

# CHAPTER 96 - UTILITIES IN CITIES

A GUIDE FROM KLC MUNICIPAL LAW



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## CHAPTER 96 - UTILITIES IN CITIES

To play any game, you must first learn the rules. The same holds true for the law surrounding Chapter 96 - Utilities in Cities. It is impossible to carry out the duties of Chapter 96 - Utilities in Cities unless you familiarize yourself with the applicable state statutes, as well as your local ordinances that govern them.

Statutes are not contained in some magical spell book. There is no forbidden wisdom in a statutory code book. You do not need a law school education to understand their meaning. We wanted to remove some of the mystique from the law by compiling this simple PDF. It contains the entire portion of Kentucky Revised Statutes which pertain to Chapter 96 - Utilities in Cities.

Feel free to use this guide in any way that you deem fit. We wanted to present this information as a PDF because a PDF does have just a little bit of magic. A PDF is word searchable. If you have the PDF on a laptop during a meeting and an issue comes up, you can plug the words in, and the relevant portion of the law about Chapter 96 - Utilities will pop up. Failing that, you can always call the KLC Municipal Law Department at 800.876.4552.

*The KLC Municipal Law Team*

## SALES OF FRANCHISES

### 96.010 Sale of public utility franchises by cities

- (1) At least eighteen (18) months before the expiration of any franchise acquired under or prior to the present Constitution, the legislative body of each city shall provide for the sale of a new franchise to the highest and best bidder on terms that are fair and reasonable to the city, to the purchaser of the franchise and to the patrons of the utility. The terms shall specify the quality of service to be rendered and, in cities of the first class, the price that shall be charged for the service.
- (2) If there is no public necessity for the kind of public utility in question and if the city desires to discontinue entirely the kind of service in question, or if, in the case of cities other than those of the first class, the city owns or desires to own and operate a municipal plant to render the required service, this section shall not apply.

### 96.020 Deposit to accompany bid; bidder to give bond

- (1) Each person desiring to bid for the franchise offered for sale under KRS 96.010 shall first deposit, with the proper officer of the city, cash or a certified check equal to five percent (5%) of the fair estimated cost of the plant required to render the service. The deposit shall be forfeited to the city in case the bid is accepted and the bidder fails, for thirty (30) days after the confirmation of the sale, to pay the price bid and to give a sufficient bond in a sum equal to one-fourth (1/4) of the fair estimated cost of the plant to be erected. The bond shall be conditioned to be enforceable in case the person giving it fails, within a reasonable time, to establish a suitable plant for rendering the service and begin rendering the service in the manner set forth in the terms of the sale.
- (2) This section shall not apply to a person already owning, in a city other than a city of the first class, a plant and equipment sufficient to render the service required under the franchise.

### 96.030 Exclusive franchise not to be granted by consolidated local government or city of the first class

No exclusive privilege shall be acquired through the sale of a franchise under KRS 96.010 by a consolidated local government or a city of the first class. The sale of a franchise to one (1) person by a consolidated local government or a city of the first class shall not prevent a subsequent sale of a similar franchise to another person.

### 96.040 City of the first class or consolidated local government may purchase public utility plant

- (1) If a city of the first class or a consolidated local government desires to own or operate a utility being operated under a franchise, and the city or consolidated local government takes the necessary steps within two (2) years before the expiration of the franchise, and offers to purchase, at a fair valuation, the plant of the company which is then rendering the service, the city or consolidated local government shall be under no obligation to sell, renew, or continue the franchise.
- (2) The fair valuation of the plant shall be determined by three (3) persons; one (1) to be selected by the city or consolidated local government, one (1) to be selected by the owners of the plant, and the third to be selected by these two (2). The plant shall be valued as a going concern, but no allowance shall be made for future growth.

### 96.045 Rights of existing facilities

- (1) No municipality, in which there is located an existing electric, water or gas public utility plant or facility shall construct or cause to be constructed any similar utility plant or any similar public utility facility duplicating such existing plant or facility or to obtain or acquire any similar public

utility plant or facility other than by the purchase of the existing plant or facility or by the acquisition of such existing plant or facility by the exercise of the power of eminent domain.

(2) “Municipality” means any county, city, and municipal corporation in the Commonwealth of Kentucky, and any board, commission or agency thereof.

(3) All laws and parts of laws in conflict herewith to the extent of such conflict are repealed.

## CONTROL OF PRIVATELY OWNED UTILITIES

### 96.050 Authorized city may regulate construction and operation of utilities

The legislative body of any authorized city may, by ordinance:

- (1) Direct and control the laying and construction of railroad or street railway tracks, bridges, turnouts and switches, poles, wires, apparatus and appliances in the streets and alleys of the city, and the location of depot grounds within the city.
- (2) Require that bridges, turnouts and switches be so constructed and laid as to interfere as little as possible with ordinary travel and the use of the streets and alleys, and that sufficient space be kept on either side of the tracks for safe and convenient passage.
- (3) Prohibit the making of running switches.
- (4) Require all railroad companies to construct and keep in repair suitable crossings at the intersections of streets, alleys, ditches, sewers and culverts, and to light and guard the same.
- (5) Require railroad companies to erect gates at street crossings.
- (6) Direct the use and regulate the speed of locomotive engines, steam, electric, street or other kind of cars within the limits of the city.
- (7) Prohibit and restrain railroad companies from doing any storage and warehouse business, or collecting money for storage, except in cases where the consignor or consignee of goods or wares fails to remove them within a reasonable time from the depots of such companies.
- (8) Compel telephone and telegraph companies and all persons using, controlling or managing telegraph or telephone wires to put and keep their wires underground.
- (9) Compel gas and electric light companies and all persons using, controlling or managing electric light wires for any purpose to change and relocate poles, electric wires, conduits for electric wires, gas mains and pipes, place those above the surface of the ground below it, change the method of conveying light, and generally to do things conducive to the safety and comfort of the inhabitants of the city in the premises.
- (10) Regulate the manner in which electric light, telephone and telegraph wires are placed underground, and the use of all such wires and connections therewith.
- (11) As used in this section, “authorized city” means a city included on the registry maintained by the Department for Local Government under subsection (12) of this section.
- (12) On or before January 1, 2015, the Department for Local Government shall create and maintain a registry of cities that, as of August 1, 2014, were classified as cities of the second class. The Department for Local Government shall make the information included on the registry available to the public by publishing it on its Web site.

**96.060 City with population of 8,000 to 19,999 may grant rights-of-way to utilities; conditions**

- (1) The legislative body of any city with a population equal to or greater than eight thousand (8,000) but less than twenty thousand (20,000) based upon the most recent federal decennial census may, by ordinance, grant the right of way in streets, alleys and public grounds of the city to any railway, street railway, gas, water, steam heating, telephone or electric light or power company for a term not exceeding twenty (20) years. Before granting such privilege, the city shall, after advertising by publication pursuant to KRS Chapter 424, receive bids publicly, and award the privilege to the highest and best bidder, having the right to reject any and all bids.
- (2) The city shall reserve the right to regulate and control the tracks, pipes and wires of such companies, and the public ways in which they are laid or constructed, and shall reserve the right to require any such company to conform to any changed grades of the streets and public grounds, to pay the cost of improving between its rails and for a reasonable distance on either side of its rails, to make culverts beneath them for the free flow of water, to change its rails, or mode of construction or operation, to suit public convenience, to raise or lower its pipes, or to take down its wires and lay them underground, as the public good requires.
- (3) The city shall not be liable for the cost or damage occasioned by such changes, or for any damage for delay in the operation of the business of any such company occasioned by any street improvement or repairs, or the constructing, bursting or repairing of any sewer or pipe in or across any street, alley or public ground, or for injury by any mob or other violence.
- (4) All such grants shall expire and become voidable, at the option of the city, although a consideration has been paid, unless a bona fide organization has taken place and business has been commenced and prosecuted under the grant in good faith within one (1) year from the date of the grant. The legislative body may impose other conditions and terms in addition to and not inconsistent with those enumerated in this section. The provisions in this section as to advertisements and bids, and limitation of the grant to twenty (20) years, shall not apply to the grant of the right of way to a trunk railway.

**96.070 City may grant rights-of-way to utilities; conditions**

The legislative body of any city may grant rights-of-way over the public streets or public grounds of the city to any utility company, on such conditions as seem proper, shall have a supervising control over the use of same, and shall regulate the speed of cars and signals and fare on street cars. The legislative body may compel any railroad company to erect and maintain gates at street crossings and prevent railroads from obstructing public ways of the city, and fix penalties for the violation of these provisions. Nothing in this section shall prevent any property owner whose property abuts on a street on which a railroad is granted a right-of-way from recovering from the railroad any damage done to his property by the occupation or use of the street by the railroad.

**96.080 Water company may condemn land and material**

Any person constructing, maintaining or operating waterworks or pipelines for the supply of water to a municipality may condemn lands and materials necessary to carry out those purposes, in the manner prescribed in the Eminent Domain Act of Kentucky.

## CITY OWNED STOCK IN UTILITY COMPANY

### 96.090 Sale of gas company stock owned by first-class city

- (1) Any city of the first class that owns stock in a gas company carrying on business within its boundaries may dispose of the stock upon such terms as may be prescribed by ordinance, but the stock shall not be sold for less than par.
- (2) The proceeds of the sale of the stock shall be applied solely to the construction of public sewers, but the purchaser of the stock shall not be required to look to the application of the purchase money.

### 96.100 Amendment to charter of gas company in which first-class city owns stock

The legislative body of a city of the first class may, on terms prescribed by ordinance, authorize the mayor to consent, on behalf of the legislative body, to such amendments to the charter of any gas company, in which the city owns stock, as are approved by the board of directors of the company, so as to vest in the board of directors and stockholders of the company the same authority to deal with its charter as the stockholders and directors of any other corporation organized under the law of Kentucky have.

### 96.110 Cities may subscribe for stock in water companies

Any city may, with funds provided from the general levy or from the sale of bonds, purchase stock in any corporation owning or operating or organized for the purpose of owning or operating a waterworks within the corporate limits of the city.

## FURNISHING WATER OR LIGHT TO ANOTHER CITY OR OUTSIDE LIMITS

### 96.120 City may acquire franchise to furnish water and light to another city; powers to contract with other city and construct and maintain apparatus

- (1) Any city that owns and operates its own water or light plant may acquire a franchise to furnish water and light to any other city, in the same manner that any private corporation or individual may acquire such a franchise.
- (2) Any city that owns and operates its own water or light plant may contract with any other city to furnish water and light to that other city. Those contracts may be entered into by the legislative bodies of the cities, and the legislative bodies are given full power to so contract in regard to the furnishing of water or light. Each contract shall be specific in its terms. Any city may pay to any other city a rental for water and light from year to year, or for a term of years.
- (3) Any city may construct, lay, or maintain mains, pipes, lines, or other necessary apparatus to convey water or light from any city that owns and operates its own water or light plant, or may contract with the other city to do these things, and the other city shall have the same power. For this purpose, any city may acquire rights and rights-of-way in the same manner that private corporations or individuals may acquire rights and rights-of-way, and may do any other things in carrying into effect the provisions of this section that any individual or corporation may do.

### 96.150 Extending water supply or sanitary sewer system outside city limits; limitation; consideration of installation of fire hydrants on extended lines

- (1) Any city that owns or operates a water supply or sanitary sewer system may extend the system into, and furnish and sell water and provide sanitary sewers to any person within, any territory



contiguous to the city, and may install within that territory necessary apparatus; provided, however, that the extension of a water supply or sanitary sewer system shall not enter into any territory served by an existing water supply or sanitary sewer district unless such district requests the extension of water or sewer services from a city. For these purposes the city or sanitation authority established by an interlocal agreement may condemn or otherwise acquire franchises, rights, and rights-of-way, as private corporations may do.

- (2) When extending the system to any person, water district, or water association, the city may consider the installation of fire hydrants on the extended lines. The city may extend water lines which are incapable of servicing fire hydrants only if the city determines that servicing hydrants is not feasible. The determination shall include consideration of the incremental costs of adequately sized pipe and associated pumps and towers, and the benefits of real estate development, water sales, the availability of fire protection insurance, and the reduction in fire insurance premiums which may result from the installation of hydrants at specified intervals. When extending lines to a water district or water association, the determination may be made in consultation with the district or association, taking into consideration their fiscal capacity.

## POWERS OF CITIES TO FURNISH UTILITY SERVICES

### 96.160 Power of city to furnish water and light

The legislative body of any city may, by ordinance:

- (1) Provide the city with water; establish and regulate public cisterns, hydrants and reservoirs, within or beyond the limits of the city, for the extinguishment of fires and the convenience of the inhabitants; prevent the unnecessary waste of water; and compel any water company to change or relocate any water main or pipe.
- (2) Provide, by itself or through others, for lighting the streets, public places and buildings of the city and furnishing light to its inhabitants; and regulate the quality and quantity of the light and the method, time and appliances for furnishing light.

### 96.170 Power of city to furnish utility services

The legislative body of any city may, by ordinance, provide the city and its inhabitants with water, light, power, and heat, by contract or by works of its own, located either within or beyond the boundaries of the city, make regulations for the management thereof, and fix and regulate the prices to private consumers and customers.

## COMBINED CITY ELECTRIC AND WATER PLANT

### 96.171 Adoption of provisions of KRS 96.172 to 96.188 by city

The governing body of any municipality now or hereafter owning an electric and water system and operating them as one (1) combined system or plant may elect to operate under the provisions of KRS 96.172 to 96.188, in which case, from the time of the exercise of such election and the appointment of a board under said sections, the electric and water system of such municipality shall be operated under the provisions of KRS 96.172 to 96.188 as an electric and water plant.

**96.172 Ordinance of city adopting provisions of KRS 96.171 to 96.188 for operation of combined electric and water plant; electric and water plant board; appointment; qualifications; corporate powers; prohibition of nepotism; bond of board members; oath; term; removal**

- (1) Any municipality now or hereafter owning and operating an electric system and a water system and operating them as one (1) combined system or plant may elect to operate such systems as an electric and water plant under the provisions of KRS 96.171 to 96.188 by enacting an ordinance declaring therein the desire and intention of the municipality to accept and operate its electric and water system or plant under the provisions of KRS 96.171 to 96.188 and by providing in said ordinance that the municipality accepts and agrees to all of the provisions of KRS 96.171 to 96.188. The ordinance shall further authorize the mayor or chief executive to appoint a board, subject to the approval of the appointments by the governing body of the municipality. Upon the passage of such ordinance the mayor or chief executive of any such municipality shall, with the approval of the governing body of the municipality, appoint a board of public utilities, consisting of five (5) citizens, taxpayers, voters, and users of electric energy or water. Said board shall be appointed and qualified before the municipality shall have any authority to proceed further under the provisions of KRS 96.171 to 96.188. Said board, when so appointed and qualified, shall be and hereby is declared to be a body-politic and corporate, with perpetual succession; and said board may contract and be contracted with, sue and be sued, in and by its corporate name, and have and use a corporate seal. The name of the board shall be "Electric and Water Plant Board of the City of \_\_\_\_\_, Kentucky."
- (2) No person shall be appointed a member of the board who has, within two (2) years next before his appointment, held any public office, or who is related within the third degree to the mayor or any member of the governing body of the municipality.
- (3) Neither the board, nor the superintendent appointed by the board as provided in KRS 96.176, shall appoint to any subordinate office which it may create, nor employ in any capacity any person who is related within the third degree to any member of the board or to the superintendent or to the mayor of said municipality or to any member of the governing body of the municipality. No officer or employee of a municipality shall be eligible for such appointment until at least one (1) year after the expiration of the term of his office or employment.
- (4) The members of the board shall be citizens, taxpayers, voters, and users of electric energy or water, and shall not at the time of their appointment be indebted to the municipality either directly or indirectly or be surety on the official bond of any officer of said municipality.
- (5) If at any time during his term of office a member of the board becomes a candidate for or is elected or appointed to any public office, he shall automatically vacate his membership from the board, and another person shall be appointed to his place.
- (6) Each member of said board shall execute bond, in an amount required by the governing body of the municipality by resolution or ordinance, conditioned upon the faithful performance of their official duties. The surety on said bonds shall be a surety company qualified to do business in Kentucky. The cost of said bonds shall be charged as an operating expense and paid by the board.
- (7) Each member of the board shall qualify by taking the oath required by Section 228 of the Constitution.
- (8) The original appointees shall serve two (2) for one (1) year, one (1) for two (2) years, one (1) for three (3) years and one (1) for four (4) years, respectively, from the date of their appointment, as the said mayor or chief executive officer of the municipality shall designate. Successors to retiring members so appointed shall be appointed for a term of four (4) years in the same manner, prior to the expiration of the term of office of the retiring members. Appointments to complete unexpired terms shall be made in the same manner as original appointments.
- (9) Any member of the board may be removed from office upon a vote of a majority of the members of the governing body of the municipality for inefficiency, neglect of duty, misfeasance, nonfeasance, or malfeasance in office.



**96.173 Salaries of board members and secretary-treasurer; all salaries and expenses payable from revenues of plant**

- (1) The salary of each member of the board shall be fixed by the board, and shall not exceed two thousand four hundred dollars (\$2,400) per annum.
- (2) Such salaries, as well as the salary of the secretary-treasurer of such board, shall constitute a cost of operation and maintenance of the plant.
- (3) The municipality shall not be liable for the payment of any salary or compensation of any of the members of said board, or for the payment of the salary or compensation or expenses of any person employed by said board, and all such salaries, compensation and expenses and any and all liabilities, of whatever kind or character incurred by the board or any officer or employee thereof, shall be payable solely and only out of the revenues obtained by said board under the provisions of KRS 96.171 to 96.188, and said liabilities shall be so limited.

**96.174 Quorum of board; officers; meetings; bylaws and rules of procedure**

A majority of the board shall constitute a quorum and the board shall act by vote of a majority present at any meeting attended by a quorum. Vacancies in the board shall not affect its power or authority so long as a quorum remains. Within ten (10) days after appointment and qualification of members, the board shall hold a meeting and elect a chairman. The board shall at the same time elect a secretary-treasurer, and shall fix his compensation, which, together with his compensation as a member of the board, shall not exceed one thousand five hundred dollars (\$1,500) per annum. The secretary may be removed by the board for cause. The board shall hold public meetings at least once each month, at such regular time and place as the board may determine. Any special meeting of the board may be called by the chairman or by two (2) members; but if such special meeting is called, written notice shall be sent to all members by the secretary. Except as otherwise expressly provided in KRS 96.171 to 96.188, the board shall establish its own bylaws and rules of procedure.

