State of Tennessee

PUBLIC CHAPTER NO. 757

SENATE BILL NO. 1812

By Johnson

Substituted for: House Bill No. 1713

By Marsh, Moon, Shaw, Hazlewood, Howell

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 82, Part 7, relative to the utility management review board.

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

SECTION 1. Tennessee Code Annotated, Section 7-82-702(a), is amended by adding the following as a new subdivision:

(20) Require a utility district to merge or consolidate with a financially distressed utility district if the merger or consolidation is in the best interest of the public being served by the financially distressed utility district and does not harm the public being served by the utility district with which the financially distressed district is required to consolidate or merge in accordance with the process provided in § 7-82-704.

SECTION 2. Tennessee Code Annotated, Section 7-82-704, is amended by deleting the section and substituting:

(a)(1) If a utility district is financially distressed or is financially unable to expand the amount or type of service or services as set forth and described in its petition for creation pursuant to § 7-82-201, then the utility management review board may consider the merger or consolidation of the utility district with another utility district or districts to restore financial stability and to ensure continued operations for the benefit of the public being served by the utility district.

(2)(A) After reviewing the audited annual financial report and operations of the financially distressed utility district, the board may order the financially distressed utility district to obtain a study from a qualified expert on the feasibility and benefit of the financially distressed district merging or consolidating with another utility district. For purposes of this subdivision (a)(2), the board shall determine whether a person or legal entity constitutes a qualified expert.

(B) After the results of the study are submitted to the board or the board's staff, and if the results favor a merger or consolidation, then a representative of the board shall hold a public hearing within the service area of the financially distressed district to notify the customers of the potential merger or consolidation.

(3)(A) After the public hearing described in subdivision (a)(2) occurs, the board shall conduct an informal hearing on the question of whether it is in the best interest of the public being served by the financially distressed utility district, and does not harm the public being served by the utility district with which the financially distressed district may consolidate or merge, that the financially distressed utility district should be merged or consolidated with another utility district.

(B) In making the determination pursuant to subdivision (a)(3)(A), the board shall consider:

(i) The results of the study;

(ii) Comments that the board representative received at the public hearing that occurred within the service area of the district;

(iii) Other evidence presented by the financially distressed district and the district with which the financially distressed district may merge or consolidate; and

(iv) Other evidence presented to the board.

(C) The board should properly notify the financially distressed district and the district with which the financially distressed district may merge or consolidate of the date and time of the informal hearing and allow each party a reasonable opportunity to address the board.

(4) If the utility management review board determines that it is in the best interest of the public being served by the financially distressed utility district that the financially distressed utility district merge or consolidate with another utility district, and that it is not harmful to the public being served by the utility district with which the financially distressed utility district should merge or consolidate, then the board shall order the districts to develop a merger or consolidation agreement between the districts. The agreement must include, but is not limited to, the following components:

(A) An assurance that the districts have sought and obtained, or will seek and obtain, all necessary approvals from the United States department of agriculture, the Tennessee local development authority, the Tennessee department of environment and conservation, or another interested party for the assumption of the financially distressed district's outstanding debt obligations;

(B) A transfer of all other rights and duties of the financially distressed district to the district with which the financially distressed district is to merge or consolidate;

(C) An assumption of all assets and liabilities of the financially distressed district to the district with which the financially distressed district is to merge or consolidate;

(D) A transfer of all appropriate documents to vest legal title of the financially distressed district to the district with which the financially distressed district is to merge or consolidate;

(E) A provision that the district with which the financially distressed district is to merge or consolidate will operate the system and account for the revenues therefrom in such a manner as not to impair contractual or other legal obligations of the financially distressed utility district;

(F) A provision describing the merged or consolidated district's new territorial boundaries;

(G) An initial rate structure for the newly merged or consolidated utility district; and

(H) Other provisions necessary to comply with applicable state and federal laws such that the districts are solely responsible for ensuring that the terms of the merger or consolidation agreement address all necessary topics and comply with relevant state and federal laws.

(5) After the districts have drafted a complete agreement, the utility management review board shall enter an order approving the merger or consolidation agreement and shall require the utility districts to enter into the merger or consolidation agreement. If the board finds that a provision of the agreement is unreasonable or deficient, then the board may order the parties to amend the agreement or resolve the deficiency in a fair and reasonable manner. If, after the parties have attempted to develop an agreement in good faith, they are unable to come to an agreement, then the utility management review board may resolve topics of disagreement in a fair and reasonable manner and have the parties amend the agreement to reflect the determination of the board. If the utility management review board determines that the districts have refused or failed to enter into good faith

negotiations on a merger or consolidation, then the utility management review board shall petition the chancery court in a jurisdiction in which the utility district is operating to require the party or parties to engage in good faith negotiations concerning a merger or consolidation.

