

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~~^{96.172} 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~~^{96.172} 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, subject to confirmation by the city commission, a
13 member from a list of three (3) nominees, with each of the following
14 organizations serving the area submitting one (1) nominee for
15 inclusion in the list:

16 a. The chamber of commerce;

17 b. A development interest group; and

18 c. An area development corporation; and

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

25 (d) The [~~Said~~] board established under this subsection shall be appointed and
26 qualified before the municipality shall have any authority to proceed further
27 under the provisions of KRS 96.171 to 96.188. The [~~Said~~] board, when so

1 appointed and qualified, shall be and hereby is declared to be a body-politic
2 and corporate, with perpetual succession; and said board may contract and be
3 contracted with, sue and be sued, in and by its corporate name, and have and
4 use a corporate seal. The name of the board shall be "Electric and Water Plant
5 Board of the City of _____, Kentucky."

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

1 the faithful performance of their official duties. The surety on said bonds shall be a
2 surety company qualified to do business in Kentucky. The cost of said bonds shall
3 be charged as an operating expense and paid by the board.

4 (7) Each member of the board shall qualify by taking the oath required by Section 228
5 of the Constitution *of Kentucky*.

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

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

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

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

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

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

27 (3) Fix and determine classifications, rates, and charges for services; provided,

1 however, the rates and charges so fixed and determined at all times shall be
2 sufficient to produce revenues sufficient to pay all operating expenses, interest, and
3 bond requirements, sinking fund requirements, adequate depreciation reserves,
4 taxes, or payments in lieu of taxes, and reserves for contemplated extensions and
5 improvements.

6 (4) Construct, lease, operate and control any and all works, lines, buildings, and other
7 facilities across, along, or under any street or public highway, and over any lands
8 which are now or may be the property of the Commonwealth or of any county or
9 municipality within this Commonwealth. The board shall, however, at its own
10 expense, restore any such street or highway to its former condition and state as
11 nearly as may be possible and shall not use the same in a manner as to impair its
12 usefulness or to interfere with or obstruct the maintenance thereof. Before
13 exercising these powers the board shall obtain a permit or consent or approval in
14 writing from the governing authority of the municipality, or the fiscal court, or the
15 Department of Highways, having appropriate jurisdiction over any and all of such
16 respective streets or public highways.

17 (5) Accept gifts, grants of property, real or personal, including money, from any
18 person, municipality, or federal agency, and to accept voluntary and uncompensated
19 services; provided, however, that when engineering services are required by the
20 board no engineer or firm with which he or she is associated who is engaged in
21 whole or in part in the business of buying or selling any electric or water
22 equipment, machinery, fixtures, materials, supplies, or the sale or purchase of bonds
23 shall be eligible for employment or for any service whatsoever under the provisions
24 of KRS 96.171 to 96.188.

25 (6) Contract debts and borrow money for the improvement and extension of any
26 electric and water plant or for the refinancing of any existing bonded indebtedness
27 on the property or any portion thereof, issue bonds therefor, provide for the rights of

1 holders of the bonds and to secure the bonds as hereinafter provided, and pledge all
2 or any of the net revenue derived from the electric and water plant to the payment
3 of such debts or repayment of money borrowed.

4 (7) The title to any property, real or personal, which the board may acquire shall vest in
5 the municipality for the use and benefit of the electric and water system. The board
6 shall have the power to sell or otherwise dispose of any personal property used or
7 useful in the operation of the electric and water system which may be or become
8 obsolete or otherwise determined by the board not to be necessary in the operation
9 of the electric and water system. Any bill of sale or other instrument of conveyance
10 shall be executed by the chairman of the board and attested by the secretary of the
11 board.