**96.175 Powers of board**

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

- (1) Acquire property, real and personal, tangible and intangible, necessary or incident to the proper conduct of its business.
- (2) Operate, maintain, improve and extend the electric and water plant, and provide electric and water service to any user or consumer within and without the boundaries of any municipality, and charge and collect reasonable rates therefor.
- (3) Fix and determine classifications, rates and charges for services; provided, however, the rates and charges so fixed and determined at all times shall be sufficient to produce revenues sufficient to pay all operating expenses, interest, and bond requirements, sinking fund requirements, adequate depreciation reserves, taxes, or payments in lieu of taxes, and reserves for contemplated extensions and improvements.
- (4) Construct, lease, operate and control any and all works, lines, buildings and other facilities across, along or under any street or public highway, and over any lands which are now or may be the property of the Commonwealth or of any county or municipality within this Commonwealth. The board shall, however, at its own expense, restore any such street or highway to its former condition and state as nearly as may be possible and shall not use the same in a manner as to impair its usefulness or to interfere with or obstruct the maintenance thereof. Before exercising these powers the board shall obtain a permit or consent or approval in writing from the governing

authority of the municipality, or the fiscal court, or the Department of Highways, having appropriate jurisdiction over any and all of such respective streets or public highways.

- (5) Accept gifts, grants of property, real or personal, including money, from any person, municipality, or federal agency, and to accept voluntary and uncompensated services; provided, however, that when engineering services are required by the board no engineer or firm with which he is associated who is engaged in whole or in part in the business of buying or selling any electric or water equipment, machinery, fixtures, materials, supplies, or the sale or purchase of bonds shall be eligible for employment or for any service whatsoever under the provisions of KRS 96.171 to 96.188.
- (6) Contract debts and borrow money for the improvement and extension of any electric and water plant or for the refinancing of any existing bonded indebtedness on the property or any portion thereof, issue bonds therefor, provide for the rights of holders of the bonds and to secure the bonds as hereinafter provided, and pledge all or any of the net revenue derived from the electric and water plant to the payment of such debts or repayment of money borrowed.
- (7) The title to any property, real or personal, which the board may acquire shall vest in the municipality for the use and benefit of the electric and water system. The board shall have the power to sell or otherwise dispose of any personal property used or useful in the operation of the electric and water system which may be or become obsolete or otherwise determined by the board not to be necessary in the operation of the electric and water system. Any bill of sale or other instrument of conveyance shall be executed by the chairman of the board and attested by the secretary of the board.
- (8) Make contracts and execute instruments containing such covenants, terms and conditions as in the discretion of the board may be proper, necessary or advisable for the purpose of obtaining loans from any source, or grants, loans or other financial assistance from any governmental agency; make all other contracts and execute all other instruments as in the discretion of the board may be advisable in or for the furtherance of the operation, maintenance, improvement or extension of any electric and water plant and the furnishing of service; and carry out and perform the covenants, terms, and conditions of all such contracts or instruments, as well as all contracts and instruments in existence and effect at the time of the transfer of the property to the board as herein provided.
- (9) Enter on any lands, waters and premises for the purpose of making surveys, soundings and examinations in connection with the operation, maintenance, improvement or extension of any electric and water plant and the furnishing of service.
- (10) Do all acts and things necessary or convenient to carry out the powers expressly given in KRS 96.171 to 96.188, except sell, convey or mortgage the real property.
- (11) Make any contracts necessary or convenient for the full exercise of the powers herein granted, including, but not limited to, contracts for either the purchase or sale or both the purchase and sale of electric energy or power; and, in connection with any such contract with a governmental agency, the board may stipulate and agree to such covenants, terms, and conditions as it deems appropriate, including, but without limitation, covenants, terms, and conditions with respect to the resale rate, financial and accounting methods and the manner of disposing of the revenues or any part thereof derived from the operation of the plant as herein provided.
- (12) Acquire by purchase or the exercise of eminent domain all lands, easements, rights of way, either upon or under or above the ground, reasonably necessary or desirable in connection with the operation, maintenance or extension of an electric and water plant.
- (13) The board shall have the power to accept the provisions of and conduct its operations under the provisions of the Kentucky Workers' Compensation Act.

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

**96.176 Board to control plant; employees; rates and practices; engineer; contract**

- (1) Upon and after a board has been appointed and qualified, the said board shall have charge of the exclusive supervision, management and control of the operation, maintenance and extension of the electric and water plant.
- (2) All powers of the municipality to operate, maintain, improve and extend, and to furnish electric and water service, shall be exercised on behalf of the municipality by the board. The board shall employ all employees, fix their duties and compensation, and shall determine programs and make all determinations as to the operation, maintenance, improvement and extension of the electric and water plant, shall determine and fix the rates to be charged for the classes of service rendered, shall determine all financial practices, shall establish rules and regulations such as it deems necessary or appropriate to govern the operation of the plant and the furnishing of electric and water service, and shall collect all moneys from the operation, maintenance, improvement and extension of the electric and water plant and the furnishing of electric and water service and disburse same in the manner and for the purposes hereinafter provided.
- (3) The board in the operation of such system may, in its discretion, engage the services of a professional engineer, qualified by education, training and experience in the operation, maintenance, improvement and extension of electric and water systems, as supervising engineer, upon terms and conditions of service such as may be satisfactory to the board. The employment of any such engineer shall be by written contract, which shall specify the services to be rendered by such person, and the compensation to be paid. Any such contract may be terminated upon sixty (60) days' notice by either party. The board may, in its discretion, require of such person so engaged a bond, in a sum to be determined and approved by the board, conditioned upon his faithful performance of the services to be rendered by him under and by virtue of such employment. A copy of any such contract shall be filed in the office of the city clerk.
- (4) A copy of the schedule of the current rates and charges in effect from time to time, and a copy of all rules and regulations of the board relating to electric and water service shall be kept on public file at the main and all branch offices of the electric and water plant board and also in the office of the municipal clerk.
- (5) All contracts shall be let by the board, and all contracts for the purchase of materials, equipment and supplies in excess of five thousand dollars (\$5,000) shall be let only after competitive bidding; provided, however, when any materials, equipment or supplies be not available in the open market, such materials, equipment and supplies may be purchased without competitive bidding. All contracts shall be in the corporate name of the board, and shall be signed by the chairman or vice chairman of the board, and attested by the secretary or treasurer of the board. The board shall make and keep or cause to be made and kept full and proper books and records.

**96.177 Charge for service furnished to city**

The board shall charge the municipality and all departments and works thereof for any electric and water service furnished to them at the rate applicable to other customers taking service under similar conditions. Revenues derived from such service shall be treated as other revenues.

**96.178 Eminent domain**

Any board proceeding under KRS 96.171 to 96.188 shall have the right to acquire by the exercise of the power of eminent domain, all lands, easements, rights of way, either upon or under or above the ground, reasonably necessary or desirable in connection with the operation, maintenance, improvement

or extension of its electric and water plant. The condemnation or eminent domain proceedings shall be brought in the name of the board, and proceed in the form and manner now prescribed for the condemnation of land by the Eminent Domain Act of Kentucky.

#### **96.179 Payment of tax equivalent**

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

#### **96.180 Pension plan for employees; repeal of ordinances establishing pension fund; liquidation and distribution of assets; report; coverage provided in County Employees Retirement System after August 1, 1988**

- (1) The board may, by proper order, provide a pension plan for its employees. In the event the board elects to provide a pension plan, it shall determine and formulate the form of pension plan to be used; determine and prescribe the eligibility of employees or their dependents to a pension or other benefits; determine and prescribe the monthly allowance or pension for employees or their dependents so determined to be eligible for a pension or benefits under the pension plan, not to exceed, however, a sum equal to one-half ( ) of the monthly salary or wages of any employee at the time of his or her retirement; appoint a commission, which shall consist of three (3) members possessing the qualifications of a member of the board, for the administration of the pension plan and prescribe the powers and duties of such commission; appoint a trustee of the pension fund, fix the term of his office and the compensation of such trustee, and prescribe the powers and duties of such trustee and do and perform any other or further acts necessary to effectuate such pension plan. When a pension plan shall have been adopted, a commission appointed to administer such plan and a trustee of the pension fund appointed and qualified, the board may annually appropriate and pay out of its operating revenue, as an operating expense, into the sinking fund, a sum sufficient, when determined on a fair actuarial basis, to maintain the pension plan so adopted, not exceeding, however, a sum equal to one-half of one percent (0.5%) of the fair value of the utility property and assets. The board may assess, and cause to be paid into the pension fund monthly, such amount or percent of the salary of all employees eligible under and electing to accept the pension plan as may be equitably determined on a fair actuarial basis, not to exceed, however, five percent (5%) of the monthly salary of any employee. The trustee of the pension fund shall give such bond as required by the board, the cost of which shall be payable out of the pension fund. The trustee of the pension fund shall each year file with the board a report showing his actions and his accounts as such trustee.
- (2) The board shall have full power to receive any and all funds of property which may be available or become available to the board or the city for use in the creation or maintenance of a pension plan for the employees of the board, including but not limiting the power to sign, execute and deliver such receipts, indemnity agreement or other writing which either the board or the city may be required to sign, execute and deliver to obtain any such fund or property for such purpose.
- (3) If all liabilities to all individuals entitled to benefits from the pension fund established under this section have been satisfied, the ordinances establishing the fund may be repealed by the majority vote of the entire board. If repealed, the fund's trustees shall, within sixty (60) days of repeal, proceed with the liquidation of any residual assets of the fund. All residual assets liquidated pursuant to this subsection shall be distributed by the trustees to the board's general fund so long as the return of assets complies with federal and state law governing the distribution of assets. Within thirty (30) days following the distribution of residual assets, the trustees of the fund shall as its last act file a complete report with the board of the actions taken to terminate the fund and liquidate residual assets of the fund.
- (4) (a) After August 1, 1988, except as permitted by KRS 65.156, no new pension fund shall be created pursuant to this section and boards which were covered by this section on or prior to August 1, 1988, shall participate in the County Employees Retirement System effective August 1, 1988.

- (b) Any board which provided a pension plan for its employees on or prior to August 1, 1988, shall place employees hired after August 1, 1988, in the County Employees Retirement System. The board shall offer employees hired on or prior to August 1, 1988, membership in the County Employees Retirement System under the alternate participation plan as described in KRS 78.530(3), but such employees may elect to retain coverage under this section.

#### **96.181 Deposit and disbursement of funds**

All moneys derived from the operation of the electric and water plant or any other operation of the board, shall be deposited to the credit of the board in a separate bank account or accounts, separate from all other municipal funds, and adequate records shall be kept of all such receipts and their sources. All withdrawals and payments from said fund, as well as any other fund which may be created, shall be only pursuant to appropriate action of the board, and the voucher, warrant or check withdrawing or paying out any part of said fund shall be signed by the treasurer or chairman of the board.

#### **96.182 Application of funds derived from operations; use of surplus**

Subject to the provisions of outstanding bonds and contracts, the board shall apply all funds derived from operations: (1) to the payment of operating expenses, (2) to the payment of bond interest and retirement, (3) to sinking fund requirements, (4) to the maintenance of a fund to meet depreciation and the improvements and extension of the plant in an amount equal to six percent (6%) of the undepreciated book value of its property, (5) to the maintenance of a cash working fund equal to one (1) month's revenue, (6) to the payment of other obligations incurred in the operation and maintenance of the plant and the furnishing of service, and (7) such taxes, if any, as the board may elect to pay under the provisions of KRS 96.179, and any surplus revenues at the end of any twelve (12) months ending June 30 shall be transferred to the sinking fund, and used by the board only for the redemption or purchase of outstanding bonds, in which case such bonds shall be canceled, or for the creation and maintenance of a cash working fund, or the creation and maintenance of a fund for improvement and extension of the system, or for the reduction of rates, or the board, after the original cost of the property shall have been fully paid and satisfied may, in its sole discretion, use, apply and pledge all or a part of such surplus revenues for the acquisition, construction, maintenance, improvement, addition to and operation of any "public project" as the same is defined in subsection (1) of KRS 58.010, or for the purpose of purchasing, paying, retiring, guaranteeing the payment of or underwriting revenue bonds issued by the city or any agency thereof to finance the acquisition, construction, maintenance, improvement, addition to and operation of such "public project," which "public project" shall be located within the territory served by the board; the board is hereby vested with all of the powers, duties and responsibilities delegated and granted to a "governmental agency" under KRS 58.020 to 58.140, both inclusive; provided, however, that the acquisition or construction of any "public project" as above defined, shall be first approved by the common council before such "public project" is undertaken.

#### **96.183 Termination of operation under KRS 96.171 to 96.188**

The governing body of the municipality may terminate the operation and management of the electric and water plant by the board under the provisions of KRS 96.171 to 96.188 only by first complying with the following provisions, to wit:

- (1) The governing body of the municipality, upon the adoption of an ordinance declaring the desire of the municipality to terminate the operation of the electric and water plant by the board under the provisions of KRS 96.171 to 96.188, may direct that such question be submitted to an election of the qualified voters of the municipality. The mayor shall certify such ordinance to the county clerk not later than the second Tuesday in August preceding the next general election, who shall have prepared to be placed before the voters in the general November election, the question: "Are you in favor of the termination of the operation and management of the electric and water system of the city by the Electric and Water Plant Board?" The voters shall be instructed to indicate a "Yes" or a "No" vote.

- (2) The mayor of such municipality shall advertise such election and the object thereof by publication pursuant to KRS Chapter 424, and also by printed handbills posted in not less than four (4) conspicuous places in each voting precinct in the city and at the courthouse door. All legal voters of such city shall be privileged to vote at such election.
- (3) If two thirds (2/3) of all the qualified voters of the municipality voting in said general election on the question shall vote in the affirmative, the governing body of the municipality may adopt an ordinance rescinding its election to operate under the provisions of KRS 96.171 to 96.188, and the board, on the first day of the month following the passage and approval of such ordinance, shall by resolution transfer the operation of the electric and water plant to the governing body of the municipality.

#### **96.184 Revenue bonds**

- (1) The board at any time may issue and sell revenue bonds to finance improvements or extensions of the plant, or the board, after the original cost of the property shall have been fully paid and satisfied, may, in its sole discretion, issue, sell, and pledge its revenues to secure the payment of revenue bonds the proceeds of which are to be used to finance the acquisition, construction, maintenance, improvement, addition to, and operation of "public projects" as defined in KRS 96.182, or for the purpose of purchasing, paying, retiring, guaranteeing the payment of, or underwriting revenue bonds issued by the city or any agency of the city to finance the acquisition, construction, maintenance, improvement, addition to, and operation of a public project, and sell refunding bonds for the purpose of providing for the payment of any outstanding bonds.
- (2) Bonds issued pursuant to KRS 96.171 to 96.188 may be issued in one or more series, may bear a date or dates, may mature at a time or times, not exceeding forty (40) years from their respective dates, may be in a denomination or denominations, may be in a form, either coupon or registered, may carry registration and conversion privileges, may be executed in a manner, may be payable in a medium of payment, at a place or places, may be sold in blocks, may be subject to terms of purchase or redemption of all or any of the bonds before maturity in a manner and at a price or prices as may be fixed by the board by resolution prior to the sale of the bonds.
- (3) All revenue bonds issued pursuant to the provisions of KRS 96.171 to 96.188 in the hands of bona fide holders shall have all the qualities and incidents of negotiable instruments under the law merchant. All bonds shall be sold to the highest responsible bidder at the time and place as fixed by the board in the notice of sale of the bonds, which notice shall have been advertised by publication pursuant to KRS Chapter 424. The board shall receive written, sealed, competitive bids, which shall be publicly opened and read at the time and place specified in the notice of sale. The board may reject all bids and readvertise.
- (4) No holder or holders of any revenue bonds issued under KRS 96.171 to 96.188 shall have the right to compel any exercise of taxing power of the municipality to pay the bonds or the interest on the bonds. Each bond issued under KRS 96.171 to 96.188 shall recite in substance that the bond, including interest on the bonds, is payable solely from the revenues pledged to the payment of the bond, and that the bond does not constitute a debt of the municipality within the meaning of any statutory or constitutional provision or limitation.
- (5) Any holder or holders of bonds issued pursuant to KRS 96.171 to 96.188 shall have the right, in addition to all other rights:
  - (a) By action in court, to enforce his or their rights against the board, and any other proper officer, agent, or employee, including, but without limitation, the right to require the board, and any proper officer, agent, or employee of the board, to fix and collect rates and charges adequate to carry out any agreement as to, or pledge of, revenues from the plant, and to require the board and any officer, agent, or employee of the board, to carry out any other covenants or agreements and to perform its and their duties under KRS 96.171 to 96.188.



- (b) By action in equity, to enjoin any act or thing which may be unlawful or a violation of the rights of the holder of bonds.
- (6) If there is a default in the payment of the principal or interest of any bonds issued pursuant to KRS 96.171 to 96.188, any court having jurisdiction may, upon the petition of the holders of not less than twenty-five percent (25%) of the outstanding bonds, appoint a receiver to administer the electric plant on behalf of the board, with power to charge and collect rates sufficient to provide for the payment of any bonds or obligations outstanding against the plant and for the payment of the operating expenses and to apply the income and revenues in conformity with KRS 96.171 to 96.188.
- (7) All bonds issued pursuant to KRS 96.171 to 96.188, bearing the signatures of officers in office on the date of the signing of the bonds, shall be valid and binding obligations, notwithstanding that before the delivery and payment of the bonds, any or all the persons whose signatures appear on the bonds shall have ceased to be members of the board issuing the same. The resolution of the board authorizing the issuance of the bonds shall contain a recital that the revenue bonds are issued pursuant to KRS 96.171 to 96.188, which recital shall be prima facie evidence of their validity and of the regularity of their issuance.
- (8) Bonds may be issued under KRS 96.171 to 96.188 without respect to the provisions of any laws requiring the prior approval of any court, commission, board, or regulatory authority.
- (9) All moneys received from the sale and issuance of bonds shall be used solely for the purpose for which the bonds were issued, except that any premium received for the bonds may be used for the payment of interest and principal of the bonds.

#### **96.185 Books and records; audit; inspection**

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

#### **96.186 Not to compete with REA corporation**

No board operating an electric and water plant under the provisions of KRS 96.171 to 96.188 shall construct any facilities or extend its existing facilities in competition with any existing facilities of any rural electric cooperative corporation.

#### **96.187 Limitation on action attacking proceedings**

Any action challenging the validity of any ordinance electing to operate under KRS 96.171 to 96.188, or any bond resolution of the board, or any election resolution or election held hereunder, shall be brought within sixty (60) days from the date on which such ordinance, election resolution or bond resolution was adopted or election held, as the case may be, and, if not brought within said time, shall be forever barred.

#### **96.188 Effective date of ordinance or resolution under KRS 96.171 to 96.188**

Every ordinance or resolution adopted by the governing body of the municipality or board under the provisions of KRS 96.171 to 96.188 shall become effective from and after its passage, and no such resolution or ordinance shall be subject to any referendum or election except as expressly provided in KRS 96.171 to 96.188.

