

1 AN ACT relating to combined municipal electric and water utilities.

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

3 ➔Section 1. KRS 96.171 is amended to read as follows:

4 **(1) As used in KRS 96.171 to 96.188:**

5 **(a) "Governing body" means the legislative body of a municipality that elected**  
6 **to operate a combined electric and water system under the provisions of**  
7 **KRS 96.171 to 96.188; and**

8 **(b) "Customer" means any person who pays for any service provided by the**  
9 **combined system or plant board.**

10 **(2)** The governing body of any municipality now or hereafter owning an electric and  
11 water system and operating them as one (1) combined system or plant may elect to  
12 operate under the provisions of KRS ~~96.171~~<sup>96.172</sup> to 96.188, in which case, from  
13 the time of the exercise of such election and the appointment of a board under said  
14 sections, the electric and water system of such municipality shall be operated under  
15 the provisions of KRS ~~96.171~~<sup>96.172</sup> to 96.188 as an electric and water plant.

16 ➔Section 2. KRS 96.172 is amended to read as follows:

17 (1) **(a)** Any municipality now or hereafter owning and operating an electric system  
18 and a water system and operating them as one (1) combined system or plant  
19 may elect to operate such systems as an electric and water plant under the  
20 provisions of KRS 96.171 to 96.188 by enacting an ordinance declaring  
21 therein the desire and intention of the municipality to accept and operate its  
22 electric and water system or plant under the provisions of KRS 96.171 to  
23 96.188 and by providing in said ordinance that the municipality accepts and  
24 agrees to all of the provisions of KRS 96.171 to 96.188. The ordinance shall  
25 further authorize the mayor or chief executive to appoint a board, subject to  
26 the approval of the appointments by the governing body of the municipality.

27 **(b)** ~~Upon the passage of such ordinance~~ The mayor or chief executive of any

1 such municipality shall, with the approval of the governing body of the  
2 municipality, appoint a board of public utilities, consisting of seven (7)  
3 customers [~~five (5) citizens, taxpayers, voters, and users of electric energy or~~  
4 ~~water~~].

5 (c) After the effective date of this Act, any vacancy on the board shall be filled  
6 in the manner that will bring the total board membership closest to being  
7 proportionately representative of the customers who reside inside the city  
8 limits of the municipality where the combined system or plant is located  
9 compared to the customers who reside outside of the city limits, as follows:

10 1. If a vacancy occurs that would require a member representing  
11 customers residing inside the city limits to be appointed, the mayor  
12 shall appoint the member, subject to confirmation by the city  
13 commission.

14 2. If a vacancy occurs that would require a member representing  
15 customers residing outside of the city limits to be appointed, the mayor  
16 shall appoint, subject to confirmation by the fiscal court, a member  
17 from a list of three (3) nominees submitted by the county  
18 judge/executive for the county where the combined system or plant is  
19 located.

20 (d) The [~~Said~~] board established under this subsection shall be appointed and  
21 qualified before the municipality shall have any authority to proceed further  
22 under the provisions of KRS 96.171 to 96.188. The [~~Said~~] board, when so  
23 appointed and qualified, shall be and hereby is declared to be a body-politic  
24 and corporate, with perpetual succession; and said board may contract and be  
25 contracted with, sue and be sued, in and by its corporate name, and have and  
26 use a corporate seal. The name of the board shall be "Electric and Water Plant  
27 Board of the City of \_\_\_\_\_, Kentucky."

