

General Provisions

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

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General Provisions

Reference Number: MTAS-567

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Limitations on Expenditures of Utility Revenue

Reference Number: MTAS-827

Although T.C.A. § 7-34-115 is part of the Revenue Bond Law, it probably applies to all utility systems. It requires that "as a matter of public policy, municipal utility systems shall be operated on sound business principles as self-sufficient entities. User charges, rates, and fees shall reflect the actual cost of providing the services rendered." T.C.A. § 7-34-115(a). Under this statute, all municipal utility revenues must be spent on:

- Payment of operating expenses;
- Bond interest and retirement or sinking fund payments;
- Acquisition and improvement of public works;
- Contingencies;
- Payment of other operations, maintenance, and service cost obligations;
- Redemption and purchase of bonds;
- Creation and maintenance of a cash working fund;
- Payment to the general fund of a return on equity invested by the general fund to a maximum of 6 percent (the term "equity investment" is defined in the statute); and
- Upon the request of the governing body by resolution, in-lieu-of-tax payments on the property of the public works within the municipality not to exceed the amount of taxes payable on "privately owned property of a similar nature." (For resolution of conflicts between this provision of T.C.A. § 7-34-115 and other tax equivalency statutes, see the next section, Utility System Tax Equivalents.)

Any remaining utility revenues shall be used solely for rate reduction.

Municipalities may make covenants with the purchasers of bonds concerning the use and disposition of revenues as to the application order of such revenues and as to limitations on the amount of the return on the equity of investment or payment in lieu of taxes to the municipality.

The statute contains other information useful in explaining allowed expenditures of municipal utility revenue and procedures for spending the money under the above provisions. It also contains the penalty for the violation of the statute.

Various Utility Provisions

Reference Number: MTAS-828

Sewer Work on Private Property

Municipalities may do work on sewer lines on private property behind a meter when there is excessive inflow from rainwater or groundwater that results in overflows and health issues when the owner consents and agrees to hold the municipality harmless. T.C.A. § 7-35-401 (c) (1) (B) (c) (iii).

Voluntary Contributions for Community Assistance

T.C.A. §§ 7-34-115 (i) (1) and 7-52-103 (e) (1) allow municipal electric and utility systems to accept and distribute voluntary contributions for charitable purposes. This may include programs in which the utility bill is rounded up to the nearest dollar. The contribution must be shown as a separate line item on the bill. Contributions are not considered revenue to the utility and must be used for community assistance and economic development.

Utility System Tax Equivalents

T.C.A. § 7-34-115 (a) (1) provides that, upon the request of the municipal governing body by resolution, the utility system shall pay to the municipality in-lieu-of tax payments on the property of the public works within the municipality not to exceed the amount of taxes payable on privately owned property of a similar nature. However, where that statute conflicts with the Municipal Gas System Tax Equivalent Law, T.C.A. § 7-39-401, or the Municipal Electric System Tax Equivalent Law of 1987, T.C.A. §§ 7-52-301, *et seq.* the latter statutes prevail. Those statutes contain complicated formulas for the payment in-lieu-of taxes to municipalities.

Eminent Domain

Several statutes empower municipalities to condemn land and property rights within and outside city limits for utility purposes. T.C.A. § 7-34-104, T.C.A. § 7-35-101, T.C.A. § 7-52-105, T.C.A. § 29-16-102, T.C.A. § 29-17-201. T.C.A. §§ 29-17-101, *et seq.* place restrictions on the use of eminent domain when there will be direct or indirect benefits to private entities or individuals. One of several exceptions from these restrictions, however, allows private benefits when "any interest in land necessary to the function of a public or private utility" is taken. The land cannot be taken primarily to convey the private benefit. T.C.A. § 66-27-207 places restrictions on the use of eminent domain to take condominium units.

Service Beyond Corporate Boundaries

Any city is empowered to extend "any utility service, specifically including waterworks, water plants, water distribution systems, and sewage collection and treatment systems" beyond its corporate boundaries, providing that proper charges are established "so that any such outside service be self-supporting." However, no city or other utility agency may "extend its services into sections of roads or streets already occupied by other public agencies rendering the same service so long as such other public agency continues to render such service." T.C.A. § 7-51-401.

Metering Errors; Statute of Limitations

When a customer is overcharged or undercharged for electric, water, sewer, or gas services because of equipment malfunction, and the customer was unaware of the discrepancy, a municipality may not recover the undercharge or reimburse the overcharge for the period before 36 months from the date the error was discovered. T.C.A. §§ 28-3-301–303.