## POWERS OF CITY OF 8,000 OR MORE CONCERNING UTILITY SERVICES AND UTILITY COMPANIES

### 96.189 Acquisition of transportation system by city

- (1) Any city may, pursuant to an ordinance so providing, acquire any streetcar system existing in the city, with all its appliances, or may establish and install a streetcar system, and may operate within and not more than ten (10) air miles beyond the corporate limits of the city, improve and extend a system so acquired or installed upon the terms and conditions as may be provided by ordinance and by the terms of the contract by which the system is acquired or installed. Any city may acquire, establish, and install a street omnibus or taxicab system, and operate it upon the terms and conditions as are prescribed by ordinance.
- (2) To provide for the financing of the streetcar system or street omnibus or taxicab line, the city may issue bonds at not less than par and accrued interest, to bear interest at a rate or rates or method of determining rates as the city determines, payable at least annually, and to mature at any time not exceeding twenty (20) years after their date, and may provide for a sinking fund to meet the bonds at their maturity. No bonds shall be issued except in compliance with the general law in reference to the amount of indebtedness that may be incurred by the city, nor until after a vote is taken as required by law to authorize the incurring of indebtedness.

### 96.190 Power of city to furnish utility services; power to regulate rates and service of utilities operating under old franchises

- (1) The legislative body of any city may provide the city and all persons in the city with water, gas, electric power, light, and heat, by contract with any person or by works and facilities owned or leased by the city and located within or beyond the city boundaries.
- (2) In all cases where the person furnishing the services is operating under a charter or franchise granted by the General Assembly prior to the adoption of the present Constitution of Kentucky the city legislative body may make and enforce rules and regulations for the furnishing and sale of such services, fix and regulate the quality, character and standards of such services, and fix and regulate the rates charged consumers for such services.

### 96.195 City may issue interest-bearing warrants for improvements and extensions to electric power plants or waterworks

Municipal corporations in the Commonwealth of Kentucky which own and operate municipal electric power plants or waterworks are authorized to issue interest-bearing warrants in payment for extensions and improvements to electric power plants or waterworks. The warrants shall bear interest at the rate or rates or method of determining rates as the legislative body of the municipal corporation determines and be due not more than five (5) years from date. They shall be payable only out of the income from the operation of the electric power plants or waterworks.

### 96.200 Use of profits from city-owned public utility

Except as otherwise provided in KRS 96.550 to 96.900, the legislative body of any city may, by ordinance, provide in what manner and for what purpose any profits, earnings or surplus funds arising from the operation of any public utility owned or operated by the city may be used and expended. The ordinance may be amended or repealed from time to time. Until such an ordinance is enacted any surplus earnings shall be paid into the city treasury, to be expended for the general purposes of government in the city.

## WATERWORKS IN CITIES OF FIRST CLASS

### 96.230 City of the first class or consolidated local government to control waterworks

Whenever any city of the first class or consolidated local government owns, through its commissioners of the sinking fund or revenue commission, respectively, all the shares of capital stock in any corporation engaged in supplying water to its inhabitants, the city or consolidated local government shall control, manage, and operate the plant of the corporation, its franchise, and all its other property, in the manner provided in KRS 96.240 to 96.310. The provisions of KRS 96.230 to 96.310 shall not affect the status of the stock as part of the assets of the sinking fund or revenue commission, respectively.

### 96.240 Board of waterworks; appointment; qualifications; term; oath

The mayor of a consolidated local government which is formed upon the consolidation of a city of the first class with its county, and which receives upon the consolidation from the city of the first class the shares of capital stock in any corporation engaged in supplying water to the area comprising the consolidated local government, shall appoint, subject to the provisions of KRS 67C.139, six (6) persons, no more than three (3) of whom shall be members of the same political party, who with the mayor as an ex officio member shall constitute a body corporate known as the "board of waterworks." Each appointee shall be at least thirty (30) years of age and shall be a resident of the county containing a consolidated local government and be the owner in his or her own right of real estate situated in the consolidated local government. At least one (1) such appointee shall be qualified, as specified in KRS 96.250, to serve as president of the board. No officer or employee of the consolidated local government, whether holding a paid or unpaid office, shall be eligible for appointment to the board. Of the persons first appointed, two (2) shall be appointed for a term of two (2) years, two (2) for a term of three (3) years, and two (2) for a term of four (4) years, and such terms shall expire on the date of the annual meeting of the board of waterworks. Their successors shall be appointed in the same manner, but for terms of four (4) years each. Appointees shall be eligible to succeed themselves. All vacancies shall be filled for the unexpired term by appointment in the same manner. Each member shall hold his office until his or her successor has been appointed and qualified. The oath of office of each member shall be filed with the board of the revenue commission of the consolidated local government.

### 96.250 Officers of board of waterworks; employees

The board of waterworks shall annually elect a president, treasurer, secretary and chief engineer, who shall hold their offices for one (1) year, or until their successors have been elected and qualified, and devote all their time to the duties of their respective offices. The member elected president shall have had at least five (5) years executive or major administrative experience in public utility operation or administration. The offices of secretary and treasurer may at the election of the board, be combined in one (1) person. No member of the board except the president shall receive a salary, but the board may allow reasonable compensation to each member other than the president for attendance upon the meetings of the board. The president shall be elected from the members of the board. The president, secretary and treasurer, or the secretary-treasurer if the offices are combined in one (1) person, shall each give bond, with approved surety, in an amount fixed by the board, payable to the board and conditioned that the makers will faithfully perform the duties of their several offices. The board may appoint such other employees as it deems necessary or proper and may fix the compensation of its officers and employees, provided, however, the board shall not be bound in fixing the compensation or providing for retirement benefits by the provisions of KRS 78.530 and 65.156.

### 96.260 Powers of board

The board of waterworks shall be vested with all the authority and privileges, exercise all the franchises, and have possession, control, and management of all the property, of the corporation of which the consolidated local government or city owns all the stock. It may make contracts and sue and be sued, but only in the name of the corporation.

**96.265 Extension of service to persons not currently served; costs; assessments; apportionment warrants; liens**

The board of waterworks may extend the waterwork corporation's facilities to provide water service to persons within and outside the city of the first class, including extensions into counties adjoining its county of origin. In extending service to persons not presently served within the city and county of the waterwork corporation's origin it may, but is not required to, make water line extensions recovering the cost thereof, KRS 96.539 notwithstanding, by assessment as provided in this section.

- (1) The board of waterworks, acting on its own motion, may hold a public hearing to consider the extension of the waterwork corporation's facilities to provide water service to persons not currently served. Alternatively, in response to a petition signed by the majority of owners in an area not currently served by the waterwork corporation's service, which petition shall describe the area proposed to be served, the board of waterworks shall hold a public hearing to consider the benefits of extending its service to that area. Notice of the hearing shall be published in accordance with KRS Chapter 424. The board of waterworks shall designate a member of the board or an officer of the waterworks corporation to preside over the hearing. Following the public hearing, the board of waterworks shall determine whether it is feasible and beneficial to extend its service. If the board of waterworks determines that it is feasible and beneficial to extend its service, it shall refer the matter to the legislative body governing the area to which service shall be extended. If the legislative body determines that service should be extended, it shall pass an ordinance providing for the extension of service.
- (2) The costs of such extension shall be apportioned by the ordinance against the property to which the waterwork corporation's service will be made available by reason of such extension according to an equitable basis, considering the size, configuration, and suitability as building sites of the lots or tracts to be served. Any of the following methods, or a combination thereof, may be used:
  - (a) The costs of such extension may be apportioned according to the number of square feet in any lot or tract abutting the publicly-dedicated right-of-way in which the water line extension is located. The rate of apportionment shall be the same for each square foot in any lot or tract abutting a publicly-dedicated right-of-way in which a water line extension is located, except the portions of any such lot or tract which lie a distance greater than a number of feet, as stated in the ordinance, from the water line extension, or which lie within a number of feet, as stated in the ordinance, from an existing water line located in a publicly-dedicated right-of-way which also abuts such lot or tract, shall not be subject to assessment nor included in the calculations of the square footage of such lot or tract. The rate of apportionment shall be determined by dividing the costs of the extension by the assessable area of all lots or tracts abutting the publicly-dedicated right-of-way in which a water line extension is located.
  - (b) The costs of such extension may be assessed against the lots or tracts according to the number of feet in the lot or tract fronting on the publicly-dedicated right-of-way in which a water line extension is located. The rate of apportionment shall be the same for each such foot of frontage, and shall be determined by dividing the assessable costs of the water line extension by the total front footage of all lots or tracts fronting on the part of the publicly-dedicated right-of-way in which a water line extension is located.
  - (c) The costs of such extension may be assessed against the lots or tracts abutting publicly-dedicated rights-of-way in which water line extensions are located according to the value of any such lot or tract, without regard to any improvements on such lots or tracts, as determined as of the date of the most recent assessment by the property valuation administrator of the county in which such lots or tracts are located. The rate of apportionment shall be the same for each dollar of assessed value of lots or tracts abutting the parts of the publicly-dedicated right-of-way in which the water line extension is located, except portions of such lots or tracts that are a distance greater than a number of feet, as stated in the ordinance, from the water line extension or that are within a number of feet, as

stated in the ordinance, from an existing water line of the corporation located in a publicly-dedicated right-of-way which also abuts such lot or tract shall not be assessed. The value of any lot or tract, portions of which are excluded from assessment, shall be determined by multiplying the value of the entire property by a ratio, the numerator of which is the number of square feet of the lot or tract to be assessed and the denominator of which is the number of square feet in the entire lot or tract. The rate of apportionment shall be determined by dividing the assessable costs of the water line extension by the total assessed value of all assessable lots or tracts abutting the parts of the publicly-dedicated rights-of-way in which water line extensions are located.

- (d) The costs of such extension may be assessed against the lots or tracts that may be served by the extension at a rate that is the same for each such lot or tract, where each such lot or tract is suitable for or limited to a single building site.
  - (e) If any lots or tracts abut on more than one (1) dedicated right-of-way in which a water line extension is made, such lots or tracts shall be assessed as if they abutted on only one (1) such right-of-way.
  - (f) In the event of a subdivision of a lot or tract assessed under this section, which subdivision requires a new water line extension, nothing herein shall prohibit the assessment of the newly subdivided lots or tracts, except those that abut a dedicated right-of-way with an existing water line.
- (3) The waterwork corporation shall determine the percentage share of the total costs of the extension to be assessed against each lot or tract and shall notify each owner of such share to be assessed against his lot or tract. Any owner may, within thirty (30) days after receiving notice of the method of apportionment or the percentage share of the total costs to be assessed against his property, appeal the percentage share to be assessed against his property by filing a written appeal with the waterwork corporation setting forth the bases for the challenge. The president of the waterwork corporation shall appoint one (1) or more officers of the corporation to review such appeal, which review may include holding a hearing on the appeal. Any determination by the officer or officers that affects only the assessment of the aggrieved property owner shall not require further legislative action. If, however, as a result of the appeal, the hearing officer or officers recommend that the method of apportionment be changed, the matter shall be referred back to the legislative body that passed the ordinance provided for in subsection (1) of this section for consideration of an amendment thereto.
- (4) The cost of property service connections from the water line extension to the property line as required shall be assessed against the individual lots or tracts to which such property service connections are furnished. The costs to be assessed for the property service connection shall be fixed by regulation of the board of waterworks based on its experience of costs for such work. No lot or tract owner shall be required to connect to the water line extension by reason of this section, but such failure to connect to the water line extension shall not exempt such lot or tract owner from its proportionate share of the costs as provided in subsection (2) of this section.
- (5) All lots or tracts abutting the publicly-dedicated right-of-way in which the water line extension is located shall be assessed as provided in the ordinance, except property dedicated to use for public roadways and property owned by cities of the first class and any joint agencies of cities of the first class and the counties in which such cities are located, if the extension is located in the city of the first class.
- (6) (a) The actual construction work to provide the water line extension and property service connections shall be done by, or under the control of, the board of waterworks.
- (b) The total cost of the water line extension, which is assessed against property served under subsection (2) of this section, shall include not only the actual construction costs and the costs of any easements required for the water line extension, but also costs of surveys,

designs, plans, specifications, notices, inspection, project legal and administrative services, and administration. However, costs included in the assessment which are other than actual construction costs and costs of easements shall not exceed fifteen percent (15%) of the actual construction costs and the costs of any easements of the project.

- (7) A lien superior to all liens except the liens for state, county, city, school, and road taxes and liens prior in time for other public improvements shall exist against the respective lots or tracts of land for the cost of the water line extension for apportionment as hereinafter provided and the interest due thereon, commencing with the date of issuance of the apportionment warrant.
- (8) Upon completion of the water line extension, the board of waterworks shall issue all apportionment warrants against the properties assessed and shall immediately list the record owners thereof in alphabetical order upon a register kept for that purpose. Each apportionment warrant shall be payable to the waterworks corporation, or its assignee, in equal monthly installments, not exceeding two hundred forty (240) months, of principal and interest and shall be the obligation of the owners of and a lien upon the applicable lots or tracts until paid in full. The apportionment warrants may bear interest at an annual fixed rate as then determined by the board of waterworks pursuant to KRS 58.430. When the warrant has been paid in full, the holder thereof shall notify the board of waterworks, and it shall mark upon the register the fact of payment and release the lien. If any installment of principal or of interest on the warrant is not paid when due, the holder thereof may foreclose the lien securing the payment of the warrant in the same manner as mortgage liens are foreclosed.
- (9) The lien shall exist from the date of the apportionment warrant. The board of waterworks shall cause such warrant or a notice thereof to be recorded in the office of the clerk of the county in which the affected property is located.
- (10) After any water line extensions have been constructed in conformity with this section, the board of waterworks shall notify each affected property owner of the cost apportioned to his property at his address as shown at the time the notice is sent on the records of the property valuation administrator for the county in which the affected property is located. Failure of any property owner to receive this notice shall not affect the validity of the lien.
- (11) If, by private agreement with the owners of lots or tracts, the waterworks corporation extends its water lines to those lots or tracts, and the private agreement provides for a lien on the lots or tracts to secure payment to the waterworks corporation of the cost of the extension, and a notice of such lien is recorded, that lien shall be superior to all liens except the liens for state, county, city, school, and road taxes and liens prior in time for other public improvements.

#### **96.270 Consolidated local government to receive water without charge; property to be exempted from taxation**

The consolidated local government shall have, through its board of waterworks, the use free of charge of all the water necessary for its fire department, police department, public buildings principally occupied by its employees, parks, parkways, its property principally used for public purposes, all of its agencies, and any waterfront parks located within the boundaries of the consolidated local government. It shall in turn exempt from taxation for consolidated local government purposes all the property of which it has the control through its board of waterworks. Nothing in this section shall affect the right and duty of the board of waterworks to fix and collect reasonable rates for the use of water furnished to any other person, whether by assessment or meter measurement.

#### **96.280 Consolidated local government to prescribe conditions for use of streets by board**

The legislative body of the consolidated local government may, by ordinance, fix reasonable conditions upon which the board of waterworks may cut into the public ways of the consolidated local government.



**96.290 Debts to be paid by waterworks**

All the existing obligations of the waterworks corporation and all the obligations created by the board of waterworks in the management and operation of the properties and in the performance of its duties, shall be discharged out of the property and rents, earnings, and incomes of the waterworks. The consolidated local government shall not be liable as a municipal corporation for such obligations.

**96.300 Ability of board of waterworks to borrow money; issuance of bonds; limitation of indebtedness**

The board of waterworks may borrow money for the purpose of meeting any of the obligations of the waterworks corporation and for current expenses of the board. In addition, the board may, after the commissioners of the sinking fund have by resolution consented, issue the bonds of the waterworks corporation or issue bonds for the refunding of bonds of the waterworks corporation, and these bonds may be issued and may be secured by the revenues of the waterworks corporation; by a mortgage upon the rights, privileges, franchises, and property of the corporation; or by both. The bonds may be issued in denominations, with maturities, bear interest, and be payable, as may be in the best interest of the waterworks corporation as determined by the board with the consent of the commissioners of the sinking fund and as otherwise required by the laws of the Commonwealth. No indebtedness, bonded or otherwise, may be authorized or consented to if, as a result of that borrowing, the waterworks corporation's net aggregate debt service on all outstanding indebtedness in any one year, multiplied by one and three-tenths (1.3), will exceed the corporation's net income, determined in accordance with generally accepted accounting principles, for the fiscal year immediately preceding the borrowing.

**96.310 Rules for government of board; reports**

The board of waterworks may establish and enforce reasonable rules and regulations for its own government. The board shall make a quarterly financial statement, showing its liabilities, receipts, and expenditures, and deliver a copy to the consolidated local government legislative body for introduction and inclusion into the minutes of the legislative body. The books and accounts of the board shall at all times be open to inspection by the mayor and the commissioners of the sinking fund or revenue commission, respectively, through their agents.

## **WATERWORKS IN CITIES OTHER THAN CITIES OF THE FIRST CLASS**

**96.320 Operation of waterworks in cities; commissioners of waterworks; employees; reports**

Cities that own a waterworks may operate such waterworks as a department of the city, or may appoint a commission to operate such waterworks. If such a commission is appointed, it may be styled "Commissioners of Waterworks," and shall be composed of from three (3) to six (6) members to be appointed by the mayor, subject to the approval of the city legislative body. If a commission is composed of six (6) members, the mayor shall appoint, in addition to the six (6) members, a member of the legislative body of the city who shall be an ex officio member of the commission. All commissioners shall reside in the area served by the waterworks and be registered voters in the county. A majority of the commissioners shall be residents of the city. The terms of the members shall be fixed by the city legislative body, or they may be appointed for indefinite terms, subject to removal by the city legislative body for cause. The commissioners shall give bond for the faithful performance of their duties in the sum of five thousand dollars (\$5,000). The commissioners shall manage the water system of the city. They may appoint a superintendent, secretary, treasurer and other necessary employees and fix their salaries. They shall make full monthly reports to the city legislative body of the operation and condition of the water system, including all receipts and expenditures. A majority of the members of the board shall constitute a quorum for the transaction of business.

**96.350 City of home rule class may acquire and operate waterworks; sewerage system may be joined**

- (1) Any city of the home rule class may, under the provisions of KRS 96.350 to 96.510, purchase, establish, erect, maintain and operate waterworks, together with extensions and necessary appurtenances thereto, within or without the corporate limits of the city, for the purpose of supplying the city and its inhabitants with water.
- (2) A sewerage system may be acquired with a water system and joined in one (1) project with the water system for the purpose of original financing.
- (3) KRS 96.350 to 96.510 constitute a method for the acquisition of waterworks by any city of the home rule class in addition or as an alternate to any other method authorized by statute. No proceedings shall be required for the acquisition of any waterworks or the issuance of bonds under KRS 96.350 to 96.510 except the proceedings required by KRS 96.350 to 96.510.