- 1 (2) No person shall be appointed a member of the board who has, within two (2) years  
2 next before his or her appointment, held any public office, or who is related within  
3 the third degree to the mayor, the county judge/executive, or any member of the  
4 governing body of the municipality or county.
- 5 (3) Neither the board, nor the superintendent appointed by the board as provided in  
6 KRS 96.176, shall appoint to any subordinate office which it may create, nor  
7 employ in any capacity any person who is related within the third degree to any  
8 member of the board, ~~or to~~ the superintendent, ~~or to~~ the mayor of said  
9 municipality, the county judge/executive of the county, or to any member of the  
10 governing body of the municipality or county. No officer or employee of a  
11 municipality shall be eligible for such appointment until at least one (1) year after  
12 the expiration of the term of his or her office or employment.
- 13 (4) The members of the board shall be customers ~~citizens, taxpayers, voters, and users~~  
14 ~~of electric energy or water~~, and shall not at the time of their appointment be  
15 indebted to the municipality either directly or indirectly or be surety on the official  
16 bond of any officer of said municipality.
- 17 (5) If at any time during his or her term of office a member of the board becomes a  
18 candidate for or is elected or appointed to any public office, the member of the  
19 board ~~he~~ shall automatically vacate his or her membership from the board, and  
20 another person shall be appointed to the position ~~his place~~.
- 21 (6) Each member of said board shall execute bond, in an amount required by the  
22 governing body of the municipality by resolution or ordinance, conditioned upon  
23 the faithful performance of their official duties. The surety on said bonds shall be a  
24 surety company qualified to do business in Kentucky. The cost of said bonds shall  
25 be charged as an operating expense and paid by the board.
- 26 (7) Each member of the board shall qualify by taking the oath required by Section 228  
27 of the Constitution of Kentucky.

1 (8) The original appointees shall serve two (2) for one (1) year, one (1) for two (2)  
2 years, one (1) for three (3) years and one (1) for four (4) years, respectively, from  
3 the date of their appointment, as the said mayor or chief executive officer of the  
4 municipality shall designate. Successors to retiring members so appointed shall be  
5 appointed for a term of four (4) years in the same manner, prior to the expiration of  
6 the term of office of the retiring members. Appointments to complete unexpired  
7 terms shall be made in the same manner as original appointments.

8 (9) Any member of the board may be removed from office upon a vote of a majority of  
9 the members of the governing body of the municipality for inefficiency, neglect of  
10 duty, misfeasance, nonfeasance, or malfeasance in office.

11 ➔Section 3. KRS 96.175 is amended to read as follows:

12 Any board operating under the provisions of KRS 96.171 to 96.188~~[shall have the legal~~  
13 ~~power and capacity to perform any act not repugnant to law and]~~ shall have the express  
14 power and capacity to do any and all acts or things necessary or convenient for the  
15 carrying out of the purposes of KRS 96.171 to 96.188, including, but not by way of  
16 limitation, the following express powers:

17 (1) Acquire property, real and personal, tangible and intangible, necessary or incident  
18 to the proper conduct of its business.

19 (2) Operate, maintain, improve, and extend the electric and water plant, and provide  
20 electric and water service to any user or consumer within and without the  
21 boundaries of any municipality, and charge and collect reasonable rates therefor.

22 (3) Fix and determine classifications, rates, and charges for services; provided,  
23 however, the rates and charges so fixed and determined at all times shall be  
24 sufficient to produce revenues sufficient to pay all operating expenses, interest, and  
25 bond requirements, sinking fund requirements, adequate depreciation reserves,  
26 taxes, or payments in lieu of taxes, and reserves for contemplated extensions and  
27 improvements.

- 1 (4) Construct, lease, operate and control any and all works, lines, buildings, and other  
2 facilities across, along, or under any street or public highway, and over any lands  
3 which are now or may be the property of the Commonwealth or of any county or  
4 municipality within this Commonwealth. The board shall, however, at its own  
5 expense, restore any such street or highway to its former condition and state as  
6 nearly as may be possible and shall not use the same in a manner as to impair its  
7 usefulness or to interfere with or obstruct the maintenance thereof. Before  
8 exercising these powers the board shall obtain a permit or consent or approval in  
9 writing from the governing authority of the municipality, or the fiscal court, or the  
10 Department of Highways, having appropriate jurisdiction over any and all of such  
11 respective streets or public highways.
- 12 (5) Accept gifts, grants of property, real or personal, including money, from any  
13 person, municipality, or federal agency, and to accept voluntary and uncompensated  
14 services; provided, however, that when engineering services are required by the  
15 board no engineer or firm with which he or she is associated who is engaged in  
16 whole or in part in the business of buying or selling any electric or water  
17 equipment, machinery, fixtures, materials, supplies, or the sale or purchase of bonds  
18 shall be eligible for employment or for any service whatsoever under the provisions  
19 of KRS 96.171 to 96.188.
- 20 (6) Contract debts and borrow money for the improvement and extension of any  
21 electric and water plant or for the refinancing of any existing bonded indebtedness  
22 on the property or any portion thereof, issue bonds therefor, provide for the rights of  
23 holders of the bonds and to secure the bonds as hereinafter provided, and pledge all  
24 or any of the net revenue derived from the electric and water plant to the payment  
25 of such debts or repayment of money borrowed.
- 26 (7) The title to any property, real or personal, which the board may acquire shall vest in  
27 the municipality for the use and benefit of the electric and water system. The board

