the
 8 public record provisions of KRS 61.870 to 61.884.

9 (5) A separate entity created pursuant to KRS 65.240 to provide electricity to two (2)
 10 or more municipal utilities in the Commonwealth may elect to become a
 11 municipal electric authority. The governing body of the entity and each
 12 municipal utility member shall:

13 (a) Pass a resolution indicating its election; and

14 (b) File each of the resolutions with the Office of the Secretary of State.

15 An election under this subsection shall not affect the validity or enforceability of
 16 any contract, bond, or obligation of the separate entity which predates the
 17 election.

18 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 96 IS CREATED TO
 19 READ AS FOLLOWS:

20 (1) In addition to the powers delegated to it under the agreement described in Section
 21 3 of this Act, a municipal electric authority shall have all powers necessary or
 22 convenient to accomplish the purposes for which it was created, including but not
 23 limited to the power to:

24 (a) Exercise all of the powers of private corporations organized under KRS
 25 271B.3-020 in order to acquire, generate, purchase, transmit, secure, and
 26 finance the acquisition or generation of electric capacity and energy for sale
 27 to municipal utilities. A municipal electric authority shall not provide

1 electricity to retail consumers served by any public utility, cooperative
2 utility, or municipal utility;

3 (b) Develop, undertake, acquire, construct, own, manage, and operate, or
4 contract for the management and operation of, one (1) or more projects,
5 itself or with other persons, within or outside the Commonwealth, in order
6 to acquire, generate, transmit, secure, and provide electricity to municipal
7 utilities;

8 (c) Contract for the purchase of electricity, transmission services, natural gas,
9 or other resources from any person whether within or outside the
10 Commonwealth;

11 (d) Contract for the sale of electricity to its members and other municipal
12 utilities whether within or outside the Commonwealth;

13 (e) Provide to any municipal utility:

14 1. Dispatch and transmission of electricity and other services related to
15 electricity;

16 2. Management, transportation, storage, and other services related to
17 natural gas; and

18 3. Technical, financial, informational, promotional, engineering, and
19 educational services;

20 (f) Enter into all other contracts necessary or convenient in connection with
21 any project undertaken by the authority or in connection with the services it
22 provides to municipal utilities, including but not limited to:

23 1. Contracts for the generation, purchase, sale, dispatch, scheduling, and
24 transmission of electricity;

25 2. Contracts for the purchase, transportation, storage, exchange, resale,
26 or remarketing of natural gas or other fuels; and

27 3. Any necessary commodity price risk management measures, including

1 but not limited to options, futures contracts, swap, cap, floor, or collar
2 agreements for bona fide hedging of its risks in providing services;

3 (g) Include in any contract provisions for the indemnification of the parties
4 upon early termination or default thereunder and for the rights and
5 remedies of the parties to the contract to be governed by the laws of the
6 Commonwealth or of any other state and consenting to the jurisdiction of
7 the courts of the United States or another state over any action brought in
8 connection with the contract;

9 (h) Issue bonds to finance the cost of a project or for any other purpose of the
10 authority;

11 (i) Grant liens or mortgages or otherwise pledge, assign, or encumber all or
12 part of its property, assets, contractual rights and interests, and all or part of
13 the revenues and receipts therefrom, whether then owned or thereafter
14 acquired; and

15 (j) Receive and accept from the federal government, the Commonwealth, or
16 any other public agency grants for or in aid of the construction or operation
17 of any project, and receive and accept aid or contributions from any source
18 of money, property, labor, or other things of value to be held, used, or
19 applied for the purposes for which the grant or contribution is made.

20 (2) A municipal electric authority may undertake, acquire, or construct a project
21 whose generation or capacity, together with the capacities of the authority's other
22 generating assets, exceeds the requirements of its member utilities. This may be
23 done to achieve economies of scale or other benefits determined by the authority.
24 If any surplus capacity or energy is available from authority assets, it shall be
25 offered to other municipal utilities in the Commonwealth at a rate determined by
26 the authority to recover its full cost. If no municipal utility buyers are found in
27 the Commonwealth for the surplus electricity, the authority may sell it to any

1 wholesale purchaser at rates determined by the authority to be in the best interest
 2 of the authority.

3 (3) Purchases and sales under paragraphs (c), (d), and (f) of subsection (1) of this
 4 section or under subsection (2) of this section or similar purchases and sales
 5 between a municipal utility and a multistate municipal power agency shall not be
 6 subject to KRS 45A.345 to 45A.460 or Section 8 of this Act.

7 (4) Sections 2 to 6 of this Act shall not be construed or applied to increase the power
 8 of eminent domain of municipal electric authorities, municipal utilities, or any
 9 public agency.

