

SENATE BILL 1087

By Stevens

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

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

SECTION 1. Tennessee Code Annotated, Section 7-36-102(2), is amended by deleting the subdivision and substituting the following:

(2) "Associated municipality" means a municipality that is located in a county having a population of three hundred thirty-five thousand (335,000) 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 chapter 52 of this title; the municipality's charter; or otherwise applicable law;

SECTION 2. Tennessee Code Annotated, Section 7-36-102(19), is amended by adding the language "storage facilities," immediately before the words "and distribution facilities".

SECTION 3. Tennessee Code Annotated, Section 7-36-102, is amended by adding the following as new subdivisions:

() "Gas service" means the furnishing of various types of gas and related energy for heating, processing, lighting, and any other purpose for which gas and its related products can be used;

() "Wastewater service" means the collection, transportation, and treatment of water discharged from residential, commercial, industrial, or other processes for final discharge to the environment;

() "Water service" means the procurement, treatment, and distribution of water for domestic use or any other purpose for which water can be used;

SECTION 4. Tennessee Code Annotated, Section 7-36-105(c), is amended by deleting the subsection and substituting the following:

(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, gas, water, and wastewater systems, and telecommunications systems as are specified in its certificate of incorporation. The authority may provide such services within or outside the corporate limits of the associated municipality and within or outside this state.

SECTION 5. Tennessee Code Annotated, Section 7-36-107(4)(C), is amended by deleting the subdivision and substituting the following:

(C) Nothing in this subdivision (4) operates 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 one (1) or more other systems of the authority, if such system and services are related to the provision of services of such system or the operation of the system, including, without limitation, load control, meter reading, appliance monitoring, power exchange, billing, or any other similar or component service; and

SECTION 6. Tennessee Code Annotated, Section 7-36-107(5), is amended by deleting the language "subdivision (4)" wherever it appears and substituting the language "subdivision (7)".

SECTION 7. Tennessee Code Annotated, Section 7-36-107(13), is amended by adding the language "storage," immediately before the words "or distribution".

SECTION 8. Tennessee Code Annotated, Section 7-36-107(17), is amended by adding the language "storage," immediately before the words "or transportation".

SECTION 9. Tennessee Code Annotated, Section 7-36-107(25) and (26), are amended by deleting the subdivisions and substituting the following:

(25) To assist persons to whom the authority sells electric power, energy, gas, water, wastewater, or telecommunications 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 municipal electric, gas, water, and wastewater utilities within this state; and

SECTION 10. Tennessee Code Annotated, Section 7-36-107, is amended by adding the following as new subdivisions (4), (5), and (6), and redesignating existing (4), (5), and (6) and all remaining subdivisions accordingly:

(4) 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 water service and to provide water service to any person, governmental entity, or other user or consumer of water services within or outside the associated municipality; provided, the system shall be operated as a financially separate system independent of, and financially separate from the other utility systems of the authority and managed by the water division of the authority; and provided, further, the authority shall not exercise any of the powers granted in this subdivision (4) wholly or partly within the legal boundaries of an incorporated city or town or a utility district

incorporated pursuant to the Utility District Act of 1937, compiled in chapter 82 of this title, or any other municipal entity, except to the extent the authority succeeds to the rights and powers of a municipal water system or except as allowed by law, without the consent of the governing body of such city, town, utility district, or municipal entity;

(5) To acquire, construct, improve, furnish, equip, finance, own, operate, and maintain within or outside the corporate limits of the associated municipality, a system for providing wastewater service to any person, governmental entity, or other user or consumer of wastewater services within and outside the associated municipality; provided, the system shall be operated as a financially separate system independent of, and financially separate from, the other utility systems of the authority and managed by the wastewater division of the authority; and provided, further, the authority shall not exercise any of the powers granted in this subdivision (5) wholly or partly within the legal boundaries of an incorporated city or town or a utility district incorporated pursuant to the Utility District Act of 1937, or any other municipal entity, except to the extent the authority succeeds to the rights and powers of the municipal wastewater system or except as allowed by law, without the consent of the governing body of such city, town, utility district, or municipal entity;