1 shall have the power to sell or otherwise dispose of any personal property used or  
2 useful in the operation of the electric and water system which may be or become  
3 obsolete or otherwise determined by the board not to be necessary in the operation  
4 of the electric and water system. Any bill of sale or other instrument of conveyance  
5 shall be executed by the chairman of the board and attested by the secretary of the  
6 board.

7 (8) Make contracts and execute instruments containing such covenants, terms, and  
8 conditions as in the discretion of the board may be proper, necessary, or advisable  
9 for the purpose of obtaining loans from any source, or grants, loans, or other  
10 financial assistance from any governmental agency; make all other contracts and  
11 execute all other instruments as in the discretion of the board may be advisable in or  
12 for the furtherance of the operation, maintenance, improvement, or extension of any  
13 electric and water plant and the furnishing of service; and carry out and perform the  
14 covenants, terms, and conditions of all such contracts or instruments, as well as all  
15 contracts and instruments in existence and effect at the time of the transfer of the  
16 property to the board as herein provided.

17 (9) Enter on any lands, waters, and premises for the purpose of making surveys,  
18 soundings and examinations in connection with the operation, maintenance,  
19 improvement, or extension of any electric and water plant and the furnishing of  
20 service.

21 (10) Do all acts and things necessary or convenient to carry out the powers expressly  
22 given in KRS 96.171 to 96.188, except sell, convey, or mortgage the real property.

23 (11) Make any contracts necessary or convenient for the full exercise of the powers  
24 herein granted, including but not limited to contracts for either the purchase or  
25 sale or both the purchase and sale of electric energy or power; and, in connection  
26 with any such contract with a governmental agency, the board may stipulate and  
27 agree to such covenants, terms, and conditions as it deems appropriate, including,

1 but without limitation, covenants, terms, and conditions with respect to the resale  
 2 rate, financial and accounting methods, and the manner of disposing of the revenues  
 3 or any part thereof derived from the operation of the plant as herein provided.

4 (12) Acquire by purchase or the exercise of eminent domain all lands, easements, rights  
 5 of way, either upon or under or above the ground, reasonably necessary or desirable  
 6 in connection with the operation, maintenance, or extension of an electric and water  
 7 plant.

8 (13) The board shall have the power to accept the provisions of and conduct its  
 9 operations under the provisions of the Kentucky Workers' Compensation Act.

10 (14) The board shall have the power to establish, create, provide, and maintain a pension  
 11 plan for its employees, and to pay out of operating revenues, as an operating  
 12 expense, such portion of the cost of the creation and maintenance of such pension  
 13 plan as may be properly payable by the board.

14 ➔Section 4. KRS 96.179 is amended to read as follows:

15 In lieu of taxes, the board ~~shall~~~~may~~ each year pay to each taxing jurisdiction~~[school~~  
 16 ~~district and municipality]~~ in which its property is located an amount equivalent to an  
 17 annual ad valorem tax on the fair cash value of the property of the board located in each  
 18 such jurisdiction, determined upon the tax rate prevailing in such year.