(6) If the board of commissioners of the utility district does not enter into the approved merger or consolidation agreement or fails to abide by the terms and conditions of the merger or consolidation agreement, then the utility management review board shall petition the chancery court in a jurisdiction in which the utility district is operating to enforce the utility management review board's order to require the board of commissioners to enter into the approved merger or consolidation agreement and to abide by and implement all of the terms and conditions of the merger or consolidation agreement.

(7) A merger or consolidation approved by the utility management review board under this section is not subject to the petition, public hearing, or mayoral order requirements of § 7-82-202, § 7-82-601, or § 7-82-603. A merger or consolidation approved under this section is not subject to approval by a county legislative body under § 7-82-202(a)(3)(B).

(8) After the utility management review board has ordered the utility districts to enter into the merger or consolidation agreement negotiated under this section, and after the utility districts have entered into the agreement, the utility management review board shall issue an order like that required of a mayor pursuant to § 7-82-202(e). After the board issues the order, a party to the agreement may secure judicial review of the decision by filing a petition for judicial review in the appropriate venue as set forth in § 4-5-322(b).

(9) The utility management review board shall file the order required by subdivision (a)(5) in the same manner as orders creating utility districts are filed under § 7-82-202(d). The utility management review board shall also file a copy of its order with the county mayor or mayors wherein the consolidated or merged districts are located.

(10)(A) The utility districts may agree to expand the size of the board of commissioners of the surviving district as permitted by § 7-82-202(e)(2) and (3). In such an event, the districts shall assert their intention to expand the size of the board of commissioners of the surviving district and name qualified individuals to serve on the new board in the consolidation or merger agreement. If the utility management review board approves of the agreement, then those individuals shall serve on the board of commissioners of the merged or consolidated district until their terms expire, at which time the county mayors shall appoint commissioners in accordance with the procedures set out in this chapter.

(B) If the utility districts do not agree to expand the size of the board of commissioners of the surviving district as provided in subdivision (a)(10)(A), then the current commissioners of the surviving district must serve the remainder of their terms. Upon the first expiration of a commissioner's term after the merger or consolidation is completed, the appropriate county mayor shall appoint a person from the service area of the previously financially distressed district to fill the seat.

(b) In order to mitigate any negative financial impact of such a merger or consolidation on the utility district or districts agreeing to merge or consolidate with a financially distressed utility district, the board is authorized to develop a plan of mitigation payments to the merged or consolidated utility system. The mitigation payments must be made from funds available in the utility district revitalization fund and may include:

(1) Amounts to offset increased administrative costs relating to the merger or consolidation, to the extent those costs cannot reasonably be recovered from customer revenues or other assets of the financially distressed utility district;

(2) Amounts that may be necessary to cure a default on indebtedness of the financially distressed utility district to the extent the defaults can, in the opinion of the board, reasonably be cured;

(3) Amounts that may be necessary to renovate and repair the facilities of the financially distressed utility district to the level necessary to enable the merged or

consolidated utility system to provide continued service to the public being served by the financially distressed utility district; and

(4) Other payments as may be necessary in the opinion of the board to accomplish the merger or consolidation and mitigate the financial impact of the merger or consolidation.

SECTION 3. Tennessee Code Annotated, Title 7, Chapter 82, Part 7, is amended by adding the following as a new section:

7-82-710.

(a)(1) There is created in the state treasury a fund to be known as the "utility district revitalization fund."

(2) The utility management review board shall administer the fund for grants to utility districts that have merged or consolidated under § 7-82-704 to mitigate the financial impact of the merger or consolidation. The utility management review board shall adopt rules for the fund's administration.

(3) Interest and earnings of the fund remain a part of the fund.

(4) No part of the fund reverts to the general fund on any June 30, but remains a part of the fund available for expenditure in accordance with this part.

(b) It is the intent of the general assembly that, to the extent practicable, money from the fund must be spent in all areas of the state.

(c) It is further the legislative intent that in each fiscal year the fund be managed so that actual expenditures and obligations to be recognized at the end of the fiscal year do not exceed available reserves and appropriations of the fund.

(d)(1) Each year, the utility management review board shall report to the commissioner of finance and administration the status of the appropriations for the fund. The report must include, at a minimum, the following information:

(A) The amount of each grant accepted since the previous report and the name of the utility district receiving the benefit of such commitment;

(B) The total outstanding commitments; and

(C) The total unobligated appropriation.

(2) The utility management review board shall transmit a copy of each report to the speaker of the house of representatives and the speaker of the senate, the state treasurer, the state comptroller of the treasury, the office of legislative budget analysis, and the secretary of state.

(e) The utility management review board shall determine the appropriate amount of each grant based on the criteria set out in § 7-82-704(b).

(f) Utility districts that are recipients of grants under this section shall submit quarterly reports on a form approved by the utility management review board.

SECTION 4. This act takes effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 1812

PASSED: March 17, 2022

RANDY McNALLY
SPEAKER OF THE SENATE

CAMERON SEXTON, *SPEAKER*
HOUSE OF REPRESENTATIVES

APPROVED this 31st **day of** March **2022**

BILL LEE, *GOVERNOR*