**96.3501 Powers of KRS 96.350 to 96.510 possessed by urban-county governments**

Having the powers of the city of the highest class at the time of the creation of an urban-county government, the provisions of KRS 96.350 to 96.510 are hereby affirmed to be possessed by urban-county governments. Any reference to a city, mayor, city legislative body, or agency of a city in KRS 96.350 to 96.510 shall also mean an urban-county government, mayor of an urban-county government, legislative body of an urban-county government, or agency of an urban-county government, respectively.

**96.351 Waterworks or waterworks and sewerage commissions in cities in counties of more than 50,000 other than counties containing a consolidated local government or urban-county government**

- (1) The city council of cities in a county containing a population of more than fifty thousand (50,000) other than a county containing a consolidated local government or urban-county government which have acquired a waterworks or a waterworks and sewerage system pursuant to KRS 96.350, and which are operating under the council form of government, may, by ordinance, establish either a waterworks commission or a waterworks and sewerage commission. The ordinance shall require the appointment of the commission in one (1) month from the passage of the ordinance. No two (2) members of the commission shall be selected from the same ward. The commission shall be appointed by the mayor, and shall consist of the mayor, who shall be a non-voting ex-officio member and either three (3) or five (5) freehold electors of the city who have been bona fide residents of the city for two (2) years next before their appointment. One (1) member shall be a member of the city legislative body. No appointed member shall be related to the mayor or a member of the city council within the third degree of consanguinity or affinity under the civil law.
- (2) The members of the commission shall enter upon the discharge of their duties as soon as appointed, and shall hold office four (4) years and until their successors are appointed and qualified, except that the member of the commission who is a member of the city legislative body shall hold office for one (1) year and until his successor is appointed and qualified. Any vacancy shall be filled in the same way the original appointments were made. The compensation of members shall be fixed by the city council prior to their appointment. The commission shall hold at least one (1) meeting each month, or more if required. Meetings shall be held at stated times, except special meetings.
- (3) The commission may designate a member to act as chairman in the absence of the mayor, with the same powers the mayor would have if presiding. If the commission consists of five (5) members, three (3) members shall constitute a quorum. If the commission consists of three (3) members, two (2) members shall constitute a quorum. The mayor or any two (2) members may call a special meeting. The city auditor shall be ex-officio clerk of the commission and custodian of its records. Copies of its records attested by him as clerk shall be competent evidence in all courts.

**96.355 Legislative body of city of the home rule class may provide city with waterworks system; police protection for waterworks system located outside city limits**

- (1) The legislative body of any city of the home rule class may by ordinance:
  - (a) Provide the city with water; establish, regulate and control public cisterns, hydrants and reservoirs, together with extensions and appurtenances thereto, within or without the limits of the city, for fire protection and the use and convenience of its inhabitants;
  - (b) Provide for the enforcement of said regulations for the health, welfare and well-being of its inhabitants.
- (2) Whenever cisterns, hydrants, reservoirs or any other portion of a waterworks system owned by any city set forth in subsection (1) of this section is located in whole or in part outside the city limits of any such city, the city may provide police protection as is necessary to prevent damage to or destruction of such property and to safeguard the water supply of the city from possible contamination.

**96.360 Acquisition of existing waterworks; notice of agreement; petition; election**

- (1) One (1) or more waterworks, owned by one (1) or more persons, may be acquired as a single enterprise, and the city legislative body may agree with the owner as to the value of the waterworks and purchase it at such value, after giving forty-five (45) days' notice by publishing the agreement of purchase, pursuant to KRS Chapter 424, setting out the price, interest rate, condition of plant, possible depreciation and repairs.
- (2) If, within the period of forty-five (45) days, a petition calling for an election on the proposition is filed with the county clerk of the county, signed by twenty-five percent (25%) of the qualified voters of the city who voted at the last preceding regular election, stating the residence of each signer and verified as to signatures and residence by the affidavits of one (1) or more persons, an election shall be held on the proposition. Notice of the election, setting forth the price, terms of bonds, interest, general repairs and condition of plant and nature of the election, shall be given by publication pursuant to KRS Chapter 424. The election shall be held at the next November election if the petition is filed with the county clerk and certified by the county clerk as sufficient not later than the second Tuesday in August preceding the regular election. The question to be submitted to the voters at the election shall be: "Are you in favor of the city of..... purchasing..... at the price of.....?" The purchase shall not be consummated unless a majority of the qualified voters voting on the proposition vote in favor of the purchase.

**96.370 Issuance of bonds; ordinance to authorize**

For the purpose of defraying the cost of acquiring any such waterworks and appurtenances or extensions thereto, either by purchase or construction, the city may borrow money and issue negotiable bonds, but only after an ordinance has been adopted specifying the proposed undertaking, the amount of bonds to be issued and the maximum rate of interest the bonds are to bear. The ordinance shall further provide that the proposed waterworks and appurtenances or extensions are to be acquired pursuant to the provisions of KRS 96.350 to 96.510.

**96.380 Interest rate and maturity of bonds**

Bonds may be issued bearing interest at a rate or rates or method of determining rates, payable at least annually, and shall be executed in a manner and be payable at times not exceeding forty (40) years from the date of issue and at the place or places as the city legislative body determines.

**96.390 Bonds negotiable and tax-free; method of sale; payable solely from revenues**

Bonds issued pursuant to KRS 96.370 shall be negotiable and shall not be subject to taxation. If any officer whose signature or countersignature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature or countersignature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until delivery. The bonds shall be sold in a manner and upon the terms as the city or urban-county government legislative body deems for the best interest of the city or urban-county government, or any contract for the purchase or acquisition of any waterworks may provide that payment shall be made in bonds. The bonds shall be payable solely from the revenue funds derived from the waterworks as provided in KRS 96.430 and shall not constitute an indebtedness of the city or urban-county government within the meaning of the Constitution. It shall be plainly stated on the face of each bond that it has been issued under the provisions of KRS 96.350 to 96.510 and that it does not constitute an indebtedness of the city or urban-county government within the meaning of the Constitution.

**96.400 Application of proceeds of bonds; lien**

All moneys received from the bonds shall be applied solely for the purchase, establishment or erection of the waterworks and extensions and appurtenances thereto, or to advance the payment of the interest on the bonds during the first three (3) years following the date of the bonds. A statutory mortgage lien shall exist upon the waterworks and appurtenances and extensions so acquired in favor of the holders of the bonds and coupons.

**96.410 Rights of bondholders to enforce lien**

The waterworks so acquired, together with the extensions and appurtenances, shall remain subject to the statutory lien until the payment in full of the principal and interest of the bonds. Any holder of the bonds or coupons may, by action at law or in equity, protect and enforce the lien and enforce and compel performance of all duties required by KRS 96.350 to 96.510, including the making and collecting of sufficient rates, the segregation of the income and revenue, and the application thereof.

**96.420 Receiver**

If there is any default in the payment of the principal or interest of any bond, any court having jurisdiction of the action may appoint a receiver to administer the waterworks on behalf of the city, with power to charge and collect rates sufficient to provide for the payment of any bonds or obligations outstanding against the waterworks and for the payment of the operating expenses, and to apply the income and revenue in conformity with KRS 96.350 to 96.510 and the ordinance referred to in KRS 96.430.

**96.430 Maintenance, operation and depreciation funds; rates**

At or before the issuance of bonds the city legislative body shall, by ordinance, set aside and pledge the income and revenue of the waterworks into a separate and special fund to be used and applied in payment of the cost thereof and in the maintenance, operation and depreciation thereof. The ordinance shall definitely fix and determine the amount of revenue necessary to be set apart and applied to the payment of the principal and interest of the bonds, and the proportion of the balance of the income and revenues to be set aside as a proper and adequate depreciation account, and the remaining proportion of such balance shall be set aside for the reasonable and proper operation and maintenance of the waterworks. The rates to be charged for service from the waterworks shall be fixed and revised from time to time so as to be sufficient to provide for payment of interest upon all bonds and to create a sinking fund to pay the principal thereof when due, and to provide for the operation and maintenance of the waterworks and an adequate depreciation account.

**96.440 Transfer of surplus to depreciation fund**

If a surplus is accumulated in the operating and maintenance funds equal to the cost of maintaining and operating the waterworks during the remainder of the calendar, operating or fiscal year and during

the succeeding like year, any excess over such amount may be transferred at any time by the city legislative body to the depreciation account, to be used for improvements, extensions or additions to the waterworks.

#### **96.450 Expenditure and investment of depreciation fund**

The funds accumulating to the depreciation account shall be expended in balancing depreciation in the waterworks or in making new constructions, extensions or additions thereto. Any such accumulations may be invested as the city legislative body may designate, and if invested the income from such investments shall be carried into the depreciation account.

#### **96.460 City to pay for water used by it**

The reasonable cost and value of any service rendered to the city by the waterworks may be charged against the city and shall be paid for monthly as the service accrues from the current funds or proceeds of taxes which the city shall levy in an amount sufficient for that purpose. The funds so paid shall be accounted for in the same manner as other revenues of the waterworks.

#### **96.470 Refunding bonds**

The city may issue new bonds to provide funds for the payment of any outstanding bonds, in accordance with the procedure prescribed by KRS 96.350 to 96.510. The new bonds shall be secured to the same extent and shall have the same source of payment as the bonds refunded.

#### **96.480 Additional bonds**

If the city legislative body finds that the bonds authorized will be insufficient to accomplish the purpose desired, additional bonds may be authorized and issued in the same manner.

#### **96.490 Bonds for extensions and improvements**

Any city acquiring any waterworks pursuant to the provisions of KRS 96.350 to 96.510 may, at the time of issuing the bonds for such acquisition, provide for additional bonds for extensions and permanent improvements to be placed in escrow and to be negotiated from time to time as proceeds for that purpose may be necessary, or the city may, at any time, provide for the extension, addition or improvement of the waterworks by an additional issue of bonds. Bonds placed in escrow shall, when negotiated, have equal standing with the bonds of the same issue.

#### **96.500 Administration of income and revenues**

The city legislative body may provide by ordinance such provisions and stipulations for the administration of the income and revenues of the waterworks and for the security of the bondholders as it deems necessary.

#### **96.510 Payment of encumbrance existing at time of acquisition of waterworks**

The ordinances required by KRS 96.370 and 96.430 may set apart a fund equal to the amount of any secured debt or charge subject to which a waterworks is acquired, and shall set aside to that fund, from the balance of the income and revenues of the waterworks remaining after setting aside the funds for payment of principal and interest of bonds, a sum sufficient to comply with the requirements of the instrument creating the lien or securing the charge. If the instrument does not make any provision therefor, the ordinance shall fix and determine the amount that shall be set aside for interest on the secured debt or charge and a fixed amount to pay the principal thereof at maturity. Any surplus after satisfying the secured debt or charge may be used for the redemption of the principal and interest of bonds. Bonds may be issued pursuant to the provisions of KRS 96.350 to 96.510 in exchange for or in satisfaction of such secured debt or charge, or may be sold and the proceeds applied in payment of the secured debt or charge at or before maturity.

## ELECTRIC PLANTS IN CITIES OF HOME RULE CLASS

**96.520 City of the home rule class or urban-county government may acquire and operate electric light, heat, and power plants; regulation of provision of telecommunications services or municipal telephone service; interconnection agreements with utilities or utility affiliates; bonds**

- (1) Any city of the home rule class or urban-county government may purchase, establish, erect, maintain, and operate electric light, heat, and power plants, with extensions and necessary appurtenances, within or without the corporate limits of the city or the urban-county government, for the purpose of supplying the city or urban-county government and its inhabitants with electric light, heat, power, and telecommunications. Any city-owned or urban-county government-owned utility created under this section that provides telecommunications services shall be regulated as to that service by KRS Chapter 278. Any city-owned or urban-county government-owned utility created under this section that provides municipal telephone service shall be regulated as to that service by KRS Chapter 278. For the purpose of providing electric light, heat, power, and telephone services, a city of the home rule class or urban-county government may enter into and fulfill the terms of an interconnection agreement with any electric or combination electric or gas utility whose rates and service are regulated by the Public Service Commission of Kentucky (or, if not so regulated, operating and having customers only outside of Kentucky), or an affiliate entirely owned by or under complete common ownership with an electric or combination electric and gas utility whose rates and service are regulated by the Public Service Commission of Kentucky. Any city of the home rule class or urban-county government may establish, erect, maintain, and operate plants, individually or jointly with any of these utilities or utility affiliate. In the case of any joint action, a city or urban-county government and utility or utility affiliate may provide by contract for their respective responsibilities, for operation and maintenance and for the allocation of expenses, revenues, and power. If in the accomplishment of this purpose a city or urban-county government at any time has capacity or energy surplus to the immediate needs of the city or urban-county government and its inhabitants, the surplus, if not disposed of for consumption outside this state, may be disposed of to an electric or combination electric and gas utility whose rates and service are regulated by the Public Service Commission of Kentucky, to an affiliate entirely owned by or under complete common ownership with such a utility, or to a city-owned or urban-county government-owned utility established pursuant to KRS Chapter 96.
- (2) The city or urban-county government shall proceed in the same manner and be governed by the same conditions as are set forth in KRS 96.360 to 96.510 for the acquisition and operation of a water system, with the following exceptions:
  - (a) A petition calling for an election on the proposition of purchasing an existing plant shall be signed by at least two hundred (200) qualified voters of the city or urban-county government, rather than by twenty-five percent (25%) of the qualified voters of the city or urban-county government who voted at the last preceding regular election.
  - (b) Notwithstanding any other laws, bonds may be issued bearing interest at a rate or rates and may be sold on a basis to yield interest at a rate or rates as may be determined upon the sale of the bonds.
  - (c) Bonds of an issue, or bonds of two (2) or more issues consolidated for the purposes of sale, which equal or exceed \$10,000,000 in the aggregate principal amount may be sold at public or private sale without compliance with KRS 424.360.
- (3) This section constitutes a method for the acquisition of an electric light, heat, and power plant by any city of the home rule class or urban-county government in addition or as an alternate to any other method authorized by statute, provided that the city or urban-county government was operating an electric plant on June 1, 1942, and has not elected to operate under KRS 96.550 to 96.900. No proceedings shall be required for the acquisition of any electric light, heat, or power



plant or the issuance of bonds under this section except the proceedings required by KRS 96.360 to 96.510.

#### **96.530 Operation of electric light, heat, and power plants; utility commission**

- (1) Any city acquiring or constructing an electric light, heat, and power plant under the provisions of KRS 96.520 shall, by ordinance, appoint a city utility commission consisting of either three (3) commissioners or five (5) commissioners to operate, manage, and control the plant. The utility commission shall have absolute control of the plant in every respect, including its operation and fiscal management and the regulation of rates, except that in fixing rates the commission shall be governed by the provisions of KRS 96.430, as it is made applicable to those plants by KRS 96.520, and by any ordinance enacted under that section, except that in fixing rates the commission in a city with a population equal to or greater than eight thousand (8,000) based upon the most recent federal decennial census shall be governed by the provisions of KRS 96.535 and any ordinance enacted according to this section. The utility commission, when so appointed, shall be a public body politic and corporate, with perpetual succession; and the body may contract and be contracted with, sue and be sued, in and by its corporate name, and have and use a corporate seal. The utility commission shall provide rules for the management of the plant, and it shall fix the number, qualifications, pay, and terms of employment of all employees needed to operate the plant. In cities with populations equal to or greater than eight thousand (8,000) based upon the most recent federal decennial census providing civil service coverage for city employees, the utility commission appointed under this section may provide civil service coverage for all of its employees, and it shall exercise the powers and functions with respect to their employees which are vested in the city legislative body with respect to the city employees by KRS 90.380. Employees who have been in the employment of the utility commission for one (1) year immediately preceding the adoption of an order by the utility commission placing all of its employees under civil service coverage shall not be required to stand a civil service examination, and they shall be eligible for all the benefits provided by civil service coverage. Out of the revenue of the plant, it shall pay operating expenses, repairs, and necessary additions and provide sufficient reserve fund against any emergency that may arise. The commission shall from time to time pay to the city the surplus revenue derived from the operation of the plant as is provided in KRS 96.430 and 96.440, as they are made applicable to the plants by KRS 96.520, except that the commission in a city with a population equal to or greater than eight thousand (8,000) based upon the most recent federal decennial census shall pay to the city the surplus revenue derived from the operation of the plant as is provided in KRS 96.535 and any ordinance adopted according to this section. Notwithstanding the foregoing provisions, the utility commission, for the purpose stated in KRS 96.520(1), may enter into an agreement for the operation of any of its plants or other facilities.
- (2)
  - (a) Except as provided in KRS 61.070, no person shall be appointed a member of the commission who has, within the last two (2) years before his appointment, held any city, county, state, or federal office, or been a member of any committee of any political party, or who is related within the third degree to the mayor, or a member of a city legislative body.
  - (b) The commission shall not appoint to any subordinate office that it may create any person who is related to any commissioner, to the mayor or to any member of the city legislative body. No officer or employee of the city, whether holding a paid or unpaid office, shall be eligible to be appointed as a member of the commission or to be employed by the commission in any capacity.
  - (c) The members of the commission shall be citizens, taxpayers, and legal voters of the city and shall not at the time of appointment be indebted to the city or be surety on the official bond of any officer of the city. However, in cities with three (3) commission members, one (1) commission member may be appointed, who does not live within the city boundaries, and, in cities with five (5) commission members, no more than two (2) commission members may be appointed who do not live within the city boundaries. In both instances, the appointment or appointments shall occur only if the appointing authority determines that each appointee:

1. Is a resident of a county in which the utility operates;
2. Possesses qualifications and expertise that would benefit and be in the best interests of the city utility; and
3.
  - a. Is not employed by;
  - b. Is not serving in any fiduciary interest or agency capacity with; or
  - c. Does not possess an ownership interest in;  
  
a direct supplier or direct competitor of the city utility.
- (d) If at any time during his or her term of office any member of the commission becomes a candidate for or is elected or appointed to any public office, he or she shall automatically vacate his membership on the commission, and another person shall be appointed in his or her place.
- (3) The city shall pay the cost of securing bonds for the commissioners from a surety company, and each commissioner shall execute bond to be approved by the city legislative body.
- (4) The city legislative body shall fix the salary to be paid each member of the commission at a sum not to exceed two thousand four hundred dollars (\$2,400) per annum. The Department for Local Government shall compute by the second Friday in February of every year the annual increase or decrease in the Consumer Price Index of the preceding year by using 1998 as the base year, and the salary of the commissioners may be adjusted at a rate no greater than that stipulated by the Department for Local Government.
- (5) The first commissioners appointed under this section shall be appointed one (1) for the term of one (1) year, one (1) for the term of two (2) years, and one (1) for the term of three (3) years. Upon the expiration of the first terms, successors shall be appointed for a term of three (3) years. On a commission with five (5) members, not more than two (2) members shall hold concurrent terms of office.
- (6) All commission members appointed subsequent to the initial members shall be appointed by the mayor or chief executive of the municipality, with the approval of the governing body of the municipality.