19 ➔Section 5. KRS 96.182 is amended to read as follows:

20 (1) Subject to the provisions of outstanding bonds and contracts, the board shall apply  
 21 all funds derived from operations:

22 (a) ~~[(1)]~~ To the payment of operating expenses;

23 (b) ~~[(2)]~~ To the payment of bond interest and retirement;

24 (c) ~~[(3)]~~ To sinking fund requirements;

25 (d) ~~[(4)]~~ To the maintenance of a fund to meet depreciation and the  
 26 improvements and extension of the plant in an amount equal to six percent  
 27 (6%) of the undepreciated book value of its property;

1        (e) ~~[(5)]~~To the maintenance of a cash working fund equal to one (1) month's  
2        revenue;

3        (f) ~~[(6)]~~To the payment of other obligations incurred in the operation and  
4        maintenance of the plant and the furnishing of service; and

5        (g) ~~[(and (7))]~~To such tax equivalent payments~~[taxes]~~, if any,~~[as the board may~~  
6        ~~elect to pay]~~ under the provisions of KRS 96.179.~~[(and)]~~

7        (2) Any surplus revenues at the end of any twelve (12) months ending June 30 shall be  
8        transferred to the sinking fund, and used by the board only for:

9        (a) The redemption or purchase of outstanding bonds, in which case such bonds  
10       shall be canceled;~~[(,)]~~ or~~[ for the creation and maintenance of a cash working~~  
11       ~~fund, or the creation and maintenance of a fund for improvement and~~  
12       ~~extension of the system, or for ]~~

13       (b) The reduction of rates~~[(, or the board, after the original cost of the property~~  
14       ~~shall have been fully paid and satisfied may, in its sole discretion, use, apply~~  
15       ~~and pledge all or a part of such surplus revenues for the acquisition,~~  
16       ~~construction, maintenance, improvement, addition to and operation of any~~  
17       ~~"public project" as the same is defined in subsection (1) of KRS 58.010, or for~~  
18       ~~the purpose of purchasing, paying, retiring, guaranteeing the payment of or~~  
19       ~~underwriting revenue bonds issued by the city or any agency thereof to~~  
20       ~~finance the acquisition, construction, maintenance, improvement, addition to~~  
21       ~~and operation of such "public project," which "public project" shall be located~~  
22       ~~within the territory served by the board; the board is hereby vested with all of~~  
23       ~~the powers, duties and responsibilities delegated and granted to a~~  
24       ~~"governmental agency" under KRS 58.020 to 58.140, both inclusive;~~  
25       ~~provided, however, that the acquisition or construction of any "public project"~~  
26       ~~as above defined, shall be first approved by the common council before such~~  
27       ~~"public project" is undertaken].~~

1 (3) The acquisition, construction, maintenance, improvement, addition to, or  
 2 operation of any "public project" as defined in KRS 58.010 shall be approved by  
 3 the governing body before any of those actions are undertaken.

4 (4) Notwithstanding any provision of law to the contrary, the board shall not use  
 5 revenues from the provision of electric or water utility service to subsidize  
 6 activities unrelated to the provision of electric or water utility service. The board  
 7 shall keep separate accounts for all activities unrelated to the provision of electric  
 8 or water utility service and shall allocate revenues and costs to those accounts  
 9 separately, in accordance with generally accepted accounting principles.

10 ➔Section 6. KRS 96.184 is amended to read as follows:

11 (1) The board at any time may issue and sell revenue bonds to finance improvements or  
 12 extensions of the plant, or the board, after the original cost of the property shall  
 13 have been fully paid and satisfied, may, subject to approval of the governing  
 14 body~~[in its sole discretion]~~, issue, sell, and pledge its revenues to secure the  
 15 payment of revenue bonds the proceeds of which are to be used to finance the  
 16 acquisition, construction, maintenance, improvement, addition to, and operation of  
 17 "public projects" as defined in KRS 96.182, or for the purpose of purchasing,  
 18 paying, retiring, guaranteeing the payment of, or underwriting revenue bonds issued  
 19 by the city or any agency of the city to finance the acquisition, construction,  
 20 maintenance, improvement, addition to, and operation of a public project, and sell  
 21 refunding bonds for the purpose of providing for the payment of any outstanding  
 22 bonds.