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

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

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

- 1 (11) Make any contracts necessary or convenient for the full exercise of the powers
 2 herein granted, including~~[-]~~ but not limited to~~[-]~~ contracts for either the purchase or
 3 sale or both the purchase and sale of electric energy or power; and, in connection
 4 with any such contract with a governmental agency, the board may stipulate and
 5 agree to such covenants, terms, and conditions as it deems appropriate, including,
 6 but without limitation, covenants, terms, and conditions with respect to the resale
 7 rate, financial and accounting methods, and the manner of disposing of the revenues
 8 or any part thereof derived from the operation of the plant as herein provided.
- 9 (12) Acquire by purchase or the exercise of eminent domain all lands, easements, rights
 10 of way, either upon or under or above the ground, reasonably necessary or desirable
 11 in connection with the operation, maintenance, or extension of an electric and water
 12 plant.
- 13 (13) The board shall have the power to accept the provisions of and conduct its
 14 operations under the provisions of the Kentucky Workers' Compensation Act.
- 15 (14) The board shall have the power to establish, create, provide, and maintain a pension
 16 plan for its employees, and to pay out of operating revenues, as an operating
 17 expense, such portion of the cost of the creation and maintenance of such pension
 18 plan as may be properly payable by the board.

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

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

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

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

27 (a) ~~(1)~~ To the payment of operating expenses;

- 1 **(b)** ~~[(2)]~~To the payment of bond interest and retirement;
- 2 **(c)** ~~[(3)]~~To sinking fund requirements;
- 3 **(d)** ~~[(4)]~~To the maintenance of a fund to meet depreciation and the
- 4 improvements and extension of the plant in an amount equal to six percent
- 5 (6%) of the undepreciated book value of its property;
- 6 **(e)** ~~[(5)]~~To the maintenance of a cash working fund equal to one (1) month's
- 7 revenue;
- 8 **(f)** ~~[(6)]~~To the payment of other obligations incurred in the operation and
- 9 maintenance of the plant and the furnishing of service; **and**
- 10 **(g)** ~~[(and (7))]~~**To** such ***tax equivalent payments***~~[taxes]~~, if any,~~[as the board may~~
- 11 elect to pay] under the provisions of KRS 96.179.~~[, and]~~
- 12 **(2)** Any surplus revenues at the end of any twelve (12) months ending June 30 shall be
- 13 transferred to the sinking fund, and used by the board only for:
- 14 **(a)** The redemption or purchase of outstanding bonds, in which case such bonds
- 15 shall be canceled;~~[,] or [for the creation and maintenance of a cash working~~
- 16 fund, or the creation and maintenance of a fund for improvement and
- 17 extension of the system, or for]
- 18 **(b)** The reduction of rates~~[, or the board, after the original cost of the property~~
- 19 shall have been fully paid and satisfied may, in its sole discretion, use, apply
- 20 and pledge all or a part of such surplus revenues for the acquisition,
- 21 construction, maintenance, improvement, addition to and operation of any
- 22 "public project" as the same is defined in subsection (1) of KRS 58.010, or for
- 23 the purpose of purchasing, paying, retiring, guaranteeing the payment of or
- 24 underwriting revenue bonds issued by the city or any agency thereof to
- 25 finance the acquisition, construction, maintenance, improvement, addition to
- 26 and operation of such "public project," which "public project" shall be located
- 27 within the territory served by the board; the board is hereby vested with all of

1 the powers, duties and responsibilities delegated and granted to a
 2 "governmental agency" under KRS 58.020 to 58.140, both inclusive;
 3 provided, however, that the acquisition or construction of any "public project"
 4 as above defined, shall be first approved by the common council before such
 5 "public project" is undertaken].

