

AN ACT relating to municipal electric authorities.

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

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

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

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

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

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

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

- (4) "Multistate municipal power agency" means a political subdivision or a nonprofit organization from another state which is owned and operated by political subdivisions which may include Kentucky public agencies and which provides joint and cooperative action in the development, generation, acquisition, transmission, storage, or arrangement of electricity or natural gas, or in the provision of services and functions which facilitate reliable, economical, and environmentally sustainable supplies of electricity;
- (5) "Municipal electric authority" or "authority" means a municipal electric authority created pursuant to Sections 2 to 6 of this Act;
- (6) "Municipal utility" means:
- (a) A public agency that provides electric service to retail customers within a municipal service area; or
- (b) A public agency that provides wholesale electric supply services to public agencies described in paragraph (a) of this subsection;
- (7) "Project" means a plant, works, system, facility, or other real or personal property, located inside or outside of the Commonwealth, and interests therein, including purchase contracts, prepaid purchase contracts, and contractual rights and interests necessary or convenient for the generation, acquisition, transmission, transportation, storage, or management of electricity or natural gas for the purpose of providing the electricity requirements of municipal utilities; and
- (8) "Public agency" has the same meaning as in KRS 65.230 and includes a city or a city-owned utility created under this chapter.

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

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

- (a) The generation, acquisition, transportation, transmission, storage, or management of electricity or natural gas; and
- (b) Related services and functions which are necessary or desirable to provide reliable, economical, and environmentally sustainable supplies of electricity.
- (2) The agreement shall:
- (a) Specify the matters required by KRS 65.250(1);
- (b) Be approved by resolution of the governing body of each municipal utility that is a party to the agreement and by the legislative body of any city that is required to approve the rates of the municipal utility under by KRS 96.535;
- (c) Be submitted to the Department for Local Government prior to and as a condition precedent to its entry into force. The agency shall make a determination whether the agreement is in proper form and compatible with the laws of the Commonwealth in the manner specified in KRS 65.260; and
- (d) Be filed as provided in KRS 65.290.
- (3) An agreement creating a municipal electric authority under Sections 2 to 6 of this Act or by an amendment of an existing agreement under the Interlocal Cooperation Act, KRS 65.210 to 65.300:
- (a) Shall establish the governing body of the authority and provide direction concerning the methods by which the authority shall conduct business;
- (b) May provide for one (1) or more classes of authority membership and requirements for adding municipal utilities as members; and
- (c) Shall provide that the authority shall continue in existence until the later of:
1. Fifty (50) years from the date of the agreement or amendment; or
 2. One (1) year after the authority has fully discharged all of its indebtedness and has fully performed all of its contractual obligations.

(4) A municipal electric authority shall:

- (a) Constitute an agency and instrumentality of its members for performing essential government functions;
- (b) Be a political subdivision and a public body corporate of the Commonwealth;
- (c) Be a public agency within the meaning of KRS 65.230; and
- (d) Be subject to the open meeting provisions of KRS 61.800 to 61.850 and the public record provisions of KRS 61.870 to 61.884.

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

- (a) Pass a resolution indicating its election; and
- (b) File each of the resolutions with the Office of the Secretary of State.

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

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

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

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

- electricity to retail consumers served by any public utility, cooperative utility, or municipal utility;
- (b) Develop, undertake, acquire, construct, own, manage, and operate, or contract for the management and operation of, one (1) or more projects, in order to acquire, generate, transmit, secure, and provide electricity to municipal utilities;
- (c) Contract for the purchase of electricity, transmission services, natural gas, or other resources from any person whether within or outside the Commonwealth;
- (d) Contract for the sale of electricity to its members and other municipal utilities whether within or outside the Commonwealth;
- (e) Provide to any municipal utility:
1. Dispatch and transmission of electricity and other services related to electricity;
 2. Management, transportation, storage, and other services related to natural gas; and
 3. Technical, financial, informational, promotional, engineering, and educational services;
- (f) Enter into all other contracts necessary or convenient in connection with any project undertaken by the authority or in connection with the services it provides to municipal utilities, including but not limited to:
1. Contracts for the generation, purchase, sale, dispatch, scheduling, and transmission of electricity;
 2. Contracts for the purchase, transportation, storage, exchange, resale, or remarketing of natural gas or other fuels; and
 3. Any necessary commodity price risk management measures, including but not limited to options, futures contracts, swap, cap, floor, or collar

agreements for bona fide hedging of its risks in providing services;

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

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

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

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

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

of the authority.

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

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

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

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

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

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

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

(d) May sell its bonds at public or private sale in the manner, at the prices, and upon the terms determined by its governing body;

- (e) May, in connection with its bonds, as approved by its governing body, enter into contracts for bond insurance, surety bonds, bond ratings, letters of credit, other forms of credit enhancement, lines of credit, trustee and paying agent services, standby bond purchase agreements, other liquidity facilities, bond remarketing agreements, reimbursement agreements, investment agreements, interest rate swap, exchange, cap, or collar contracts, and forward delivery contracts; and
- (f) Shall take all actions necessary to authorize, issue, and secure its bonds, and no actions shall be required to be taken in connection therewith by the municipal utilities that created the authority.
- (2) Bonds issued by an authority shall be fully negotiable for all purposes and shall not be subject to taxation. Any lien, pledge, or other security interest created by an authority to secure its obligations is valid, binding, perfected, and enforceable on and after the effective date of the bond resolution, trust indenture, or other security instrument under which it is created, and no physical delivery, filing, or recording shall be required to perfect it under the Uniform Commercial Code or otherwise. An authority may but shall not be required to publish any of its proceedings in connection with the issuance of bonds.
- (3) Bonds issued by a municipal electric authority shall constitute an obligation of the authority only, shall be payable solely from the property, revenue, and income pledged for their payment, and shall not constitute an indebtedness, liability, or obligation of the municipal utilities that created the authority, the Commonwealth, or any political subdivision thereof other than the authority.