#### **96.531 Regulation of telecommunications services provided by municipal utility**

Any legislative body of any city may provide telecommunications service. Any city that owns, operates, or controls, either directly or indirectly, a municipal utility that provides telecommunications services as defined in KRS 278.010(3)(e) shall, as to telephone service solely, be subject to the provisions of KRS Chapter 278 in the same manner as other nonmunicipal providers of telephone services.

## **MISCELLANEOUS PROVISIONS**

#### **96.533 Director of utility board or commission**

- (1) This section and the applicable provisions of KRS 65.200 to 65.2006 shall apply to any director of any municipal utility board or commission created or operated pursuant to KRS Chapter 96.
- (2) A director shall discharge his duties as a director, including his duties as a member of a committee:

- (a) In good faith;
  - (b) On an informed basis; and
  - (c) In a manner he honestly believes to be in the best interest of the utility board or commission.
- (3) A director shall discharge his duties on an informed basis if he makes inquiry, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, into the business and affairs of the utility board or commission, or into a particular action to be taken or decision to be made.
- (4) In discharging his duties, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
- (a) One (1) or more officers or employees of the utility board or commission whom the director honestly believes to be reliable and competent in the matters presented;
  - (b) Legal counsel, public accountants, or other persons as to matters the director honestly believes are within the person's professional or expert competence; or
  - (c) A committee of the board of directors of which he is not a member if the director honestly believes the committee merits confidence.
- (5) A director shall not be considered as acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (4) of this section unwarranted.
- (6) Any action taken as a director, or any failure to take any action as a director, shall not be the basis for monetary damages or injunctive relief unless:
- (a) The director has breached or failed to perform the duties of the director's office in compliance with this section; and
  - (b) In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety or property.
- (7) A person bringing an action for monetary damages under this section shall have the burden of proving by clear and convincing evidence the provisions of subsection (6)(a) and (b) of this section, and the burden of proving that the breach or failure to perform was the legal cause of damages suffered.
- (8) Nothing in this section shall eliminate or limit the liability of any director for any act or omission occurring prior to July 15, 1988.

**96.534 Rate increase for municipally owned electric utilities; rates to be uniform**

- (1) The rates charged for services by municipally owned electric utilities shall not be increased except after a public hearing following reasonable notice thereof.
- (2) The rates charged for services and the standards of services maintained by municipally owned electric utilities shall be the same for customers inside and outside the corporate limits.

**96.535 Water plant or electric light, heat and power plant of city with population of 8,000 or more; maintenance, operation and depreciation funds for; payment of surplus to general fund of city; fair return on property**

- (1) At the time or before or after the issuance of revenue bonds for the acquisition, extension or maintenance of a system of waterworks or electric light, heat and power plants in cities with populations equal to or greater than eight thousand (8,000) based upon the most recent federal decennial census, which bonds do not represent the general obligation of the city, the city legislative body shall, by ordinance, set aside and pledge the income and revenue of any such municipally owned utility into a separate and special fund to be used and applied in the payment of the cost thereof, and in the maintenance, operation and depreciation thereof, and for the purposes hereinafter set out. The ordinance shall definitely fix and determine the amount of revenue necessary to be set apart and applied to the payment of the principal and interest of the bonds, and the portion of the balance of the income and revenue to be set aside as a proper and adequate depreciation account, and the portion to be set aside for the reasonable and proper operation and maintenance of the utility, and may provide that the surplus not needed for the purposes aforesaid shall be paid over to and become a part of the general funds of such city. The rates to be charged for services from the utility shall be fixed and revised from time to time by the board appointed to operate the utility by and with the approval of the legislative body of the city so as to be sufficient to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal thereof when due; to provide for the operation and maintenance of the utility and an adequate depreciation account; and such rates may be fixed as will furnish a fair and reasonable return to the municipality on the fair value of the used and useful property of the utility.
- (2) Nothing in this section shall apply to electrical plants acquired or operated under provisions of KRS 96.550 to 96.900.

**96.536 City owned light, water, or gas plant may pay tax equivalent to school district**

- (1) Each board of education of a public school district in which is located the property or properties of a publicly-owned light, water, or gas plant may each year be paid by the governing board of the plant from the proceeds of the sale of electrical energy, water, or gas an amount which shall not exceed that determined by multiplying the book value of the property or properties of the publicly-owned light, water, or gas plant as of the beginning of each year by the current tax rate levied for school purposes for the school district in which the property or properties may be located. "Book value," as used in this section, means the cost of tangible property plus additions, extensions, and betterments, less reasonable depreciation or retirement reserve, and "year" as herein used shall mean the twelve (12) month period ending June 30. The book value so determined shall be in accordance with standard accounting practices. No payment may be made under this section except pursuant to a resolution of the governing board of the plant, adopted by a unanimous vote of the members of the board.
- (2) Amounts for any year, as provided in subsection (1) of this section, shall be paid to the board of education on or before January 1 of each year.
- (3) This section shall not apply to any publicly owned electric plant that is subject to the provisions of KRS 96.820.
- (4) This section shall be construed only as an enabling act and shall in no way confer upon any board of education of a public school district authority to require this money to be paid to it.

**96.537 City operated natural gas distribution system; bonds; negotiated sale**

The legislative body of any city operating a municipal system for the acquisition and distribution of natural gas may, by ordinance, authorize the issuance of revenue bonds to pay all or any part of the costs of any project for the improvement or extension of the system, or for obtaining new sources of supply.

The revenue bonds may be sold and issued in the manner provided for the sale and issuance of revenue bonds under the provisions of KRS 58.010 to 58.140, 58.150, 58.155, and 58.180, including by negotiated sale, or, upon a determination of a legislative body, acting upon the advice of the city attorney or city solicitor, that the proposed bonds will be industrial development bonds within the meaning of federal statutes, the revenue bonds, whether or not exempt from federal income taxation, may be sold in any manner provided for the sale of industrial building revenue bonds under the terms of KRS 103.200 to 103.285, inclusive; provided, however, that the contract with the private corporation which is deemed to give rise to the federal classification of industrial development bonds need not take the form of a lease agreement, and no request in writing from any contracting private corporation shall be required for any negotiated sale, and provided, further, that in the event of a negotiated sale, a report of negotiations shall be made to a consultant who shall be employed by the city to make a recommendation to the legislative body on the adequacy of such negotiations and of the terms of sale in the light of market conditions. The provisions of KRS 424.360 shall not apply to any negotiated sale under this section.

**96.5375 Rights of city owning or operating natural gas system to sell natural gas within and without city boundaries; limitations; prohibitions; definitions**

- (1) Subject to the limitations of subsection (4) of this section and KRS 96.045 and 96.538, any city that owns and operates a municipal system for the acquisition, distribution, or transmission of natural gas may extend the system into and furnish and sell natural gas to any person or entity within the boundaries of the city or within any territory outside of the city's boundaries. In exercising the authority provided by this subsection, the city may install the necessary apparatus to provide natural gas distribution or transmission service and may also condemn or otherwise acquire rights-of-way as private utilities may do. The provisions of this subsection shall apply to all cities of this Commonwealth transporting or distributing natural gas as well as any board, commission, or agency thereof.
- (2) A city, other than a city of the first class or a consolidated local government, may acquire the entire plant of an existing natural gas distribution system only under the same process and subject to the same limitations established by KRS 96.580, 96.590, and 96.600.
- (3) No property owned or operated by an existing natural gas distribution system located within the Commonwealth may be condemned by a city from another state.
- (4) A natural gas utility, which, for purposes of this subsection, means a public, private or municipally owned gas utility distributing or transporting natural gas to customers within this Commonwealth, shall not:
  - (a) Extend its system for the purposes of furnishing or selling natural gas to any person or entity that is currently being served by another natural gas utility; or
  - (b) Extend its system to furnish or sell natural gas to any person or entity when there is another natural gas utility in closer proximity to the person or entity to be served, unless the natural gas utility in closer proximity has declined to provide service.
- (5) The provisions of subsection (4) of this section shall only apply to extension of service issues between a municipally owned natural gas utility servicing customers located outside its municipal boundaries and a private or investor-owned natural gas utility. The term "municipally owned" shall include systems distributing or transporting natural gas that are owned by a city from another state.

**96.538 Right of existing utility in annexed area**

- (1) Any utility providing electric service in any area annexed, subsequent to June 16, 1960, by any municipality shall have the dominant right to continue to provide electric service in said area to consumers then being served and to new consumers located nearer to its facilities than to the facilities of any other utility as all those facilities were located immediately prior to annexation.

- (2) Any utility providing water, sewer or gas service in any area annexed, subsequent to July 15, 1980, by any municipality shall have the dominant right to continue to provide water, sewer or gas service in said area to consumers then being served and to new consumers located nearer to its facilities than to the facilities of any other utility as all those facilities were located immediately prior to annexation.

#### **96.539 Development of rules to govern extension of water and sewer service by city**

Any water or sewer utility owned by a city shall develop rules to govern extensions of service to unserved customers and areas. These rules may require that the applicant or applicants for new service pay to the utility all or part of the cost of extending utility lines. Where such payment is required, however, the cost of any extension greater than one hundred (100) feet per applicant shall be subject to refund by the utility on a prorated basis for each additional customer whose service line is directly connected to the extension line paid for by the initial applicant or applicants. The refund period shall extend at least ten (10) years, and in no case shall the refund amounts exceed the amount paid. Nothing in this section shall be construed to prevent a water or sewer utility from adopting extension or refund policies which are more lenient to customers than are herein specified.

#### **96.5395 Public hearing required for city-owned or city-controlled electric generating facility considering acquiring property for wind-based electric generating facility**

- (1) Any city-owned or city-controlled electric generating entity shall hold a public meeting in any county where acquisition of real estate or any interest in real estate is being considered for construction of a wind-based electric generating facility. A request for a public meeting may be made by any city or county governmental entity with jurisdiction. The meeting shall be held not more than thirty (30) days from the date of the request.
- (2) The purpose of the meeting is to fully inform the public, landowners, and other interested parties of the full extent of the project being considered, including the project time line. One (1) or more representatives of the city-owned or city-controlled electric generating entity with full knowledge of all aspects of the project shall be present and shall answer questions from the public.
- (3) Notice of the time, subject, and location of the meeting shall be posted in both a local newspaper, if any, and a newspaper of general circulation in the county. Notice shall also be placed on the Web site of the city-owned or city-controlled electric generating entity.
- (4) A person that, on or before April 10, 2014, has started acquiring interests in real estate for a project as described in subsection (1) of this section shall hold a meeting that complies with this section within thirty (30) days of April 10, 2014.

#### **96.540 Restrictions on conveyance or encumbrance of waterworks or lighting system by a city of the home rule class**

- (1) Except as provided in KRS 96.171 to 96.188, inclusive, and in KRS 96.5405, no city of the home rule class that owns a lighting system by gas or electricity, shall sell, convey, lease, or encumber the system or the income therefrom without the assent of a majority of the total number of legal voters of the city voting at an election held for that purpose, after notice of the election has been published pursuant to KRS Chapter 424.
- (2) In the case of a city with a population of less than eight thousand (8,000) based upon the most recent federal decennial census, the election shall be ordered and the election officers shall be selected by the city legislative body, the city clerk shall prepare the question for presentation to the voters, and a tabulation of the vote shall be done by the city legislative body in the presence of the mayor; in all other respects the election shall be conducted under the regular election laws.
- (3) Except as provided in KRS 96.171 to 96.188, inclusive, and in KRS 96.5405, no city of the home rule class that owns a waterworks system, shall sell, convey, lease, or encumber the system or



the income therefrom without the assent of a majority of the legislative body for the city or of a majority of the total number of legal voters of the city voting at an election held for that purpose, after notice of the election has been published pursuant to KRS Chapter 424.

- (4) This section shall not apply to the issuance of revenue bonds under the provisions of KRS 96.350 to 96.520.

**96.5405 Sale, lease, or transfer of utility system in emergency by city with population of less than 1,000; procedure**

- (1) A city with a population of less than one thousand (1,000) based upon the most recent federal decennial census may, in an emergency situation, sell, lease, or otherwise transfer a utility system which it owns after obtaining the approval of two-thirds (2/3) of the utility's customers by petition, as specified in this section, without holding an election under KRS 96.540.
- (2) The city legislative body shall enact an ordinance pursuant to 83A.060 which shall describe the terms of the proposed sale, lease, or other transfer of the city-owned utility system, declare an emergency, and set out the reasons why the proposed transaction is deemed to be an emergency. The ordinance also shall set a deadline for obtaining the necessary signatures, and specify who will certify the petition.
- (3) At least two (2) public hearings shall be held to inform the public of the proposed sale, lease, or other transfer of the utility system, and to obtain public comment on the proposal. The hearings shall be publicized at a minimum, in accordance with KRS 424.130(1)(d).
- (4) The petition may consist of several separate units, and shall include a full address and the date with each signature. Unless the ordinance provides otherwise, only a person named on an account shall be a valid signer of the petition. The utility shall make available a list of the names and addresses of all current customers.

**96.5407 Home heating assistance fund**

An electric power system owned and operated by a municipality may establish a home heating assistance fund to receive voluntary contributions from customers to assist individuals in preventing the termination of home heating service. This fund may be administered by the electric power system or through a community action agency or charitable organization that identifies individuals in need and makes such assistance available. This fund shall be administered as described in KRS 278.287.

## ARTIFICIAL GAS SYSTEMS

**96.541 Definitions for KRS 96.542 to 96.546**

As used in KRS 96.542 to 96.546, the term "acquire" shall mean and include construct, acquire by purchase, by lease, devise, gift, or the exercise of the right of eminent domain in the manner now or hereafter provided by law for the exercise thereof and acquisition by any other mode.

**96.542 Power of city of any class to acquire and operate artificial gas system; acquisition of existing system**

- (1) Any city may acquire, maintain and operate an artificial gas system, together with extensions and necessary appurtenances thereto within or without the limits of the city.
- (2) If any such artificial gas system is acquired from a company having a franchise, such system may be acquired under the provisions of the Eminent Domain Act of Kentucky, except as otherwise provided in KRS 96.543 to 96.546 and 96.600.

**96.543 Ordinance for acquisition of system and issuance of bonds; election; plans and specifications; acquisition of lands and easements**

- (1) Before any city may acquire, maintain, or operate any such artificial gas system, the legislative body of the city shall pass an ordinance declaring it desirable that this be done, and shall prepare an estimate of the probable cost of the system. If revenue bonds are to be issued to pay the cost the ordinance shall so provide. An election shall be had on the adoption of the ordinance if a number of legal voters of the city equal to twenty-five percent (25%) of the total number of votes cast in the city at the last regular election file a petition within ten (10) days after the ordinance is passed asking that the question of approval of the ordinance be submitted to a vote of the people. If the petition is filed with the county clerk and certified by the county clerk as sufficient not later than the second Tuesday in August preceding the next regular election, the election shall be held at the next regular election held in the city. If no petition is filed, the city may proceed immediately with the acquisition of an artificial gas system.
- (2) If an election is petitioned for, the presiding officer of the city shall certify the ordinance to the county clerk, who shall cause to be prepared for presentation to the voters the question: "Are you in favor of acquiring, maintaining and operating an artificial gas system in accordance with the estimate of cost adopted by the..... (here insert name of city) and the issuance of revenue bonds in the amount of \$..... (here insert total face amount of bonds estimated by the legislative body of the city to be necessary to pay the cost of the system, based upon the estimate of cost)." The voters shall indicate a "Yes" or a "No" vote. The presiding officer of the city shall advertise the election and its object by publication pursuant to KRS Chapter 424. All legal voters of the city may vote at the election.
- (3) If an election is held, the city shall not acquire, maintain or operate the system or issue revenue bonds unless a majority of all the qualified voters voting on the question vote in favor thereof.
- (4) Before revenue bonds are issued the legislative body of the city shall select the location of the system, prepare the necessary plans and specifications, and take all steps necessary in its judgment for the acquisition of the land, right of ways, constructions, franchises and easements necessary for the construction of the system.

**96.544 Issuance of bonds; use of proceeds of bonds; disposition of surplus revenue; bond procedure**

- (1) Except where an election has been held and the proposition has been defeated, any city may borrow money and issue negotiable bonds, but only after an ordinance has been adopted specifying the proposed undertaking, the amount of bonds to be issued, and the maximum rate of interest the bonds are to bear. The ordinance shall further provide that the proposed system, with necessary appurtenances thereto, is to be acquired pursuant to the provisions of KRS 96.541 to 96.546. Any bonds issued under the provisions of KRS 96.541 to 96.546 shall be payable solely from the revenue derived from the operation of the artificial gas system, and shall not constitute an indebtedness of the city within the meaning of the Constitution.
- (2) Money received from bonds issued as provided in subsection (1) of this section may be used to advance the expense of operation and maintenance for one (1) month after the establishment of the system. If a surplus is accumulated, from revenue, in the operation and maintenance fund equal to the cost of maintaining and operating the artificial gas system during the remainder of the calendar, operating or fiscal year, as may be provided by ordinance on or before issuance of the bonds, the legislative body of the city may at any time transfer the excess to the depreciation account to be used for any improvements or additions to the system.
- (3) Except as provided in subsection (2) of this section, all of the provisions of KRS 96.380 to 96.500 shall be applicable to proceedings under KRS 96.541 to 96.546.

**96.545 Operation and management of system; artificial gas commission**

- (1) Any city acquiring any such artificial gas system under the provisions of KRS 96.541 to 96.546 may by ordinance provide for the operation of the system under the direction of an official of the city as designated by the legislative body, or may delegate the authority to operate the system to a commission created for the operation of some other public works in the city, including a waterworks or electric plant, or may provide for the appointment of a commission of seven (7) members to operate, manage and control the system, which commission shall be known as the "..... Artificial Gas Commission." The commission shall provide rules, regulations and bylaws for the artificial gas system and shall, out of the revenue of the system, pay necessary operating expenses, repairs and additions thereto, and provide a sufficient reserve fund to insure that the system is kept in repair and in safe and sanitary condition and to provide against any emergency that may arise. The commission shall from time to time pay to the city the surplus revenue derived from the operation of the system as provided in KRS 96.541 to 96.546.
- (2) In order that the commission may be nonpartisan and nonpolitical, no person shall be appointed a member thereof who has, within the last two (2) years before his appointment, held any city, county, state or federal office, or who is related within the third degree to the mayor or any member of the legislative body of the city. The commission shall not appoint, to any subordinate office created by it, any person who is related to any member of the city legislative body or to the mayor or chief executive of the city, or to any member of the commission. No officer or employee of the city, whether holding a paid or unpaid office, shall be eligible to be a member of the commission. The members of the commission shall be citizens, taxpayers and legal voters of the city and shall not at the time of their appointment be indebted to the city or be surety on the official bond of any officer of the city. No member of the commission shall be interested in any contract for the furnishing of supplies or services of any kind to the system, or to the city. If at any time during his term of office any member of the commission becomes a candidate for or is elected or appointed to any public office, he shall automatically vacate his office on the commission and another person shall be appointed.
- (3) Each commissioner shall execute bond with a surety company in the penal sum of one thousand dollars (\$1,000), conditioned upon the faithful performance of his official duties. The bonds shall be approved by the legislative body of the city and the premiums shall be paid by the city. An action may be maintained upon any commissioner's bond by any person injured by a violation of the covenants therein contained.
- (4) The members of the commission shall serve without compensation.
- (5) The first artificial gas commission appointed in each city under this section shall be appointed for terms as follows: Two (2) members for a term of one (1) year, two (2) for a term of two (2) years, and three (3) for a term of three (3) years. Upon the expiration of the first terms, successors shall be appointed for a term of three (3) years.