10 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 96 IS CREATED TO
 11 READ AS FOLLOWS:

12 (1) Any bonds issued by a municipal electric authority shall be issued pursuant to
 13 KRS 65.270 and this section and, notwithstanding KRS 65.270 or any other
 14 provision of law, the authority:

15 (a) May issue notes in anticipation of the issuance of bonds, issue bonds for
 16 one (1) or more projects or purposes, and issue bonds to refund bonds
 17 previously issued;

18 (b) May issue bonds in one (1) or more series that mature not more than forty
 19 (40) years from their date and are subject to redemption or tender for
 20 purchase by the owners at the times, upon the terms and at the prices set
 21 forth in the proceedings authorizing their issuance;

22 (c) May issue and secure its bonds pursuant to a bond resolution, trust
 23 indenture, or other security instrument approved by its governing body,
 24 establish and fund from bond proceeds or its revenues the reserves that it
 25 deems necessary or desirable, and enter into the covenants and agreements
 26 with the owners of the bonds as shall be necessary to secure them;

27 (d) May sell its bonds at public or private sale in the manner, at the prices, and

1 upon the terms determined by its governing body;

2 (e) May, in connection with its bonds, as approved by its governing body, enter
 3 into contracts for bond insurance, surety bonds, bond ratings, letters of
 4 credit, other forms of credit enhancement, lines of credit, trustee and paying
 5 agent services, standby bond purchase agreements, other liquidity facilities,
 6 bond remarketing agreements, reimbursement agreements, investment
 7 agreements, interest rate swap, exchange, cap, or collar contracts, and
 8 forward delivery contracts; and

9 (f) Shall take all actions necessary to authorize, issue, and secure its bonds,
 10 and no actions shall be required to be taken in connection therewith by the
 11 municipal utilities that created the authority.

12 (2) Bonds issued by an authority shall be fully negotiable for all purposes and shall
 13 not be subject to taxation. Any lien, pledge, or other security interest created by
 14 an authority to secure its obligations is valid, binding, perfected, and enforceable
 15 on and after the effective date of the bond resolution, trust indenture, or other
 16 security instrument under which it is created, and no physical delivery, filing, or
 17 recording shall be required to perfect it under the Uniform Commercial Code or
 18 otherwise. An authority may but shall not be required to publish any of its
 19 proceedings in connection with the issuance of bonds.

20 (3) Bonds issued by a municipal electric authority shall constitute an obligation of
 21 the authority only, shall be payable solely from the property, revenue, and income
 22 pledged for their payment, and shall not constitute an indebtedness, liability, or
 23 obligation of the municipal utilities that created the authority, the
 24 Commonwealth, or any political subdivision thereof other than the authority.

25 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 96 IS CREATED TO
 26 READ AS FOLLOWS:

27 (1) Contracts for the sale of electricity or natural gas from projects or undertakings

1 of a municipal electric authority shall contain such terms and provisions as the
2 authority determines necessary to provide revenues sufficient to enable the
3 authority to pay its operation, maintenance, development, construction, and debt
4 service costs. A municipal utility of the Commonwealth that owns or operates a
5 municipal utility system may contract to purchase electricity or natural gas from
6 an authority or a multistate municipal power agency upon such terms as the
7 parties may agree. Contracts may include but are not limited to full or partial
8 requirement contracts or "take or pay" contracts requiring minimum payments
9 to be made regardless of:

10 (a) Whether the electricity or gas is made available by the authority or the
11 multistate municipal power agency or is taken by the municipal utility; or

12 (b) Whether the project is completed, operating, operable, interfered with, or
13 curtailed.

14 (2) A sale of electricity or natural gas by a contract between an authority or a
15 multistate municipal power agency and a municipal utility of the Commonwealth
16 shall provide that the utility shall be obligated to make payments solely from the
17 available revenues and income from the operation of a municipal utility system
18 designated in the contract, or other revenues when applicable, as an operation
19 and maintenance expense and a cost of purchased electricity or natural gas.
20 Neither the full faith and credit nor the taxing power of the municipal utility
21 shall be pledged for the payment of any obligation under the contract. A
22 municipal utility shall establish, charge, and collect rates and charges for the
23 services provided by its utility facilities to provide revenues sufficient to meet its
24 obligations under any contract with an authority or multistate municipal power
25 agency and to pay its obligations payable from or constituting a charge against
26 the revenues.

27 (3) A municipal utility that purchases electricity or natural gas from an authority or

1 **a multistate municipal power agency shall not be liable for the payment of bonds**
2 **issued by the authority or for the performance of the authority's or the multistate**
3 **municipal power agency's contractual obligations in connection with any project.**

4 ➔Section 7. KRS 45A.365 is amended to read as follows:

5 (1) All contracts or purchases shall be awarded by competitive sealed bidding, which
6 may include the use of a reverse auction, except as otherwise provided by KRS
7 45A.370 to 45A.385, ~~or~~ ~~and~~ for the purchase of wholesale electric power by
8 municipal utilities as provided in KRS 96.901(1), **or for purchases or sales under**
9 **subsection (3) of Section 4 of this Act.**

10 (2) The invitation for bids shall state that the award shall be made on the basis of the
11 lowest bid price or the lowest evaluated bid price. If the latter is used, the objective
12 measurable criteria to be utilized shall be set forth in the invitation for bids. The
13 invitation for bids shall include the reciprocal preference for resident bidders
14 described in KRS 45A.494.