(6) 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 gas and related products and to provide gas service to any person, governmental entity, or other user or consumer of gas services within or outside the associated municipality; provided, the system shall be operated as a separate system financially independent of, and financially separate from, the other utility systems of the authority and managed by the gas division of the authority; and provided, further, the authority shall not exercise any of the powers granted in this subdivision (6) wholly or

partly within the legal boundaries of an incorporated city or town or a utility district incorporated pursuant to the Utility District Act of 1937, or any other municipal entity, except to the extent the authority succeeds to the rights and powers of the municipal gas system or except as allowed by law, without the consent of the governing body of such city, town, utility district, or municipal entity;

SECTION 11. Tennessee Code Annotated, Section 7-36-108, is amended by deleting the section and substituting the following:

Each system of the authority shall operate independently of the others and shall be self-sustaining, except insofar as the board may by resolution combine any of the systems which in the opinion of the board shall be advisable and economical and which by the general laws of the state or any federal laws or any contracts or indentures are not required to be operated separately.

SECTION 12. Tennessee Code Annotated, Section 7-36-112(b), is amended by deleting the subsection and substituting the following:

(b) Notwithstanding this chapter to the contrary, the authority does not have any power to dispose of all or substantially all of the electric, gas, water, or wastewater system of the authority, as applicable, except upon the concurrence and consent of the governing body of the associated municipality and, in the case of the disposition of the electric plant of the authority, except upon the further 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 is deemed the "supervisory body," the electric plant of the authority is 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.

SECTION 13. Tennessee Code Annotated, Section 7-36-113(d), is amended by deleting the subsection and substituting the following:

(d) The authority has the power and is authorized 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 or gas purchases, including transmission costs, storage costs, and pipeline capacity costs. Any such notes must be secured solely by a pledge of, and lien on, the revenues of the system for whose benefit the financing is undertaken. The principal amount of notes that may be issued during any twelve-month period must not exceed sixty percent (60%) of total electrical power or gas purchases for the same period, and all notes issued during such period must be retired and paid in full on, or before, the end of such period. The notes must 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 or gas system, as applicable, 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.

SECTION 14. Tennessee Code Annotated, Section 7-36-119(a), is amended by deleting the subsection and substituting the following:

(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 from time-to-time whenever necessary so that each system, or any combined systems as authorized in this chapter, shall be and always 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, unless the systems are operated as a combined system in accordance with the terms of this chapter, in which case the combined system shall be self- supporting. The authority shall keep 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.

SECTION 15. Tennessee Code Annotated, Section 7-36-122, is amended by deleting the section and substituting the following:

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 must be made and computed in accordance with the Municipal Electric Plant Law of 1935, compiled in chapter 52 of this title, payments from the gas system revenues must be made and computed in accordance with the Municipal Gas System Tax Equivalent Law of 1987, compiled in chapter 39, part 4 of this title, and payments made from revenues of the telecommunication system must be made in accordance with §§ 7-52-404 and 7-52-606. Payments made from revenues of the water and wastewater systems must be made by

agreement with the affected municipality. The authority shall make payments in lieu of taxes to the associated municipality, accruing from and after the effective date of the transfer of such system or systems from the associated municipality, from such system's revenues on the same basis as payments are currently being made by the supervisory body. 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 is subject to all other state and local fees and charges imposed upon private providers of telecommunications services.

SECTION 16. Tennessee Code Annotated, Section 7-36-132, is amended by deleting the section and substituting the following:

(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, gas, water, wastewater, and telecommunications systems, or any one (1) or more of such systems, 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 must be transferred to the authority. The transfer must be authorized by resolution of the governing body of the associated municipality adopted on one (1) reading and must be accomplished through documents and instruments authorized by the resolution and executed by the officers of the associated municipality as designated by the resolution. A transfer of an associated

municipality's electric or telecommunications system to an authority in accordance with this subsection (a) is not a disposition of assets for purposes of § 7-52-132.

(b) Upon formation of an authority pursuant to this chapter, a franchise is granted to the authority to provide within the corporate limits of the associated municipality any and all of the services that it is authorized to provide under applicable law and its certificate of incorporation, subject to payment in lieu of taxes pursuant to § 7-36-122. Consistent with § 7-36-107(7), 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 an electric, gas, water, or wastewater 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 must be transferred to the authority, and the supervisory board having oversight over such system shall cease to exist.

(d) It is a condition of the transfer of a system from the associated municipality to the authority that upon the transfer the authority must either retire the associated municipality's bonds associated with such system by the payment of the bonds 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 must 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 must 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 17. 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 18. This act shall take effect upon becoming a law, the public welfare requiring it.