**96.546 Alternate method**

KRS 96.541 to 96.545 are intended to create an additional and alternate method for the acquisition of the artificial gas systems mentioned in KRS 96.542, and are not intended to alter, amend or repeal any other statute.

## CONDEMNATION

### 96.547 Condemnation and eminent domain

Except as provided in KRS 96.550 to 96.900, any city utility shall have the same rights with respect to condemnation and eminent domain as given corporations and partnerships under KRS 278.502 and 416.130.

## T.V.A ACT

### 96.550 Definitions for KRS 96.550 to 96.900

As used in KRS 96.550 to 96.900, unless the context requires otherwise:

- (1) “Acquire” shall mean and include construct, acquire by purchase, by lease, devise, gift, or the exercise of the right of eminent domain in the manner now or hereafter provided by law for the exercise thereof and acquisition by any other mode.
- (2) “Board” shall mean a board of public utilities established pursuant to KRS 96.740.
- (3) “Bonds” shall mean either general obligation bonds or revenue bonds.
- (4) “Constitution” shall mean the Constitution of Kentucky.
- (5) “Electric plant” shall mean and include any plant, works, systems, facilities, and properties (including poles, wires, stations, transformers, and any and all equipment and machinery), together with all parts thereof and appurtenances thereto, used or useful in the generation, production, transmission, or distribution of energy.
- (6) “Energy” shall mean and include any and all electric energy no matter where or how generated, produced, transmitted, or conveyed.
- (7) “Electric service” shall mean the furnishing of electric power and energy for any purpose for which electric power and energy can be used.
- (8) “General obligation bonds” shall mean direct or general obligations of any municipality, issued within the limits and subject to the provisions of Sections 157 and 158 of the Constitution.
- (9) “Governing body” shall mean the board, council, commission, fiscal court, or other general governing body of the municipality.
- (10) “Governmental agency” includes the United States, the President, the federal works agency, the federal lending agency, Tennessee Valley Authority, or any other similar agency, instrumentality, or corporation of the United States, or of Kentucky or any political subdivision thereof, created by or pursuant to any Act of Congress or by state legislation.
- (11) “Improve” shall mean and include construct, reconstruct, improve, extend, enlarge, alter, better, and repair.
- (12) “Improvement” shall mean any improvement, extension, betterment, or addition to any electric plant.
- (13) “Law” shall mean any statute of this state.
- (14) “Mayor” shall mean the mayor of any class city unless there be a city manager, then it shall mean

city manager, or the county judge/executive of any county. "Mayor" shall also mean the mayor of a consolidated local government.

- (15) "Municipality" shall mean any county, city, consolidated local government, or municipal corporation of any and every class in the Commonwealth of Kentucky.
- (16) "Revenue bonds" shall mean obligations payable solely from the revenues derived from the operation of an electric plant and such bonds shall not constitute an indebtedness of any municipality within the meaning of the provisions or limitations of the Constitution.
- (17) "Net revenues" shall mean revenues remaining after payments of:
  - (a) All payments provided for herein to be made to the state, county, school or other taxing district;
  - (b) The payments of salaries, and premiums on bonds of officers and employees of the board; and
  - (c) All other ordinary and necessary operating expenses of the board in the operation of the electric plant including reserves for depreciation.

#### **96.560 Scope of KRS 96.550 to 96.900; legislative purpose and intent**

- (1) The provisions of KRS 96.550 to 96.900 shall not apply in the case of a municipality now operating an electric plant under any existing law, but the governing body of any such municipality may elect to operate under the provisions of KRS 96.550 to 96.900, in which case, from the time of the exercise of such election and the appointment of a board hereunder, the electric plant of such municipality shall be operated under the provisions of KRS 96.550 to 96.900.
- (2) KRS 96.550 to 96.900 are intended to be the complete law of this state with respect to municipalities acquiring electric plants after June 1, 1942, and the complete law of this state with respect to the operation of electric plants acquired by any municipality after June 1, 1942. Any proceedings heretofore taken by any municipality relating to the subject matter of KRS 96.550 to 96.900, whether or not commenced under any other law, may be discontinued by the municipality and new proceedings instituted under KRS 96.550 to 96.900.
- (3) It hereby is declared to be the legislative purpose and intent to vest in the municipalities of all the classes in this Commonwealth full power and authority to establish, acquire, own and operate electric plants; to empower and authorize said municipalities to contract with and acquire from the Tennessee Valley Authority or any governmental agency electric power or current for resale and to authorize and require the payment, out of earnings from the sale of electric power or current, of certain amounts to the state, counties, municipalities, school districts and other taxing districts in order that they may not suffer from loss of revenue resulting from the tax exemption created by the transfer of property from private to public ownership, and in the interest of the general welfare.
- (4) It hereby is declared to be the further legislative intent that KRS 96.550 to 96.900 shall be the complete law of this state with respect to municipalities acquiring electric plants, after June 1, 1942, and the complete law of this state with respect to the operation of electric plants acquired by any municipality after June 1, 1942; and that all laws and parts of laws in conflict herewith, to the extent of such conflict, hereby are repealed.

**96.570 Powers of boards for municipal electric plants**

Except as otherwise specifically provided in KRS 96.550 to 96.900, the board of the municipality shall exercise all powers conferred upon the municipality by KRS 96.550 to 96.900. Any board operating under the provisions of KRS 96.550 to 96.900 shall have the legal power and capacity to perform any act not repugnant to law and shall have the express power and capacity to do any and all acts or things necessary or convenient for the carrying out of the purposes of KRS 96.550 to 96.900, including, but not by way of limitation, the following express powers:

- (1) Acquire, hold and dispose of property, real and personal, tangible and intangible, necessary or incident to the proper conduct of its business.
- (2) Construct, acquire, own, lease, operate, maintain and improve electric plant or plants as defined in KRS 96.550, and may provide electric service to any user or consumer within and without the boundaries of any municipality, and charge and collect reasonable rates therefor.
- (3) Construct, acquire, own, lease, operate, maintain and improve distribution or transmission line or lines, or generating plant or plants, together with all necessary and appropriate facilities, equipment and appurtenances, individually or jointly with any other municipality or rural electric cooperative corporation organized under the laws of Kentucky for the purpose of generating, distributing, or transmitting electric power or energy and connecting their respective electric plants with a wholesale source of supply, and in the case of any such joint action, such municipalities and rural electric cooperative corporations may provide by contract for the method of holding title, for the allocation of responsibility, for operation and maintenance and for the allocation of expenses and revenues.
- (4) Construct, own, lease, operate and control any and all works, lines, buildings and other facilities across, along, or under any street or public highway, and over any lands which are now or may be the property of the Commonwealth or of any county or municipality within this Commonwealth. The board shall, however, at its own expense, restore any such street or highway to its former condition and state as nearly as may be possible and shall not use the same in a manner as to impair its usefulness or to interfere with or obstruct the maintenance thereof. Before exercising these powers the board shall obtain a permit or consent or approval in writing from the governing authority of the municipality, or the fiscal court, or the Department of Highways having appropriate jurisdiction over any and all of such respective streets or public highways.
- (5) Accept gifts, grants of property, real or personal, including money, from any person, municipality, or federal agency, or both, and to accept voluntary and uncompensated services; provided, however, that when engineering services are required by any municipality or any board or any appraisers or board of appraisers, appointed pursuant to the provisions of KRS 96.550 to 96.900 to render any services authorized or required or incident to surveys, plans, estimates of cost, or the valuation of property, or in the preparation of reports authorized by KRS 96.550 to 96.900, no engineer who is engaged in whole or in part in the business of buying or selling any electric equipment, machinery, fixtures, materials, supplies, or the sale or purchase of bonds shall be eligible for employment or for any services whatsoever under the provisions of KRS 96.550 to 96.900. The limitations hereinabove provided shall also apply to any firm of engineers and to any member of any firm of engineers, if the firm or member of the firm is engaged in whole or in part in the business of buying or selling any electric machinery, equipment, fixtures, materials, supplies, or the sale or purchase of bonds; and no such firm or member of such firm shall be eligible for employment or for any service whatsoever under the provisions of KRS 96.550 to 96.900. Provided, further, that the provisions of this section shall not be construed to prohibit the board or the governing authority of any municipality from obtaining the advice or services of any engineer in the regular employment of the state or any federal governmental agency.



- (6) Contract debts and borrow money for the acquisition or improvement of any electric plant, issue bonds to finance such acquisition or improvement, provide for the rights of holders of the bonds and to secure the bonds as hereinafter provided, and pledge all or any of the net revenues derived from electric service to the payment of such debts or repayment of money borrowed.
- (7) Acquire, hold, and, subject to the provisions of KRS 96.860 and the applicable provisions of any bonds or contracts, dispose of any property, real or personal, tangible or intangible, or any right or interest in any such property in connection with any electric plant, and whether or not subject to mortgages, liens, charges, or other encumbrances.
- (8) Make contracts and execute instruments containing such covenants, terms, and conditions as in the discretion of the board may be necessary, proper, or advisable for the purpose of obtaining loans from any source, or grants, loans or other financial assistance from any governmental agency, including, but without limitation, covenants, terms, and conditions with respect to the acquisition or construction of any electric plant or any improvement thereto with money in whole or in part borrowed from or granted by any governmental agency; make all other contracts and execute all other instruments as in the discretion of the board may be advisable in or for the furtherance of the acquisition, improvement, operation and maintenance of any electric plant and the furnishing of electric service; and carry out and perform the covenants, terms, and conditions of all such contracts or instruments.
- (9) Enter on any lands, waters and premises for the purpose of making surveys, soundings and examinations in connection with the acquisition, improvement, operation or maintenance of any electric plant and the furnishing of electric service.
- (10) Do all acts and things necessary or convenient to carry out the powers expressly given in KRS 96.550 to 96.900.
- (11) Make any contracts necessary or convenient for the full exercise of the powers herein granted, including, but not limited to, contracts for either the purchase or sale or both the purchase and sale of electric energy or power, and contracts for the acquisition or improvement of all or any part of an electric plant; and, in connection with any such contract with a governmental agency, the board may stipulate and agree to such covenants, terms, and conditions as the governing body deems appropriate, including, but without limitation, covenants, terms, and conditions with respect to the resale rates, financial and accounting methods and the manner of disposing of the revenue of the electric plant conducted and operated by the board, except that the board shall not have power to contract with the Tennessee Valley Authority or any other governmental agency for the purchase and resale of electric energy or power unless the contract shall provide that the resale rates of the board for electric service or electric energy shall be sufficient to cover all operating expenses, interest charges, and bond payments, other expenses, and payments to the state, any county, any school district, any municipality, and any other special taxing district in which the board operates, of amounts determined as provided in KRS 96.820; nor unless such contract provides that the payments to such taxing jurisdictions be made to them as hereinafter prescribed.
- (12) Acquire a franchise to furnish electric service to any other municipality or county or the inhabitants thereof, and to contract with any other municipality or county to furnish it with electric service. Such contracts may be entered into by the governing bodies of the other cities or county.

**96.580 Proceedings to agree upon sale price of existing plant required before condemnation or construction of competing plant**

- (1) Before a board or municipality may condemn an existing electric plant under the provisions of KRS 96.550 to 96.900 the board shall notify the owner of the existing electric plant, hereinafter referred to as the owner, in writing of its desire to purchase the plant or that portion thereof located or situated within said municipality and of its desire to enter into an agreement as to the value thereof. If no fair and reasonable price and terms of purchase and sale shall be agreed upon between the board and the owner within sixty (60) days after the aforesaid notice has been given the owner, and if either party desires that further efforts to determine a fair price and terms of purchase and sale be made, a board of appraisers consisting of two (2) members shall be appointed, one (1) by the board and the other by the owner. Such appointments shall be made within thirty (30) days after the expiration of the time given the board and the owner to agree upon the value of the existing electric plant, or that part thereof which the board desires to purchase. Should the two (2) members of the board of appraisers be unable to agree within thirty (30) days after their appointment upon a fair and reasonable price, a third member of the board of appraisers shall be selected by them. In the event the two (2) appraisers cannot agree upon the third member of the board of appraisers, then upon application of either the board or the owner, the Governor of the Commonwealth shall name the third appraiser. The board of appraisers shall consult with the state Public Service Commission in its efforts to arrive at a fair price for the electric plant, and the state Public Service Commission shall make available to the board of appraisers its facilities and any information in its possession bearing on the value of the electric plant. It shall be the duty of the board of appraisers to make a survey of, appraise and submit to the board and the owner in writing, its valuation of the electric plant. The board shall file its written report within six (6) months from the date of the appointment of the first two (2) members. The value fixed by two (2) of the three (3) members of the board of appraisers shall be the finding of the board. In the event two (2) of the three (3) members cannot agree within six (6) months after the appointment of the first two (2) members, the entire first board, unless given further time by agreement between the board and the owner, shall be discharged, and a second board, if desired by both the board and the owner, may be appointed as provided herein, which shall make its final report within six (6) months after the appointment of the first two (2) members thereof. The board shall pay all compensation to the member appointed by it, and the owner shall pay all compensation to the member appointed by it, and the board and the owner shall each pay one-half (1/2) of the compensation due the third member and one-half (1/2) of all other costs incurred in connection with the work of the board of appraisers. These costs may be included as a part of the purchase price agreed upon. Neither the board nor the owner shall be required to accept the report of the board of appraisers. If the owner fails or refuses to appoint an appraiser or appraisers as and within the time limits hereinabove provided, the board may proceed to exercise all of the powers granted by KRS 96.550 to 96.900 without waiting for the expiration of all or any part of the time authorized for making the appraisal herein provided for.
- (2) After the board has complied with the provisions of this section, it may proceed in the manner and subject to the terms and conditions in KRS 96.590 to 96.900 provided to (a) enter into a contract with the owner for the purchase from the owner of the electric plant; or (b) institute condemnation proceedings and acquire the electric plant by the exercise of the powers of eminent domain. The governing authority of the municipality shall determine which of the courses hereinabove authorized shall be followed by the board.

**96.590 Power of condemnation**

- (1) Any board proceeding under KRS 96.550 to 96.900 shall have the right to acquire by the exercise of the power of eminent domain, all lands, easements, rights of way, either upon or under or above the ground, any existing electric plant, or that part of an electric plant within the corporate limits of such city, and any and all real estate, franchise or personal property reasonably necessary or desirable in connection with the construction or operation or maintenance of electric plants or improvements or extensions thereto; and the right of such board to acquire such electric plant and facilities hereby is declared to be a superior and paramount right and superior and

paramount to any other public use. Provided, however, That no board, by exercise of the power of eminent domain, shall have the right to acquire any central generating plant or station or substation or transmission lines, dams, or other property or facilities primarily and principally used by any public or private utility in the production and transmission of electric energy by such public or private utility for use outside the area to be served by the municipal electric plant; and, Provided further, That in the eminent domain proceedings to acquire from any public or private utility an electric plant, the property condemned must include all of the property owned by the utility within the city limits which is used or useful in connection with the business, of rendering electric service, subject only to the proviso next hereinabove in this section stated.

- (2) The condemnation or eminent domain proceedings shall be brought in the name of the board, and title to the property so condemned shall be taken in the name of the board.

**96.600 Procedure for condemnation; report of commissions; jury award; procedure when condemnor not a utility**

- (1) When the board of any municipality authorized to acquire, construct, own or operate an electric plant under the provisions of KRS 96.550 to 96.900 shall be unable to contract with the owner of any land, easement, right of way, electric plant, or any facilities or property needed by such board for its use for the purposes thereof and desires to exercise the right of eminent domain, the board shall proceed to condemn the property pursuant to the Eminent Domain Act of Kentucky except that, in lieu of determining the award to the owners in the manner prescribed in KRS 416.580(1) the commissioners shall ascertain and determine the value of the property taken; the value of real estate, tangible personal property, intangible property and franchises, if any such value is found to exist, shall be determined and stated separately in their report; and they shall also award damages, if any, resulting to the remainder of the electric plant or system of the owner, considering the purposes for which the property is taken, and the amount of said damages, if any, shall be stated separately in their report. The jury award shall be made in this manner rather than in the manner prescribed in KRS 416.660(1).
- (2) Notwithstanding the provisions of subsection (1) of this section, when the owner of any land, easement, right of way or facility to be acquired by exercise of the right of eminent domain is not a utility, the award to the owners thereof shall be determined pursuant to the Eminent Domain Act of Kentucky.

**96.640 Election by voters on question of constructing, purchasing, or condemning electric plant, or issuing bonds therefor**

- (1) Before any municipality shall have authority to (a) construct or cause to be constructed an electric plant, (b) acquire an electric plant by purchase, (c) institute condemnation proceedings for acquiring by eminent domain an electric plant, or (d) issue revenue bonds for the construction, purchase, or acquisition of an electric plant, the question shall be submitted to the qualified voters of the municipality as hereinafter in this section provided.
- (2) Before any municipality shall be authorized or empowered to purchase or establish and thereafter operate an electric plant, or to issue bonds therefor, the legislative body of such municipality shall pass an ordinance declaring it desirable that the municipality shall purchase or construct and operate a municipal electric plant, and if it is proposed to construct such electric plant, the board shall cause an engineer or engineers duly qualified and licensed under the laws of this Commonwealth (a) to prepare the necessary and proper plans and specifications for the construction of the electric plant, (b) select the location therefor, (c) determine the size, type and method of construction thereof, (d) make the necessary estimates of the cost of construction and of the acquisition of the land and rights of way, and (e) a survey of all lands, structures, rights of way, franchises and easements, the acquisition of which is deemed necessary by said engineers and the board for the construction and operation of such municipal electric plant, all of which shall be approved by the board; and, Provided further, That the question of whether

or not revenue bonds shall be issued to provide for the payment of the cost thereof shall be submitted to the qualified voters of such municipality at the next regular November election to be held in said municipality if the ordinance is certified to the county clerk not later than the second Tuesday in August preceding the next regular election. The mayor shall certify such ordinance to the county clerk, who shall have prepared to be placed before the voters in the general November election, the question: "Are you in favor of the city constructing and operating a municipal electric plant in accordance with the plans and specifications adopted by the Electric Plant Board of..... (here insert name of municipality) and the issuance of revenue bonds in the maximum amount of \$..... (here insert maximum total face amount of bonds estimated by the board to be necessary to pay the cost of such plant, based upon the estimate hereinabove provided)." The voters shall respond to the question by voting "Yes" or "No".