23 (2) Bonds issued pursuant to KRS 96.171 to 96.188 may be issued in one (1) or more  
 24 series, may bear a date or dates, may mature at a time or times, not exceeding forty  
 25 (40) years from their respective dates, may be in a denomination or denominations,  
 26 may be in a form, either coupon or registered, may carry registration and  
 27 conversion privileges, may be executed in a manner, may be payable in a medium

1 of payment, at a place or places, may be sold in blocks, may be subject to terms of  
2 purchase or redemption of all or any of the bonds before maturity in a manner and  
3 at a price or prices as may be fixed by the board by resolution prior to the sale of  
4 the bonds.

5 (3) All revenue bonds issued pursuant to the provisions of KRS 96.171 to 96.188 in the  
6 hands of bona fide holders shall have all the qualities and incidents of negotiable  
7 instruments under the law merchant. All bonds shall be sold to the highest  
8 responsible bidder at the time and place as fixed by the board in the notice of sale of  
9 the bonds, which notice shall have been advertised by publication pursuant to KRS  
10 Chapter 424. The board shall receive written, sealed, competitive bids, which shall  
11 be publicly opened and read at the time and place specified in the notice of sale.  
12 The board may reject all bids and readvertise.

13 (4) No holder or holders of any revenue bonds issued under KRS 96.171 to 96.188  
14 shall have the right to compel any exercise of taxing power of the municipality to  
15 pay the bonds or the interest on the bonds. Each bond issued under KRS 96.171 to  
16 96.188 shall recite in substance that the bond, including interest on the bonds, is  
17 payable solely from the revenues pledged to the payment of the bond, and that the  
18 bond does not constitute a debt of the municipality within the meaning of any  
19 statutory or constitutional provision or limitation.

20 (5) Any holder or holders of bonds issued pursuant to KRS 96.171 to 96.188 shall have  
21 the rights~~[right]~~, in addition to all other rights:

22 (a) By action in court, to enforce his, her, or their rights against the board, and  
23 any other proper officer, agent, or employee, including~~[,]~~ but without  
24 limitation~~[,]~~ the right to require the board, and any proper officer, agent, or  
25 employee of the board, to fix and collect rates and charges adequate to carry  
26 out any agreement as to, or pledge of, revenues from the plant, and to require  
27 the board and any officer, agent, or employee of the board, to carry out any

1 other covenants or agreements and to perform its and their duties under KRS  
2 96.171 to 96.188; ~~and~~;

3 (b) By action in equity, to enjoin any act or thing which may be unlawful or a  
4 violation of the rights of the holder of bonds.

5 (6) If there is a default in the payment of the principal or interest of any bonds issued  
6 pursuant to KRS 96.171 to 96.188, any court having jurisdiction may, upon the  
7 petition of the holders of not less than twenty-five percent (25%) of the outstanding  
8 bonds, appoint a receiver to administer the electric plant on behalf of the board,  
9 with power to charge and collect rates sufficient to provide for the payment of any  
10 bonds or obligations outstanding against the plant and for the payment of the  
11 operating expenses and to apply the income and revenues in conformity with KRS  
12 96.171 to 96.188.

13 (7) All bonds issued pursuant to KRS 96.171 to 96.188, bearing the signatures of  
14 officers in office on the date of the signing of the bonds, shall be valid and binding  
15 obligations, notwithstanding that before the delivery and payment of the bonds, any  
16 or all the persons whose signatures appear on the bonds shall have ceased to be  
17 members of the board issuing the same. The resolution of the board authorizing the  
18 issuance of the bonds shall contain a recital that the revenue bonds are issued  
19 pursuant to KRS 96.171 to 96.188, which recital shall be prima facie evidence of  
20 their validity and of the regularity of their issuance.

21 (8) Bonds may be issued under KRS 96.171 to 96.188 without respect to the provisions  
22 of any laws requiring the prior approval of any court, commission, board, or  
23 regulatory authority.

24 (9) All moneys received from the sale and issuance of bonds shall be used solely for  
25 the purpose for which the bonds were issued, except that any premium received for  
26 the bonds may be used for the payment of interest and principal of the bonds.