15 (3) Adequate public notice of the invitation for bids and any reverse auction shall be
16 given prior to the date set forth for the opening of bids. The notice may include
17 posting on the Internet or publication in a newspaper of general circulation in the
18 local jurisdiction at least seven (7) days before the date set for the opening of the
19 bids and any reverse auction. Nothing in this section shall prohibit additional notice,
20 posting, or publication, nor shall additional notification, posting, or publication
21 extend the required notice period. The public notice shall include the time and place
22 the bids will be opened and the time and place where the specifications may be
23 obtained.

24 (4) The bids shall be opened publicly or entered through a reverse auction at the time
25 and place designated in the invitation for bids. Each written or reverse auction bid,
26 together with the name of the bidder, shall be recorded and be open to public
27 inspection. Electronic bid opening and posting of the required information for

1 public viewing shall satisfy the requirements of this subsection.

2 (5) A contract shall be awarded with reasonable promptness by written notice to the
3 responsive and responsible bidder whose bid is either the lowest bid price or the
4 lowest evaluated bid price after the application of any reciprocal preference for
5 resident bidders required by KRS 45A.494.

6 (6) The local public agency may allow the withdrawal of a bid where there is a patent
7 error on the face of the bid document, or where the bidder presents sufficient
8 evidence, substantiated by bid worksheets, that the bid was based upon an error in
9 the formulation of the bid price.

10 ➔Section 8. KRS 424.260 is amended to read as follows:

11 (1) Except where a statute specifically fixes a larger sum as the minimum for a
12 requirement of advertisement for bids, no city, county, or district, or board or
13 commission of a city or county, or sheriff or county clerk, may make a contract,
14 lease, or other agreement for materials, supplies except perishable meat, fish, and
15 vegetables, equipment, or for contractual services other than professional, involving
16 an expenditure of more than twenty thousand dollars (\$20,000) without first making
17 newspaper advertisement for bids. This subsection shall not apply to the transfer of
18 property between governmental agencies as authorized in KRS 82.083(4)(a).

19 (2) If the fiscal court requires that the sheriff or county clerk advertise for bids on
20 expenditures of less than twenty thousand dollars (\$20,000), the fiscal court
21 requirement shall prevail.

22 (3) (a) Nothing in this statute shall limit or restrict the ability of a local school district
23 to acquire supplies and equipment outside of the bidding procedure if those
24 supplies and equipment meet the specifications of the contracts awarded by
25 the Office of Material and Procurement Services in the Office of the
26 Controller within the Finance and Administration Cabinet or a federal, local,
27 or cooperative agency and are available for purchase elsewhere at a lower

1 price. A board of education may purchase those supplies and equipment
2 without advertising for bids if, prior to making the purchases, the board of
3 education obtains certification from the district's finance or purchasing officer
4 that the items to be purchased meet the standards and specifications fixed by
5 state price contract, federal (GSA) price contract, or the bid of another school
6 district whose bid specifications allow other districts to utilize their bids, and
7 that the sales price is lower than that established by the various price contract
8 agreements or available through the bid of another school district whose bid
9 specifications would allow the district to utilize their bid.

10 (b) The procedures set forth in paragraph (a) of this subsection shall not be
11 available to the district for any specific item once the bidding procedure has
12 been initiated by an invitation to bid and a publication of specifications for
13 that specific item has been published. In the event that all bids are rejected, the
14 district may again avail itself of the provisions of paragraph (a) of this
15 subsection.

16 (4) This requirement shall not apply in an emergency if the chief executive officer of
17 the city, county, or district has duly certified that an emergency exists, and has filed
18 a copy of the certificate with the chief financial officer of the city, county, or
19 district, or if the sheriff or the county clerk has certified that an emergency exists,
20 and has filed a copy of the certificate with the clerk of the court where his necessary
21 office expenses are fixed pursuant to KRS 64.345 or 64.530, or if the
22 superintendent of the board of education has duly certified that an emergency exists,
23 and has filed a copy of the certificate with the chief state school officer.

24 (5) The provisions of subsection (1) of this section shall not apply for the purchase of
25 wholesale electric power for resale to the ultimate customers of a municipal utility
26 organized under KRS 96.550 to 96.900, *or for purchases or sales under subsection*
27 *(3) of Section 4 of this Act.*

1 ➔Section 9. Sections 2 to 6 of this Act may be cited as the Municipal Electric
2 Authorities Act.