Utility Deposits

Unclaimed utility deposits and unclaimed utility refunds fall under the state's Abandoned Property Law, which imposes record-keeping and reporting requirements on a utility. The utility must attempt to notify the subscriber within 120 days of the commencement of the two-year waiting period before the deposit is presumed abandoned. T.C.A. § 66-29-106. The city may reclaim unclaimed utility deposits and monies from other abandoned property reported by the city under circumstances outlined in the Abandoned Property Law.

Theft of Utility Service and Damage to Equipment

It is unlawful to divert utility service or damage utility equipment. When a utility catches a customer stealing utility service, it has a right to collect three times the value of the stolen service and attorney's fees and costs. The city also may collect for theft of or damage to equipment, theft of meters, etc., by taking civil action to recover those losses and file liens against the property served to enforce the collection. To make the liens valid if the property is sold, the utility must follow procedures prescribed in T.C.A. §§ 65-35-101, *et seq.*

A violation of T.C.A. § 65-35-102 also is a violation of T.C.A. § 39-14-104 (theft of services), T.C.A. § 65-35-105. T.C.A. § 39-14-411 prohibits damage to or interference with utility lines, fixtures, and appliances. The civil remedies and criminal penalties imposed by the criminal statutes are mutually exclusive. T.C.A. § 65-35-106.

Underground Utility Damage Prevention

The Underground Utility Damage Prevention Act of 1978 prescribes a procedure for recording underground facilities (communications, electricity, gas, petroleum, hazardous liquids, water, steam, and sewerage) with each county's register of deeds and giving notification of intended excavation or demolition. The act applies to state and local governments.

Before digging on public property, public rights of way, private easements, or within 100 feet of the edge of pavement of a street or highway, the digger must give no fewer than three and no more than 10 days of advance notice to any entity that has filed a record with the register of deeds. To help manage this notification process, the state's utilities joined to create Tennessee One Call. The digger can meet

notification requirements by making a single telephone call (800-351-1111), and the One Call service notifies utilities with underground facilities in the area. Municipalities are encouraged to join and participate in the Tennessee One Call organization for which there is no charge. However, if the digger complies with the act, it prohibits utilities that suffer damage resulting from not joining the One Call service from recovering damages from the excavation.

Water Losses

The Water and Wastewater Financing Board may issue rules defining excessive water losses by public water systems and investigate systems with excessive losses and require them to reduce water losses to acceptable levels.

The comptroller must, within 60 days after an audit is filed showing excessive losses, file the audit with the Water and Wastewater Financing Board. If the water system fails to take appropriate actions to reduce losses, the board may petition the chancery court to require these actions.

Public water systems must include in their annual audits the annual average unaccounted-for water losses in the manner prescribed by the comptroller.

Water & Sewer System Provisions

Reference Number: MTAS-829

State Oversight

Public water supplies and sanitary sewerage systems are subject to supervision by the state Department of Environment and Conservation. Such supervision includes approving construction plans, examining water samples, and enforcing regulations regarding operating and maintaining such systems. State approval of construction or other changes to the public water supply and sewage systems is not required if the state has certified that local approval under local standards is sufficient to safeguard the public health. T.C.A. §§ 68-221-101–108.

Financial Oversight

The financial condition of municipal water and sewer systems is monitored by the Water and Wastewater Financing Board in the state comptroller's office. Board members, appointed by the governor, hear cases brought by the comptroller's office. Generally, water or sewer systems that have defaulted on a debt, have two consecutive years of negative change in net position, or have negative net position in any one year will be referred to the board. However, in determining whether to file a report with the board, the comptroller is not to consider depreciation expenses if the water or wastewater system has a total equity at least four times greater than total debt. Several other exceptions apply. The board has broad powers to effect the adoption of user rates, issue subpoenas, and so forth. T.C.A. §§ 68-221-1008–1010.

Plant Operator Certification

The Water Environmental Health Act makes it unlawful to operate a water supply system, wastewater system, water treatment plant, wastewater treatment plant, water distribution system, or wastewater collection system unless the operators in direct charge have been certified as competent by the commissioner of environment and conservation. A five-member board established by the act is charged with adopting rules and regulations to govern the program, and the commissioner issues certificates.

All operators are encouraged to be certified, but certification is required of only one operator in charge of each system or plant. One operator may supervise two or more nearby systems when his or her work time can reasonably be so divided. Annual renewal of certificates is predicated on payment of fees and meeting any continuing education or experience requirements established by the board. A procedure is provided for revoking a certificate. Each day in violation subjects a city or other responsible agency to a Class C misdemeanor and a civil penalty of up to \$10,000. T.C.A. §§ 68-221-901–915.