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

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

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

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

- 1 (2) Bonds issued pursuant to KRS 96.171 to 96.188 may be issued in one (**I**) or more
2 series, may bear a date or dates, may mature at a time or times, not exceeding forty
3 (40) years from their respective dates, may be in a denomination or denominations,
4 may be in a form, either coupon or registered, may carry registration and
5 conversion privileges, may be executed in a manner, may be payable in a medium
6 of payment, at a place or places, may be sold in blocks, may be subject to terms of
7 purchase or redemption of all or any of the bonds before maturity in a manner and
8 at a price or prices as may be fixed by the board by resolution prior to the sale of
9 the bonds.
- 10 (3) All revenue bonds issued pursuant to the provisions of KRS 96.171 to 96.188 in the
11 hands of bona fide holders shall have all the qualities and incidents of negotiable
12 instruments under the law merchant. All bonds shall be sold to the highest
13 responsible bidder at the time and place as fixed by the board in the notice of sale of
14 the bonds, which notice shall have been advertised by publication pursuant to KRS
15 Chapter 424. The board shall receive written, sealed, competitive bids, which shall
16 be publicly opened and read at the time and place specified in the notice of sale.
17 The board may reject all bids and readvertise.
- 18 (4) No holder or holders of any revenue bonds issued under KRS 96.171 to 96.188
19 shall have the right to compel any exercise of taxing power of the municipality to
20 pay the bonds or the interest on the bonds. Each bond issued under KRS 96.171 to
21 96.188 shall recite in substance that the bond, including interest on the bonds, is
22 payable solely from the revenues pledged to the payment of the bond, and that the
23 bond does not constitute a debt of the municipality within the meaning of any
24 statutory or constitutional provision or limitation.
- 25 (5) Any holder or holders of bonds issued pursuant to KRS 96.171 to 96.188 shall have
26 the **rights**~~[right]~~, in addition to all other rights:
- 27 (a) By action in court, to enforce his, **her**, or their rights against the board, and

1 any other proper officer, agent, or employee, including~~[,]~~ but without
2 limitation~~[,]~~ the right to require the board, and any proper officer, agent, or
3 employee of the board, to fix and collect rates and charges adequate to carry
4 out any agreement as to, or pledge of, revenues from the plant, and to require
5 the board and any officer, agent, or employee of the board, to carry out any
6 other covenants or agreements and to perform its and their duties under KRS
7 96.171 to 96.188; and~~[,]~~

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

10 (6) If there is a default in the payment of the principal or interest of any bonds issued
11 pursuant to KRS 96.171 to 96.188, any court having jurisdiction may, upon the
12 petition of the holders of not less than twenty-five percent (25%) of the outstanding
13 bonds, appoint a receiver to administer the electric plant on behalf of the board,
14 with power to charge and collect rates sufficient to provide for the payment of any
15 bonds or obligations outstanding against the plant and for the payment of the
16 operating expenses and to apply the income and revenues in conformity with KRS
17 96.171 to 96.188.

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

26 (8) Bonds may be issued under KRS 96.171 to 96.188 without respect to the provisions
27 of any laws requiring the prior approval of any court, commission, board, or

1 regulatory authority.

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

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

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

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

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

26 Any action challenging the validity of any ordinance electing to operate under KRS
27 96.171 to 96.188, or any bond resolution of the board, or any election resolution or

1 election held hereunder, shall be brought within sixty (60) days from the date on which
 2 such ordinance, election resolution, or bond resolution was published in accordance with
 3 KRS Chapter 424~~[adopted]~~ or election held, as the case may be, and, if not brought
 4 within said time, shall be forever barred.

5 ➔SECTION 9. A NEW SECTION OF KRS 96.171 TO 96.188 IS CREATED TO
 6 READ AS FOLLOWS:

7 (1) As used in this section:

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

11 (b) "Political advertising" means any advertising for the purpose of
 12 influencing public opinion with respect to legislative, administrative, or
 13 electoral matters, or with respect to any controversial issue of public
 14 importance;

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

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

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

22 2. Required by statute or administrative regulation;

23 3. Regarding service interruption, safety measures, or emergency
 24 conditions;

25 4. Concerning current employment opportunities; and

26 5. That promotes the use of energy efficient appliances, equipment, or
 27 services.

1 (2) Notwithstanding any provision of law to the contrary, the board of a combined
2 electric and water plant or system shall not use funds derived from any provision
3 of its services for political advertising or institutional advertising. However, only
4 with regard to funds not derived from the provision of water or electric service,
5 the board of a combined electric water and plant or system may engage in
6 promotional advertising for its public projects undertaken pursuant to Section 5
7 of this Act.

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

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