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

- (1) Contracts for the sale of electricity or natural gas from projects or undertakings of a municipal electric authority shall contain such terms and provisions as the

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

- (a) Whether the electricity or gas is made available by the authority or the multistate municipal power agency or is taken by the municipal utility; or
- (b) Whether the project is completed, operating, operable, interfered with, or curtailed.

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

(3) A municipal utility that purchases electricity or natural gas from an authority or a multistate municipal power agency shall not be liable for the payment of bonds

issued by the authority or for the performance of the authority's or the multistate municipal power agency's contractual obligations in connection with any project.

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

- (1) All contracts or purchases shall be awarded by competitive sealed bidding, which may include the use of a reverse auction, except as otherwise provided by KRS 45A.370 to 45A.385 ~~or~~and for the purchase of wholesale electric power by municipal utilities as provided in KRS 96.901(1), *or for purchases or sales under subsection (3) of Section 4 of this Act.*
- (2) The invitation for bids shall state that the award shall be made on the basis of the lowest bid price or the lowest evaluated bid price. If the latter is used, the objective measurable criteria to be utilized shall be set forth in the invitation for bids. The invitation for bids shall include the reciprocal preference for resident bidders described in KRS 45A.494.
- (3) Adequate public notice of the invitation for bids and any reverse auction shall be given prior to the date set forth for the opening of bids. The notice may include posting on the Internet or publication in a newspaper of general circulation in the local jurisdiction at least seven (7) days before the date set for the opening of the bids and any reverse auction. Nothing in this section shall prohibit additional notice, posting, or publication, nor shall additional notification, posting, or publication extend the required notice period. The public notice shall include the time and place the bids will be opened and the time and place where the specifications may be obtained.
- (4) The bids shall be opened publicly or entered through a reverse auction at the time and place designated in the invitation for bids. Each written or reverse auction bid, together with the name of the bidder, shall be recorded and be open to public inspection. Electronic bid opening and posting of the required information for public viewing shall satisfy the requirements of this subsection.

- (5) A contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price after the application of any reciprocal preference for resident bidders required by KRS 45A.494.
- (6) The local public agency may allow the withdrawal of a bid where there is a patent error on the face of the bid document, or where the bidder presents sufficient evidence, substantiated by bid worksheets, that the bid was based upon an error in the formulation of the bid price.

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

- (1) Except where a statute specifically fixes a larger sum as the minimum for a requirement of advertisement for bids, no city, county, or district, or board or commission of a city or county, or sheriff or county clerk, may make a contract, lease, or other agreement for materials, supplies except perishable meat, fish, and vegetables, equipment, or for contractual services other than professional, involving an expenditure of more than twenty thousand dollars (\$20,000) without first making newspaper advertisement for bids.
- (2) If the fiscal court requires that the sheriff or county clerk advertise for bids on expenditures of less than twenty thousand dollars (\$20,000), the fiscal court requirement shall prevail.
- (3) (a) Nothing in this statute shall limit or restrict the ability of a local school district to acquire supplies and equipment outside of the bidding procedure if those supplies and equipment meet the specifications of the contracts awarded by the Office of Material and Procurement Services in the Office of the Controller within the Finance and Administration Cabinet or a federal, local, or cooperative agency and are available for purchase elsewhere at a lower price. A board of education may purchase those supplies and equipment without advertising for bids if, prior to making the purchases, the board of

education obtains certification from the district's finance or purchasing officer that the items to be purchased meet the standards and specifications fixed by state price contract, federal (GSA) price contract, or the bid of another school district whose bid specifications allow other districts to utilize their bids, and that the sales price is lower than that established by the various price contract agreements or available through the bid of another school district whose bid specifications would allow the district to utilize their bid.

- (b) The procedures set forth in paragraph (a) of this subsection shall not be available to the district for any specific item once the bidding procedure has been initiated by an invitation to bid and a publication of specifications for that specific item has been published. In the event that all bids are rejected, the district may again avail itself of the provisions of paragraph (a) of this subsection.
- (4) This requirement shall not apply in an emergency if the chief executive officer of the city, county, or district has duly certified that an emergency exists, and has filed a copy of the certificate with the chief financial officer of the city, county, or district, or if the sheriff or the county clerk has certified that an emergency exists, and has filed a copy of the certificate with the clerk of the court where his necessary office expenses are fixed pursuant to KRS 64.345 or 64.530, or if the superintendent of the board of education has duly certified that an emergency exists, and has filed a copy of the certificate with the chief state school officer.
- (5) The provisions of subsection (1) of this section shall not apply for the purchase of wholesale electric power for resale to the ultimate customers of a municipal utility organized under KRS 96.550 to 96.900, **or for purchases or sales under subsection (3) of Section 4 of this Act.**

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