Minimum Sewer Use Rates

To qualify minimum base rate charges paid by all sewer users as deductible items against an individual's federal income tax, a 1977 act declared such charges a tax. However, the Internal Revenue Service ruled that this tax did not change the charges' status as user fees, and they are not deductible. T.C.A. § 7-35-414.

Safe Drinking Water

Water pipes and solder used in water systems and plumbing must be lead free. Each water supplier must identify and notify all persons whose drinking water may be contaminated with lead. T.C.A. § 68-221-720.

Water Withdrawals

The Tennessee Water Resources Information Act (T.C.A. §§ 69-7-301, *et seq.*) requires people, including local governments, that withdraw or propose to withdraw 10,000 or more gallons of water daily from surface or groundwater sources to register the withdrawal annually with the Department of Environment and Conservation. This does not apply to emergency or agricultural withdrawals.

Non-compliance with Drinking Water Regulations

Public water systems that are not in compliance with current primary drinking water regulations must notify the state Division of Water Supply within 24 hours of discovery and provide public notice. T.C.A. § 68-221-708.

Untrue Statements About Water

Firms selling domestic water-softening or filtration devices sometimes attempt to boost their sales by advertisements questioning the safety or quality of public water supplies. It is unlawful to make certain untrue representations connected with selling, leasing, renting, etc., water treatment devices. T.C.A. §§ 47-18-1201–1203.

Watershed Districts

Watershed districts have broad powers. They are authorized to conserve soil and water resources, contract for constructing public works projects, acquire land, promote and protect public health, take fire prevention steps, acquire water rights, distribute or sell water for irrigation or other purposes, provide recreational facilities, etc. The exercise of eminent domain by watershed districts requires approval of the local government in which the property in question is located. T.C.A. §§ 69-6-101, *et seq.*

Mandatory Tap-on

Any city that has issued bonds secured by sewer revenues is empowered to require connection to an available sewer and, after a 30-day notice, discontinue water service to compel compliance. T.C.A. § 7-35-201, T.C.A. § 68-221-209 (a) (1) (B).

Energy Acquisition Corporation Authority Relative to Water Meters

An energy acquisition corporation may install, read, maintain, and remove water meters for any municipality. T.C.A. § 7-39-302(17).

Cross-connections Prohibited

Public water systems must implement an effective program to eliminate or control cross-connection hazards. A cross-connection could permit unsafe or questionable water or other substances to flow backward into the water supply lines. T.C.A. § 68-221-711(6).

Water Pollution and Sewers / Wastewater

Reference Number: MTAS-568

Sewer Lateral Maintenance

To control sewer inflow and seepage, cities may require the owner, tenant, or occupant of each land parcel to properly maintain the portion of a sewer connection located on the private property. Cities may cut off water service if the customer fails to make repairs after being notified to do so. T.C.A. § 7-35-201(2), T.C.A. § 68-221-209 (a) (1) (B).

Water Pollution Control Permits and Pre-treatment Programs

Federal EPA regulations require municipal sewage treatment plant operators to establish programs requiring businesses and industries discharging into the city sewers to pre-treat their effluent to meet the sewer plant's treatment standards. The state code gives cities authority to administer pre-treatment programs and assess civil penalties of up to \$10,000 per day for violations. T.C.A. §§ 69-3-101, *et seq.*

A municipality that applies for a permit under T.C.A. Title 69, Chapter 3 has these rights:

- Right to assistance from the Department of Environment and Conservation in understanding regulatory and permit requirements;

- Right to know the projected fees for review of applications and how any costs will be determined and billed;
- Right to access, via the department's website, complete and clearly written guidance, opinions, and department policies explaining the regulatory jurisdiction and requirements;
- Right to timely completeness determinations for applications. Absent extraordinary circumstances, the commissioner will notify the applicant within 30 days that the application is complete or of the existence of any deficiencies;
- Right to timely decision. Aquatic Resource Alteration Permits will be issued or denied within 90 days. Reissuance of National Pollutant Discharge Elimination System permits will be issued or denied within 180 days. New or modified National Pollutant Discharge Elimination System permits will be issued or denied within 365 days;
- Right to appeal to the board any permit review time limits that have been violated for good cause; and
- Right to know who will be reviewing the application and the time required to complete the full review. T.C.A. § 69-3-141.

Loan Programs

The state is authorized to make repayable grants to municipalities for constructing sewage treatment works based on the unobligated amount of the municipality's annual state-shared taxes. T.C.A. § 68-221-202.

T.C.A. §§ 68-221-1001, *et seq.* created a self-sustaining, low-interest, revolving loan program for wastewater facility construction. The program is administered by the Department of Environment and Conservation's Division of Community Assistance and the Tennessee Local Development Authority.