- (3) The mayor of such municipality shall advertise such election and the object thereof by publication pursuant to KRS Chapter 424, and also by printed handbills posted in not less than four (4) conspicuous places in each voting precinct in the municipality and at the courthouse door. All legal voters of such municipality shall be privileged to vote at such election. The city shall have no authority to construct a municipal electric plant, or to issue revenue bonds unless a majority of all the qualified voters voting in said election on this question vote in favor thereof.
- (4) Any contract of a municipality for the purchase of an electric plant shall be conditioned upon the approval of the qualified voters of the municipality at an election held at the time and in the manner provided in subsections (2) and (3) of this section, except that the clerk shall have prepared to be placed before the voters the following question: "Are you in favor of the City of..... purchasing from..... (insert the name of owner or owners) an electric plant at the price of \$..... (herein insert the amount of the agreed purchase price) and the issuance of revenue bonds in the amount of \$..... (herein insert total face amount of bonds required to pay the agreed purchase price)." The voters shall respond to the question by voting "Yes" or "No".
- (5) Before any municipality shall be authorized or empowered to institute condemnation or eminent domain proceedings to acquire an electric plant, the legislative body of such city shall pass an ordinance declaring it desirable that the municipality shall acquire by condemnation an electric plant, and shall describe in the ordinance the property which it deems necessary to be acquired, and there shall be submitted, in the manner provided in subsections (2) and (3) of this section, to the qualified voters of the municipality at the next regular November election, the following question: "Are you in favor of the City of..... (here insert name of city) acquiring an electric plant by the exercise of the power of eminent domain and the issuance of revenue bonds in an amount sufficient to pay the entire damages and costs of such acquisition." The voters shall respond to the question by voting "Yes" or "No".
- (6) No municipality or board shall have authority to purchase, construct, or acquire, or to institute condemnation proceedings for acquiring an electric plant, or to issue revenue bonds or other obligations or evidences of indebtedness for the payment of the costs thereof unless a majority of all the qualified voters voting in said election on the question vote in favor thereof. Elections held pursuant to the provisions of KRS 96.550 to 96.900 shall be governed by the laws of this state relative to elections to the extent that such laws are not inconsistent herewith.

#### **96.650 Power to issue revenue bonds**

Any municipality, by action of its board, may issue and sell revenue bonds, subject to the provisions of KRS 96.550 to 96.900, to pay the cost of construction or acquiring an electric plant.

#### **96.660 Validity of revenue bonds**

All bonds issued pursuant to KRS 96.550 to 96.900, bearing the signature of officers in office on the date of the signing thereof, shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor, any or all the persons whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same. The resolution of the board shall contain a recital

that the revenue bonds are issued pursuant to KRS 96.550 to 96.900, which recital shall be prima facie evidence of their validity and of the regularity of their issuance.

#### **96.670 Limitation of actions to challenge validity of ordinance, resolution or election**

Any action challenging the validity of any ordinance electing to operate under KRS 96.550 to 96.900 or any election resolution, bond resolution, or election adopted or held thereunder, shall be brought within sixty (60) days from the date on which such ordinance or election resolution or bond resolution was adopted or election held, as the case may be, and if not brought within such time shall be forever barred.

#### **96.680 Revenue bonds not debts of municipality**

No holder or holders of any revenue bonds issued under KRS 96.550 to 96.900 shall have the right to compel any exercise of taxing power of the municipality to pay the bonds or the interest thereon. Each revenue bond issued under KRS 96.550 to 96.900 shall recite in substance that the bond, including interest thereon, is payable solely from the revenue pledged to the payment thereof, and that the bond does not constitute a debt of the municipality within the meaning of any statutory or constitutional provision or limitation.

#### **96.690 Form and terms of bonds; sale; bonds for improvement; refunding or additional bonds; negotiability; interest rate**

- (1) Bonds issued pursuant to KRS 96.550 to 96.900 may be issued in one (1) or more series, may bear a date or dates, may mature at a time or times, not exceeding forty (40) years from their respective dates, may be in a denomination or denominations, may be in a form, either coupon or registered, may carry registration and conversion privileges, may be executed in a manner, may be payable in such medium of payment, at such place or places, may be sold or hypothecated in blocks, may be subject to the terms of repurchase or redemption of all or any of the bonds before maturity in a manner and at a price or prices as may be fixed by the board prior to the sale of the bonds.
- (2) The board at any time may issue and sell revenue bonds to finance improvements or issue and sell refunding bonds for the purpose of providing funds for the payment of any outstanding bonds issued in accordance with the provisions of KRS 96.550 to 96.900. The new bonds shall be issued, sold, and secured in accordance with the provisions of KRS 96.550 to 96.900 for the issuance of the original revenue bonds, except no election shall be necessary or required to ascertain the will of the voters of the city. Should the board find that the bonds originally authorized will be insufficient to accomplish the purpose desired, additional bonds may be authorized and issued, subject to the same procedure and conditions as original revenue bonds.
- (3) All revenue bonds issued pursuant to the provisions of KRS 96.550 to 96.900 in the hands of bona fide holders shall have all the qualities and incidents of negotiable instruments under the law merchant. Except as provided in subsection (5) of this section, all bonds shall be sold to the highest responsible bidder at a time and place as has been fixed by the board in the notice of the sale of the bonds, which notice has been advertised by publication pursuant to KRS Chapter 424. The board shall receive written, sealed, competitive bids, which shall be publicly opened and read at the time and place specified in the notice of sale. The board may reject all bids and readvertise. Notwithstanding any law to the contrary, bonds may be issued bearing interest at a rate or rates and may be sold at a price equal to, less than or greater than, the aggregate principal amount of the bonds, as is satisfactory to and acceptable by the board. "Highest responsible bidder" as used in this section means the responsible bidder whose bid generates the lowest net interest costs for the issue.
- (4) After revenue bonds have been offered for sale by the board, as in this section provided, if no bid satisfactory or acceptable to the board is received, the board may sell, issue, and deliver the bonds to any federal governmental agency or other responsible purchaser at private sale upon terms, not in conflict with the provisions of KRS 96.550 to 96.900, as may be agreed upon

between the board and the federal governmental agency or other responsible purchaser at private sale; but the net interest cost paid on the bond shall not be greater than that received from the highest responsible bidder.

- (5) Notwithstanding any law to the contrary, bonds of an issue, or bonds of two (2) or more issues consolidated for the purposes of sale, which equal or exceed ten million dollars (\$10,000,000) in the aggregate principal amount may be sold at public sale in compliance with KRS 424.360 or at private sale without compliance with KRS 424.360, and bonds for the purpose of raising funds for the completion of any project for which a previous bond issue, or issues consolidated for the purposes of sale, equaled or exceeded ten million dollars (\$10,000,000) in the aggregate principal amount may likewise be sold at a public sale in compliance with KRS 424.360 or a private sale without compliance with KRS 424.360.

#### **96.700 Power of board to make provisions to secure payment of bonds**

In order to secure the payment of any of the bonds issued pursuant to KRS 96.550 to 96.900, and interest thereon, or in connection with such bonds, the board of any municipality shall have power as to such bonds, to the extent not inconsistent with the mandatory provisions of KRS 96.550 to 96.900:

- (1) To pledge all or any part of the net revenues derived from sale of electric service;
- (2) To provide for the terms, form, registration, exchange, execution and authentication of any bonds;
- (3) To provide for the replacement of lost, destroyed, or mutilated bonds;
- (4) To covenant as to the use and disposition of the proceeds from the sale of such bonds;
- (5) To covenant as to the rates and charges of the electric plant;
- (6) To redeem such bonds, and to covenant for their redemption and to provide the terms and conditions thereof;
- (7) To covenant and prescribe as to what happenings or occurrences shall constitute "events of default," and the terms and conditions upon which any or all of such bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;
- (8) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation;
- (9) To vest in a trustee or trustees the right to receive all or any part of the net income and revenue pledged and assigned to, or for the benefit of, the holder or holders of bonds issued hereunder, and to hold, apply and dispose of the same, and the right to enforce any covenant made to secure or pay or in relation to the bonds; to execute and deliver a trust agreement or trust agreements which may set forth the powers and duties and the remedies available to such trustee or trustees and limiting the liabilities thereof and describing what occurrences shall constitute "events of default," and prescribing the terms and conditions upon which such trustee or trustees or the holder or holders of bonds of any specified amount or percentage may exercise such rights and enforce any and all such covenants and resort to such remedies as may be appropriate;
- (10) To make covenants other than, and in addition to, the covenants herein authorized of like or different character, necessary or advisable to effectuate the purpose of KRS 96.550 to 96.900; and
- (11) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties.



**96.710 Remedies of holders of bonds**

Any holder or holders of bonds issued pursuant to KRS 96.550 to 96.900, including a trustee or trustees for holders of such bonds, shall have the right, in addition to all other rights:

- (1) By action in court, to enforce his or their rights against the board, and any other proper officer, agent or employee, including, but without limitation, the right to require the board, and any proper officer, agent or employee thereof, to fix and collect rates and charges adequate to carry out any agreement as to, or pledge of, electric plant revenues, and to require the board and any officer, agent or employee thereof to carry out any other covenants and agreements and to perform its and their duties under KRS 96.550 to 96.900; and
- (2) By action in equity to enjoin any act or thing which may be unlawful or a violation of the rights of such holder of bonds.

**96.720 Receiver**

If there is a default in the payment of the principal or interest of any bonds issued pursuant to KRS 96.550 to 96.900, any court having jurisdiction may, upon the petition of the holders of not less than twenty-five percent (25%) of the outstanding bonds, appoint a receiver to administer said electric plant on behalf of the board, with power to charge and collect rates sufficient to provide for the payment of any bonds or obligations outstanding against said electric plant and for the payment of the operating expenses and to apply the income and revenues in conformity with KRS 96.550 to 96.900.

**96.730 Payment of preliminary expenses**

- (1) All expenses incurred by the board or the governing body of any municipality in the making of surveys, estimates of cost and of revenues, employment of engineers, attorneys, or other employees, the giving of notices, taking of options, selling of bonds, and all other preliminary expenses of whatever nature which such board or governing body deems necessary in connection with or precedent to the acquisition or improvement of any electric plant and which it deems necessary to be paid prior to the issuance and delivery of the bonds issued pursuant to the provisions of KRS 96.550 to 96.900, may be met and paid out of the general fund of said municipality not otherwise appropriated, or from any other available fund.
- (2) All such payments from the general or other funds of the municipality shall be considered as temporary loans and shall be repaid immediately upon sale and delivery of the bonds, and claim for such repayment shall have priority over all other claims against the proceeds derived from the sale of such bonds.

**96.740 Election to operate under KRS 96.550 to 96.900; creation of board of public utilities; appointment; qualifications; incompatibility with other offices; bond; oath; not to hire relatives**

- (1) Any municipality desiring to acquire and operate an electric plant under the provisions of KRS 96.550 to 96.900 or any municipality now owning and operating an electric plant may elect to operate under the provisions of KRS 96.550 to 96.900 by enacting an ordinance declaring therein the desire and intention of the municipality to accept and operate under the provisions of KRS 96.550 to 96.900 and by providing in the ordinance that the municipality accepts and agrees to all of the provisions of KRS 96.550 to 96.900, and to all of the provisions as they may be from time to time amended by the acts of the General Assembly of Kentucky. The ordinance shall further authorize the mayor or chief executive to appoint a board, subject to the approval of the appointments by the governing body of the municipality as hereinafter in KRS 96.750 to 96.900 provided. Upon the passage of the ordinance the mayor or chief executive of any municipality may, with the approval of the governing body of the municipality, appoint a board of public utilities, consisting of four (4) residents of the municipality who have resided therein for not less than one (1) year next preceding the date of the appointment. However, one (1) board member may be appointed who lives in a portion of the utility's service area that is not within the city if

that portion contains ten percent (10%) or more of the utility's customers and that member is a customer of the utility for not less than one (1) year. The board must be appointed and qualified before the municipality shall have any authority to proceed further under the provisions of KRS 96.550 to 96.900. The board, when so appointed and qualified, shall be and hereby is declared to be a body politic and corporate, with perpetual succession; and may contract and be contracted with, sue and be sued, in and by its corporate name, and have and use a corporate seal. The name of the board shall be "Electric Plant Board of the City of \_\_\_\_\_" (The name of the municipality to be inserted.)

- (2) No person shall be appointed a member of the board who has, within the last two (2) years next before his or her appointment, held any public office, or who is related within the third degree to the mayor or any member of the governing body of the municipality.
- (3) Neither the board nor the superintendent appointed by the board shall appoint to any subordinate office which it may create nor employ in any capacity any person who is related within the third degree to any member of the board or to the mayor of the municipality or to any member of the governing body of that municipality. No officer or employee of a municipality shall be eligible for such appointment until at least one (1) year after the expiration of the term of his or her public office, or employment, except that the one (1) year waiting period after the expiration of the term of public office or employment shall not apply to an employee of a municipality that is not related within the third degree to the mayor or any member of the governing body of the municipality, at the time of appointment or employment by the board.
- (4) Except as provided in subsection (1) of this section, the members of the board shall be citizens, taxpayers, and legal voters of the municipality and shall not at the time of the appointment be indebted to the municipality either directly or indirectly or be surety on the official bond of any officer of the municipality.
- (5) If at any time during his or her term of office a member of the board becomes a candidate for or is elected or appointed to any public office, he or she shall automatically vacate his or her membership from the board, and another person shall be appointed to his or her place.
- (6) The municipality shall pay the cost of securing bonds for board members from a surety company qualified to do business in Kentucky, and members shall execute bond in an amount required by resolution of the governing body, and conditioned upon the faithful performance of their official duties.
- (7) Each member of the board shall qualify by taking the oath required by Section 228 of the Constitution.

#### **96.750 Compensation of board members and others**

- (1) The salary of each member of a board of public utilities may be fixed by the board at not exceeding two thousand four hundred dollars (\$2,400) per annum.
- (2) Such salaries, as well as the salary of the secretary-treasurer, shall constitute a cost of operation and maintenance of the electric plant.
- (3) The governing body of the municipality may, by resolution or ordinance, provide that the municipality shall not be liable for the payment of any salary or compensation of any of the members of said board, or for the payment of the salary or compensation or expenses of any person employed by said board, and that such salaries, compensation and expenses and any and all liabilities, of whatever kind or character incurred by the board or any officer or employee thereof, shall be payable solely and only out of revenues obtained by said board under the provisions of KRS 96.560 to 96.900, and said liabilities shall then be so limited.

**96.760 Term of board members; vacancies; removals**

- (1) The original appointees shall serve for one (1), two (2), three (3) and four (4) years respectively, from the date of appointment, as the said mayor or chief executive officer shall designate. Successors to retiring members so appointed shall be appointed for a term of four (4) years in the same manner, prior to the expiration of the term of office of the retiring members. In addition to the members so appointed, the said mayor or chief executive officer shall also, with the approval of the governing body, designate a member of such governing body, or in his discretion the city manager, to serve as a fifth member of the board. The term of such member shall be for such time as the appointing officer may fix, but not beyond such appointee's term of office in such governing body, or his employment as city manager. Appointments to complete unexpired terms of office shall be made in the same manner as original appointments.
- (2) Any member of the board may be removed from office upon a vote of a majority of the members of the governing body of the municipality for inefficiency, neglect of duty, misfeasance, nonfeasance, or malfeasance in office.

**96.770 Quorum of board; officers; meetings**

A majority of the board shall constitute a quorum and the board shall act by vote of a majority present at any meeting attended by a quorum. Vacancies in the board shall not affect its power or authority so long as a quorum remains. Within ten (10) days after appointment and qualification of members, the board shall hold a meeting and elect a chairman. The board shall at the same time elect a secretary-treasurer, and shall fix his compensation. The board shall hold public meetings at least once each month, at such regular time and place as the board may determine. Changes in such time and place of meeting shall be made known to the public as far in advance as practicable. Any special meeting may be called by the chairman or by two (2) members of the board, but, if such special meeting is called, written notice shall be sent to all members of the board by the chairman or secretary-treasurer. Except as otherwise expressly provided, the board shall establish its own bylaws and rules of procedure.

**96.780 Board to control plant; superintendent; public filing of rates and regulations; employees; contracts; records**

- (1) After a board has been appointed and qualified, it shall have charge of the general supervision and control of the acquisition, improvement, operation and maintenance of the electric plant of the municipality. The board shall employ an electric plant superintendent (herein called "superintendent"), who shall be qualified by training and experience for the general superintendence of the acquisition, improvement and operation of the electric plant. His salary shall be fixed by the board. The superintendent shall be removable by the board for inefficiency, neglect of duty, misfeasance, or malfeasance in office. He shall be required to execute a bond, in a sum to be determined and approved by the board, conditioned upon the faithful performance of his official duties. The cost of the bond may be charged as an expense of the operation of the electric plant.
- (2) Within the limits of the funds available therefor, all powers of a municipality to acquire, improve, operate and maintain, and to furnish electric service, and all powers necessary or convenient thereto, conferred by KRS 96.550 to 96.900, shall be exercised on behalf of the municipality by the board and the superintendent, respectively. Subject to the provisions of applicable bonds or contracts, the board shall determine programs and make all plans for the acquisition of the electric plant, shall make all determinations as to improvements, rates and financial practices, may establish such rules and regulations as it deems necessary or appropriate to govern the furnishing of electric service, and may disburse all moneys available in the electric plant fund hereinafter established for the acquisition, improvement, operation and maintenance of the electric plant and the furnishing of electric service.

- (3) A copy of the schedule of the current rates and charges in effect from time to time and a copy of all rules and regulations of the board relating to electric service shall be kept on public file at the main and all branch offices of the electric plant and also in the office of the municipal clerk or recorder. The superintendent shall have charge of all actual construction, the immediate management and operation of the electric plant and the enforcement and execution of all rules, regulations, programs, plans and decisions made or adopted by the board.
- (4) The superintendent shall appoint all employees and fix their duties and compensation subject to and with the approval of the board. Subject to the limitations and provisions of KRS 96.550 to 96.900, the superintendent, with the approval of the board, may acquire and dispose of all property, real and personal, necessary to effectuate the purposes of KRS 96.550 to 96.900. The title to all property purchased or acquired shall be taken in the corporate name of the board.
- (5) The superintendent shall let all contracts, subject to the approval of the board, but may, without such approval, obligate the electric plant on purchase orders up to an amount to be fixed by the board, not to exceed twenty thousand dollars (\$20,000). All contracts shall be in the corporate name of the board and shall be signed by the superintendent and attested by the secretary-treasurer or chairman of the board. The superintendent shall make and keep or cause to be made and kept full and proper books and records, subject to the supervision and direction of the board, and the provisions of applicable contracts.