27 ➔Section 7. KRS 96.185 is amended to read as follows:

1 **(1)** The board shall keep a complete and accurate record of all meetings and actions  
 2 taken, and of all receipts and disbursements. Such records shall be open to  
 3 inspection at any and all times to the governing body of the city. An audit of the  
 4 board's records shall be made annually by a certified public accountant to be  
 5 selected by the board, and the expense of such audit shall constitute an operating  
 6 expense and be paid as such by the board. The board shall furnish a copy of such  
 7 audit to the common council when requested so to do.

8 **(2)** **In conjunction with the preparation of the audits required under subsection (1) of**  
 9 **this section and KRS Chapter 65A, in each even-numbered fiscal year the board**  
 10 **shall have independent appraisals prepared for the properties and associated**  
 11 **services and assets of each discrete project or operation undertaken by the board**  
 12 **that is unrelated to the provision of water or electric utility services, including but**  
 13 **not limited to any public project undertaken pursuant to Section 5 of this Act. The**  
 14 **independent appraisals required by this subsection shall be paid for by the board**  
 15 **and shall be conducted by individuals or organizations not affiliated with the city**  
 16 **or the board, or any officers or employees thereof, and shall use generally**  
 17 **accepted national or professional standards. The board may also contract with**  
 18 **the Auditor of Public Accounts to conduct any appraisal required by this**  
 19 **subsection.**

20 ➔Section 8. KRS 96.187 is amended to read as follows:

21 Any action challenging the validity of any ordinance electing to operate under KRS  
 22 96.171 to 96.188, or any bond resolution of the board, or any election resolution or  
 23 election held hereunder, shall be brought within sixty (60) days from the date on which  
 24 such ordinance, election resolution, or bond resolution was **published in accordance with**  
 25 **KRS Chapter 424**~~[adopted]~~ or election held, as the case may be, and, if not brought  
 26 within said time, shall be forever barred.

27 ➔SECTION 9. A NEW SECTION OF KRS 96.171 TO 96.188 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) As used in this section:

3 (a) "Institutional advertising" means advertising which is only used for the  
4 enhancement or preservation of the public image of the utility and to  
5 present it in a favorable light to the general public and potential employees;

6 (b) "Political advertising" means any advertising for the purpose of  
7 influencing public opinion with respect to legislative, administrative, or  
8 electoral matters, or with respect to any controversial issue of public  
9 importance;

10 (c) "Promotional advertising" means any advertising for the purpose of  
11 encouraging any person to select or use the service or additional service of  
12 the combined electric and water utility, or the selection or installation of any  
13 appliance or equipment designed to use such utility's service; and

14 (d) The terms "political advertising," "promotional advertising," and  
15 "institutional advertising" do not include advertising:

16 1. That informs utility customers about how they can conserve energy;

17 2. Required by statute or administrative regulation;

18 3. Regarding service interruption, safety measures, or emergency  
19 conditions;

20 4. Concerning current employment opportunities; and

21 5. That promotes the use of energy efficient appliances, equipment, or  
22 services.

23 (2) Notwithstanding any provision of law to the contrary, the board of a combined  
24 electric and water plant or system shall not use funds derived from any provision  
25 of its services for political advertising or institutional advertising. However, only  
26 with regard to funds not derived from the provision of water or electric service,  
27 the board of a combined electric water and plant or system may engage in

1        *promotional advertising for its public projects undertaken pursuant to Section 5*  
2        *of this Act.*

3        ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO  
4 READ AS FOLLOWS:

5        *Notwithstanding any provision of law to the contrary, and in addition to all other*  
6        *authority conferred to the commission under this chapter, the commission shall assist*  
7        *in the resolution of consumer complaints of customers of any water or electric utility*  
8        *service provided by combined electric and water systems or plant boards established*  
9        *under KRS Chapter 96.171 to 96.188, and shall review the rates of the customers of*  
10       *each of those combined electric and water systems or plant boards at least once per*  
11       *year.*