SENATE BILL 769
By Ketron

HOUSE BILL 990

By Todd

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 52, Part 6, relative to municipal electric systems.

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

SECTION 1. Tennessee Code Annotated, Section 7-52-601, is amended by adding the following new subsection:

(f) Notwithstanding § 65-4-101(6)(B) or any other provision of this code or of any private act, to the extent that any municipal electric system provides any of the services authorized by this section, such municipal electric system shall be subject to regulation by the Tennessee regulatory authority who shall, in addition to having the power to determine feasibility as set forth in § 7-52-602(1), have jurisdiction to make rules or orders governing anti-competitive practices and shall be considered as and have the duties of a public utility, as defined in § 65-4-101, but only to the extent necessary to effect such regulation.

SECTION 2. Tennessee Code Annotated, Section 7-52-602, is amended by deleting the section in its entirety and substituting instead the following:

7-52-602. To provide the services authorized under this part, the governing board of the municipal electric system shall comply with the following procedure:

(1) Upon the approval and at the direction of the governing board, the municipal electric system shall file a detailed business plan with the Tennessee regulatory authority, referred to in this section as the “authority”, who shall open a docket and conduct a hearing on the feasibility of the business plan. The business plan shall include a five-year cost benefit analysis, which identifies and discloses the total projected direct cost and indirect cost of and revenues to be derived from providing the

proposed services. The plan shall also include a description of the quality and level of services to be provided, pro forma financial statements, a detailed financing plan, marketing plan, rate structure and any other information requested by the authority. The authority shall examine and comment on the reasonableness of the assumptions, estimated cost of construction, and the financial operation of the proposed system;

(2) The authority shall provide written findings on the feasibility of the proposed business plan to the chief legislative body of the municipality in which the municipal electric system is located and the governing board within one hundred and twenty (120) days; provided, that the calculation of the time to file the authority's written findings shall not commence until the business plan is complete;

(3) If the governing board determines to proceed, it shall publish, in a newspaper of general circulation within that area, a notice of its intent to proceed with the offering of additional services and such notice shall be filed with the authority on or before the date of publication. The notice shall include a general description of the business plan, a summary of the governing board's findings on such plan, and the findings of the authority on the feasibility of such plan. The notice shall also specify a date on which the governing board shall conduct a public hearing on the provision of such services;

(4) The governing board shall conduct a public hearing on the provision of such services. No sooner than fourteen (14) days after such public hearing, the governing board may consider authorizing the provision of additional services. A municipal electric system may provide additional services only after approval by a two-thirds (2/3) majority vote of the chief legislative body of the municipality, who may also conduct a public hearing at the request of a member of the legislative body in which the municipal electric system is located, or by a public referendum held pursuant to subdivision (6). If the chief

legislative body conducts a public hearing, no sooner than thirty (30) days after such public hearing shall the chief legislative body consider any action;

(5) Upon approval of the plan, any material change in the operations shall be reported to the authority, who shall have the discretion to require the municipal electric system to follow the same provisions as set forth in this section to receive the necessary approval for the original plan. For the purposes of this subdivision (5), “material change” includes, but is not limited to, any change in projections relative to market penetration regarding the contemplated services, any change in the financing arrangements, including, refinancing or recapitalization of debt, changes in terms of debt or interest rates, or any extensions thereof; and

(6) Upon a majority vote by the chief legislative body of the municipality in which the municipal electric system is located that a public referendum should be held on the question of whether the municipal electric system may provide additional services, the chief legislative body of such municipality may direct the county election commission to hold a referendum on such question. In order for the question to be placed on the ballot, the chief legislative body shall so direct not less than sixty (60) days before a regular general election. Upon receipt of such direction from the chief legislative body, the county election commission shall place the question on the ballot. The referendum shall only be held in conjunction with a regular general election being held in the municipality and only registered voters of such municipality may participate in the referendum. The question to appear on the ballot shall be:

“FOR THE MUNICIPAL ELECTRIC SYSTEM PROVIDING CABLE, INTERNET OR ANY LIKE SERVICE FOR A TOTAL COST OF ____INCLUDING INTEREST, WHICH IS THE EQUIVALENT TO ____ PER ELECTRIC RATEPAYING HOUSEHOLD. THE MUNICIPAL ELECTRIC SYSTEM IS A

PUBLIC ENTITY AND THIS DEBT IS A PUBLIC LIABILITY. " and "AGAINST THE MUNICIPAL ELECTRIC SYSTEM PROVIDING CABLE, INTERNET OR ANY LIKE SERVICE FOR A TOTAL COST OF ____INCLUDING INTEREST, WHICH IS THE EQUIVALENT TO ____ PER ELECTRIC RATEPAYING HOUSEHOLD."

SECTION 3. Tennessee Code Annotated, Section 7-52-603(a), is amended by deleting the subdivision (1) and substituting instead the following:

(1)

(A)

(i) A municipal electric system shall establish a separate division to deliver any of the services authorized by this part. The division shall maintain its own separate accounting and record-keeping system. Such record-keeping shall be consistent with § 7-52-604. A municipal electric system shall not provide subsidies for the delivery of such services or lend funds to the division, in excess of fifteen percent (15%) of the total cost of the project.

(ii) "Subsidies" for the purposes of this part include, but are not limited to, failure to timely service debt obligations pursuant to the original terms and conditions of any financing arrangement, any recapitalization of existing debt obligations, waiver of pole attachment fees, in lieu of tax payments or franchise fees.

(B) Any municipal electric system providing services under this part or § 7-52-401 shall provide the authority with a certified copy of:

(i) Any existing inter-divisional loan agreement or an affidavit describing the amount, date of issue, repayment terms, and status of repayment, no later than July 1, 2011, and annually thereafter; and

(ii) Within 180 days after municipal electric systems' fiscal year end annually, the audited financial statement for the municipal electric system and the cable and Internet division.

(C) The authority shall have the right to request information in subdivision (a)(1)(B) more frequently than annually.

(D) Documents obtained in subdivision (a)(1)(B) or (a)(1)(C) shall be maintained by the authority and shall be open to the public pursuant to state law.

SECTION 4. Tennessee Code Annotated, Section 7-52-603, is amended by adding a new subsection as follows:

(f) The Tennessee regulatory authority shall provide a report on the documents filed pursuant to subdivisions (a)(1)(B) and (C) for services offered under this part or under § 7-52-401 to the general assembly no later than January 31, 2012, and every year thereafter.

SECTION 5. Tennessee Code Annotated, Section 7-52-604(a) and (b), are amended by deleting the subsections in their entirety and substituting instead the following:

(a) The authority shall adopt, after consideration of written comments submitted by any interested party, guidelines or procedures to establish appropriate accounting principles applicable to the division's affiliated transactions and cost allocation.

(b) A municipal division providing the services authorized by this part is subject to a finance and compliance audit under § 6-56-105, which audit shall be conducted in accordance with enterprise fund accounting principles under generally accepted accounting principles. Financial statements shall be prepared reporting the results of the

operations for the cable and Internet enterprise on an annual basis. A copy of each statement shall be filed with the authority within 180 days of the close of the fiscal year.

SECTION 6. Tennessee Code Annotated, Section 7-52-606(a), is amended by adding the following language at the end of the subsection:

No municipality or county has a right to waive payment of such taxes.

SECTION 7. Tennessee Code Annotated, Section 7-52-609, is amended by deleting the section in its entirety and substituting instead:

Any party alleging a violation of this title may file a petition with the Tennessee regulatory authority in accordance with the rules of the authority.

SECTION 8. This act shall take effect upon becoming a law, the public welfare requiring it.