

## Various Utility Provisions

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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.

Sincerely,

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## Various Utility Provisions

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### ***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.

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