Combined Billings

A city that has both a sewer system and a water system is authorized to combine water and sewer bills (if the contractual obligations of water revenue bonds are not impaired) and to enforce the payment of both charges as a unit, including discontinuance of water service. T.C.A. § 7-35-201(3).

Bonds for Self-contained Wastewater Systems

The Tennessee Public Utility Commission must require the posting of a bond or other security for a public utility providing wastewater service or for a particular project by such a utility. The purpose of the bond is to ensure the proper operation of the utility or project. The Tennessee Public Utility Commission establishes the amount of the bond. T.C.A. § 65-4-201.

Provisions for Electric, Gas & Other Fuel Systems

Reference Number: MTAS-571

Energy Production and Landfill Methane

Any municipality is empowered "to construct, own, operate, or maintain – within its corporate limits or within the limits of the county wherein it is located – an existing or planned energy production facility or facilities," including acquiring easements or other appurtenances for transporting or transmitting energy. Such a facility may use "fossil or other fuels" or solid waste. Creating a monopoly by ordinance is specifically authorized, provided the ordinance is first reviewed and approved by the state Department of Environment and Conservation. Annual reports about the monopoly must be made to and reviewed by this department. T.C.A. §§ 7-54-101, *et seq.*

The Landfill Methane Development Act allows any municipality to construct and operate a facility for the preparation of landfill methane for transportation and as a substitute for natural gas. T.C.A. §§ 65-28-201, *et seq.*

Averaging Bills

Any utility providing electricity, natural gas, or other fuel to more than 15,000 residential customers must permit bill payment on a monthly averaging basis. Every customer has the option to use such a plan. T.C.A. §§ 65-33-101–106.

Utility Relocation for Highway Construction

Under the common law, utilities using municipal streets may be required to remove or relocate those

utilities from those streets at their own expense. With respect to state highways, however, T.C.A. § 54-5-804 authorizes the Department of Transportation, subject to funding, to reimburse public and private utilities the full costs of relocating caused by state road projects.

To qualify, the utility must:

- Comply with T.C.A. § 54-5-854(b), including preparing and submitting to the department the utility's relocation plan, its cost estimate, and schedule for completing the relocation within specified allowed times.
- Enter into a written agreement with the commissioner to include the relocation costs as a part of the department's highway construction contract, OR enter into an agreement that the utility will remove all facilities that the department wants moved before the department lets the construction contract. The utility will be reimbursed for the cost of the relocation work it has undertaken if the department does not undertake the project within a specified time.

The utility will be responsible for inspecting all phases of the relocation to ensure compliance with all specifications and safety codes.

The department will make no reimbursement until the commissioner is satisfied that the relocation has been performed in accordance with plans and the schedule of calendar days approved by the department.

This section requires the utility to reimburse the department to the extent the department is not compensated from federal funds for the relocation costs.

The utility management review board administers a state-funded loan program to help local governments and certain non-profit businesses relocate utilities in the path of highway construction projects. Such loans are provided for up to 15 years and are interest free for the first five years. The utility management review board requires the borrowing utility to establish user fees sufficient to repay the loan and interest. T.C.A. § 7-82-701, T.C.A. § 67-3-617(j)(1).

Utilities that are relocating because of a state highway project must make monthly progress reports to the Tennessee Department of Transportation (TDOT) and other utility owners. Reports made at pre-construction meetings between the contractor and TDOT will be sufficient to meet this requirement even if the meetings are not held monthly. T.C.A. § 54-5-854 (h) (2).

Energy Acquisition Corporations

The Energy Acquisition Corporation Act, contained in T.C.A. §§ 7-39-101, *et seq.*, authorizes municipalities to establish energy acquisition corporations. These corporations have extraordinarily broad powers to acquire and operate gas- and electricity-producing properties under various arrangements prescribed by the act, including the power to issue bonds for those purposes. Municipalities are authorized to lend money to and enter into other financial arrangements with such corporations. The structure and powers of energy acquisition corporations are prescribed in the act.

T.C.A. § 7-39-302(a)(12) requires engineering services provided by an energy acquisition corporation to be in compliance with T.C.A. § Title 62, Chapter 2.

Electrical Safety Code for Supply Stations

T.C.A. § 68-101-104 adopts the August 1, 2006, edition of the American National Standard Safety Code (for supply stations and lines, overhead and underground electric-supply and communications lines, and work rules governing their construction and operation.)

Oil and Gas Exploration

Municipalities are authorized to undertake oil and gas ventures. Cities may prospect, drill, mine, produce, treat, and transport natural gas, oil, and mineral byproducts. T.C.A. § 6-54-110.

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