#### **96.790 Separate account for funds of electric plant**

All moneys derived from the issuance of bonds under KRS 96.550 to 96.900, together with any governmental grant made in connection therewith, and all receipts from electric service or any other operation of the board, shall be deposited in a separate bank account or accounts, separate from all other municipal funds, and adequate records shall be kept of all such receipts and their sources.

#### **96.800 Use of proceeds from sale of bonds**

All moneys received from the sale and issuance of bonds shall be used solely to defray the cost of acquiring or improving an electric plant, except that such proceeds may in the discretion of the board also be used for the payment of the interest on the bonds until such acquisition and improvement is completed and for a period of not more than eighteen (18) months thereafter. The cost of the electric plant shall include all costs of acquisition or improvement, including all preliminary expenses described in KRS 96.730; the cost of acquiring all property, franchises, easements, and rights which, in the judgment of the board, are necessary or convenient; engineering and legal expenses; expenses for estimates of cost and revenues; expenses for plans, specifications and surveys; other expenses incident or necessary to determining the feasibility or practicability of the enterprise; administrative expense; and such other expense as may be incurred in the financing herein authorized, the acquisition or improvement of the electric plant, the placing of such plant in operation, including the creation of a cash working fund, and the performance of the things herein required or permitted in connection therewith.

#### **96.810 Use of revenues; reduction of rates; equity of municipality**

- (1) The board shall devote all moneys derived from any source other than the issuance of bonds to or for the payment of all operating expenses; bond interest and retirement and sinking fund payments; the acquisition and improvement of the electric plant; contingencies; other obligations incurred in the operation and maintenance of the electric plant and the furnishing of electric service; the state, any county, any school district, any municipality, and any other special taxing district in which the board operates, of the same respective amounts as provided in KRS 96.820, or any other additional amounts which the board pursuant to its contract with the Tennessee Valley Authority or other governmental agencies collects as tax equivalents for any taxing jurisdiction if the board contracts with the Tennessee Valley Authority or any governmental agency for the purchase and resale of electrical energy, or if the board does not contract with the Tennessee Valley Authority or any other governmental agency for the purchase or resale of any electrical energy and if it has met all obligations imposed on it by KRS 96.550 to 96.900 it may at the end of any twelve (12) months ending June 30 transfer any surplus to the general fund of the

municipality which authorized it; the redemption and purchase of electric plant bonds, in which case the bonds should be canceled; the creation and maintenance of a cash working fund; and the payment of an amount to the general funds of the municipality.

- (2) After the establishment of proper reserves, if any, and after complying with the above provisions of this section, any surplus of proceeds shall be devoted solely to the reduction of rates. The equity of the municipality contracting with the Tennessee Valley Authority or other governmental agency for the purchase and resale of electrical power or energy shall be the purchase price of the electric plant, less the face value of outstanding bonds, or, if there is no purchase price, the original cost of the plant as defined by the Federal Energy Regulatory Commission, less accrued depreciation, less the face value of the outstanding bonds. The payment of bonds or the acquisition or improvement of property from the receipts derived from electric service or any other operation of the board shall not be considered to increase the equity or investment of the municipality.

#### **96.820 Payment of sums equivalent to taxes based on book value**

- (1) For the purposes of this section, unless the context requires otherwise:
  - (a) "Taxing jurisdiction" shall mean each county, each school district, each municipality, and each other special taxing district located within the state.
  - (b) "State" shall mean the Commonwealth of Kentucky.
  - (c) "Tax equivalent" shall mean the amount in lieu of taxes computed according to this section which is required to be paid by each board to the state and to each taxing jurisdiction in which the board operates and required by subsection (11) of KRS 96.570 to be included in resale rates.
  - (d) "Tax year" shall mean the twelve (12) calendar-month period ending with December 31.
  - (e) "Current tax rate" shall mean the actual levied ad valorem property tax rate of the state and of each taxing jurisdiction which is applicable to all property of the same class as a board's property subject to taxation for the tax year involved.
  - (f) "Book value of property" or "book value of property owned by the board" shall mean the sum of:
    1. The original cost (less reasonable depreciation or retirement reserve) of a board's electric plant in service on December 31 of the immediately preceding calendar year located within the state, used and held for use in the transmission, distribution, and generation of electric energy, and
    2. The cost of the material and supplies owned by a board on December 31 of the immediately preceding calendar year. For the purpose of this definition, "electric plant in service" shall mean those items included in the "electric plant in service" account prescribed by the Federal Energy Regulatory Commission uniform system of accounts for electric utilities, and "material and supplies" shall mean those items included in the accounts grouped under the heading "material and supplies" in the said system of accounts.
  - (g) "Adjusted book value of property" or "adjusted book value of property owned by the board" shall mean the book value of property owned by the board excluding manufacturing machinery as interpreted by the Department of Revenue for franchise tax determination purposes.

- (h) The “adjustment factor” shall be one hundred twenty-five percent (125%) for the tax year 1970. For each tax year thereafter, it shall be the duty of the Department of Revenue to compute the adjustment factor for that tax year as follows: For each five (5) percentage points or major fraction thereof by which the adjustment ratio for electric utility property for the immediately preceding tax year exceeded or was less than one hundred sixteen percent (116%), five (5) percentage points shall be added to or subtracted from one hundred twenty-five percent (125%). For the purposes of this computation, “adjustment ratio for electric utility property” shall mean the ratio of total assessed value to total property value for all public service corporations distributing electric energy to more than fifty thousand (50,000) retail electric customers within the state. “Total assessed value” shall mean the total actual cash value assigned by the Department of Revenue for ad valorem property tax purposes to the property of such corporations located within the state (properly adjusted for property under construction). “Total property value” shall mean the sum of:
1. The depreciated original cost of the total utility plant in service of such corporations within the state, and
  2. The book value of material and supplies of such corporations located within the state, both as derived from published reports of the Federal Energy Regulatory Commission, or in the absence thereof, from information provided to the Department of Revenue by such corporations.
- (i) “Electric operations” shall mean all activities associated with the establishment, development, administration, and operation of any electric system and the supplying of electric energy and associated services to the public, including without limitation the generation, purchase, sale, and resale of electric energy and the purchase, use, and consumption thereof by ultimate consumers.
- (2) It shall be the duty of each board, on or before April 30, to certify to the Department of Revenue the book value of property owned by the board and the adjusted book value of property owned by the board and located within the state and within each taxing jurisdiction in which the board operates. A copy of the certification shall also be sent by the board to each such taxing jurisdiction. The book value of property and adjusted book value of property shall be determined, and the books and records of the board shall be kept in accordance with standard accounting practices, and the books and records of each board shall be subject to inspection by the Department of Revenue and by representatives of the affected taxing jurisdictions and to adjustment by the Department of Revenue if found not to comply with the provisions of this section. Upon the receipt of the required certification from a board, the Department of Revenue shall make any inspection and adjustment, hereinabove authorized, as it deems necessary, and no earlier than September 1 of each year the Department of Revenue shall certify to the board and to the county clerk of each county in which the board operates the book value of property owned by the board and the adjusted book value of property owned by the board, located within each taxing jurisdiction in which the board operates and within the state. At the same time, the Department of Revenue shall certify to the board and to the county clerk the adjustment factor for the tax year. The county clerk shall promptly certify the book value of property, the adjusted book value of property, and the adjustment factor certified by the Department of Revenue, to the respective taxing jurisdiction in which the board operates.
- (3) (a) Each board shall pay for each tax year, beginning with the tax year 1970, to the state and to each taxing jurisdiction in which the board operates, a tax equivalent from the revenues derived from the board’s electric operations for that tax year, computed according to this subsection.
- (b) The tax equivalent for each tax year payable to the state shall be the total of:
1. The book value of the property owned by the board within the state, multiplied by the adjustment factor, multiplied by the current tax rate of the state, less thirty cents (\$0.30), plus



2. The state's portion of the amount payable under paragraph (d) of this subsection.
- (c) The tax equivalent for each tax year payable to each taxing jurisdiction in which the board operates shall be the total of:
1. The adjusted book value of property owned by the board within the taxing jurisdiction, multiplied by the adjustment factor, multiplied by the current tax rate of the taxing jurisdiction; provided, however, for the purpose of this calculation the tax rate for school districts shall be increased by thirty cents (\$0.30), plus
  2. The taxing jurisdiction's portion of the amount payable under paragraph (d) of this subsection.
- (d) For purposes of this subsection, "amount payable" shall mean four-tenths of one percent (0.4%) of the book value of property owned by the board located within the state. The state shall be paid the same proportion of the amount payable as the payment to the state under subparagraph 1. of paragraph (b) of this subsection represents of the total payments to the state and all taxing jurisdictions in which the board operates required by subparagraph 1. of paragraph (b) and subparagraph 1. of paragraph (c) of this subsection. Each taxing jurisdiction in which the board operates shall be paid the same proportion of the amount payable as the payment to the taxing jurisdiction under subparagraph 1. of paragraph (c) of this subsection represents of the total payments to the state and all taxing jurisdictions in which the board operates required by subparagraph 1. of paragraph (b) and subparagraph 1. of paragraph (c) of this subsection. Under the regulations the Department of Revenue may prescribe, upon the board's receipt from the state and taxing jurisdictions of notice of the amount due under subparagraph 1. of paragraph (b) and subparagraph 1. of paragraph (c) of this subsection, the board shall compute the portion of the amount payable which is due the state and each taxing jurisdiction in which the board operates.
- (e) Payment of the tax equivalent under this section for each tax year shall be made by each board to the state within thirty (30) days after receipt by the board of the certification from the Department of Revenue required by subsection (2) of this section and shall be made directly to each taxing jurisdiction in which the board operates within thirty (30) days from the date of the certifications by the county clerk required by subsection (2) of this section. The state and each taxing jurisdiction in which a board operates shall have a superior lien upon the proceeds of the sale of electric energy by that board for the amounts required by this section to be paid to it.
- (4) Except as hereinafter provided, the tax equivalents computed under this section shall be in lieu of all state, municipal, county, school district, special taxing district, other taxing district, and other state and local taxes or charges on the tangible and intangible property, the income, franchises, rights, and resources of every kind and description of any municipal electric system operating under KRS 96.550 to 96.900 and on the electric operations of any board established pursuant thereto, and the tax equivalent for any tax year computed and payable under this section to the state or to any taxing jurisdiction in which any board operates shall be reduced by the aggregate amount of any tax or charge within the meaning of this sentence which is imposed by the state, or by any taxing jurisdiction in which a board operates, on the board, the electric system, or the board's electric operations. Provided, however, that if any school district in which property of a board is located has elected, or does hereafter elect, to apply the utility gross receipts license tax for schools to all utility services as provided by KRS 160.613 through KRS 160.617, or as may hereafter be provided by other statutes, the amount of such utility gross receipts license tax shall not reduce, or in any manner affect, the amount payable to any such board or boards under the provisions of this section. It is the intent and purpose of this provision to eliminate all sums received by any such board or boards by reason of the utility gross receipts license tax from any computation of the amount payable under this section to any such board or boards, irrespective of the manner in which that payment is computed, so that, in no event, shall any sum received by any school district by reason of the utility gross receipts license tax reduce, directly or indirectly,

the amount payable to such district under this chapter. Provided, further, that if the state shall levy a statewide retail sales or use tax on electric power or energy, collected by retailers of the energy from the vendees or users thereof, and imposed at the same rate or rates as are generally applicable to the sale or use of personal property or services, including natural or artificial gas, fuel oil, and coal as well as electric power or energy, the retail sales or use tax shall not be deemed to be a tax or charge within the meaning of the first sentence of this subsection, and the tax equivalent payable for the tax year to the state under this section shall not be reduced on account of such retail sales or use tax.

- (5) (a) Notwithstanding subsection (3) of this section, until the first tax year in which the total of:
1. The tax equivalent payable to the state, or to any taxing jurisdiction in which the board operates, computed under subsection (3) of this section, plus
  2. The additional amounts permitted to be paid to the state or taxing jurisdiction without deduction under the second and third sentences of subsection (4) of this section, exceeds the minimum payment to the state or taxing jurisdiction specified in paragraph (b) of this subsection, the tax equivalent for each tax year payable to the state or taxing jurisdiction shall be an amount equal to the minimum payment computed under paragraph (b) of this subsection.
- (b) For purposes of this subsection, the minimum payment to the state or to any taxing jurisdiction in which the board operates shall mean an amount equal to the total of:
1. The largest actual payment made by the board pursuant to this section to the state or to the taxing jurisdiction for any of the tax years 1964, 1965, or 1966, plus
  2. The state's or taxing jurisdiction's pro rata share of an amount equal to four-tenths of one percent (0.4%) of the increase since July 1, 1964, in the book value of property owned by the board within the state. For the purposes of this paragraph "pro rata share" shall mean the same proportion of the amount computed under this subparagraph as the largest actual payment in lieu of taxes made by the board to the state or taxing jurisdiction for the applicable tax year under subparagraph 1. of this paragraph represents of the total amount of the largest actual payments in lieu of taxes made by the board to the state and to all taxing jurisdictions in which it operated for any of the applicable tax years.
- (c) The provisions of paragraph (e) of subsection (3) of this section shall apply to all payments required under this subsection.
- (d) This subsection shall not be applicable for the first tax year specified in paragraph (a) of this subsection or for any tax year thereafter, except however, that tax year 1977 shall not be deemed as the "first tax year" as specified in paragraph (a) and this subsection shall continue to apply in such cases.

#### **96.830 Charge for electric service furnished municipality**

The board shall charge the municipality and all departments and works thereof for any electric service furnished to them at the rates applicable to other customers taking service under similar conditions. Revenues derived from such service shall be treated as all other revenues.

#### **96.840 Records and reports of board; audits**

- (1) The board shall keep a complete and accurate record of all meetings and actions taken, and of all receipts and disbursements, and shall make reports of the same to the governing body at stated intervals, not to exceed one (1) year. Said report shall be in writing, shall be filed in open meeting of the governing body, at stated intervals, not to exceed one (1) year, and a copy shall be filed

with the municipal clerk or recorder as a public record. An audit of the board's records shall be made annually by an auditor selected by the legislative body of the municipality. The expense of such an audit shall constitute an operating expense.

- (2) The board shall comply with the requirements of KRS Chapter 65A.

#### **96.850 Power of municipality to issue general obligation bonds**

Any municipality is hereby authorized and empowered to issue general obligation bonds under the limitations imposed by Section 158 of the Constitution for carrying out the purposes of KRS 96.550 to 96.900, but general obligation bonds shall not be issued for such purposes without the assent of two-thirds (2/3) of the voters voting in an election conducted in the manner set out in KRS 96.640.

#### **96.860 Disposal of plant**

The board or the municipality may sell or dispose of all or substantially all of that part of an electric plant located within the boundary of the municipality, owned and operated by it, only by first complying with the following provisions, to wit:

- (1) The board shall adopt a resolution which shall state in substance (a) that the board has approved the proposed sale or disposition, (b) a full description of the property to be sold or disposed of, (c) the transferee or transferees or purchasers thereof, (d) the consideration to be received by the board for such sale or disposition, (e) the terms or conditions of such sale or disposition, (f) the date on which an election shall be held, which shall be the day of the regular November election.
- (2) The resolution of the board shall be submitted to the governing body of the municipality; and if approved by the governing body of the municipality, the question shall be submitted to an election of the qualified voters in the manner provided in KRS 96.640, except that the question to be presented to the voters in the general election shall be: "Are you in favor of the sale or disposition of the electric plant, for the consideration of \$..... (here state the consideration)." The voters shall indicate a "Yes" or a "No" vote. If a majority of all of the qualified voters of the municipality voting in said general election on the question shall vote in favor of the sale or disposition of the electric plant, the sale shall be consummated, otherwise the sale or disposition shall not be made.
- (3) The board may dispose of all or any part of an electric plant located without the boundary of the municipality without an election or any other approval or authority than that in the board.

#### **96.870 Effective date of resolutions and ordinances**

Every resolution or ordinance adopted by the governing body of any municipality under the provisions of KRS 96.550 to 96.900 shall become effective from and after its passage, and no such resolution or ordinance shall be the subject of any referendum or election except as expressly provided in KRS 96.550 to 96.900.

#### **96.880 Plant not subject to authority of Public Service Commission except as to extension of service; bonds do not require approval**

- (1) It shall not be necessary for any municipality proceeding under KRS 96.550 to 96.900 to obtain any certificate of convenience and necessity, license, permit, or other authorization, from any board, commission, or other agency of Kentucky, in order to acquire, maintain and operate any electric plant.
- (2) Neither the Public Service Commission of Kentucky nor any other board or commission of like character shall, unless in the future expressly authorized, have jurisdiction over such board or municipality in the management and control of any electric plant whether within or without its boundaries, or any power or authority over the regulation of rates or charges, except that the

Public Service Commission may, when it determines that such action is in the public interest and will not jeopardize the financial structure of the system, require any such municipality to extend service within or without its boundaries to customers not previously served by such municipality. Its orders may be enforced by mandamus or mandatory injunction.

- (3) If and when any board organized and operating under the provisions of KRS 96.550 to 96.900 shall be required by the Public Service Commission to extend its services within or without its boundaries to customers not previously served by such municipality or board, revenue bonds may be issued and sold by the board in an amount sufficient for the board to obtain all money necessary to pay the cost of such extended service.
- (4) Bonds may be issued under KRS 96.550 to 96.900 without respect to the provisions of any laws requiring the prior approval of any court, commission, board, or regulatory authority.

**96.890 Competition with rural electric cooperative or other municipal plant forbidden; cooperative agreements**

No municipality or board operating an electric plant under the provisions of KRS 96.550 to 96.900 shall enter into competition with, or construct, maintain, or operate, any facilities or service in competition with any rural electric cooperative corporation or electric plant operated by another municipality or board organized under the laws of this state in any territory being served by any such rural electric cooperative corporation or other municipality or board; but any municipality or board operating an electric plant under the provisions of KRS 96.550 to 96.900 may enter into cooperative agreements with any such rural electric cooperative corporation or other municipality or board for a connection for cooperative service upon such terms and conditions as may be mutually agreed upon between any such municipality or board and any such rural electric cooperative corporation or other municipality or board. Such agreements may provide, but not by way of limitation, for exchange of electric service, the cooperative use of transmission lines and other facilities, and the common use or exchange of other service or facilities.

**96.895 Proration and distribution of payments of sums equivalent to taxes based on book value among the state, counties, cities, and school districts; regional development agency assistance fund; portion of TVA payment received by state to be transferred to fund for distribution to regional development agencies in fund-eligible counties; annual report**

- (1) As used in this section, unless the context requires otherwise:
  - (a) “Book value” means original cost unadjusted for depreciation as reflected in the TVA’s books of account;
  - (b) “Fund” means the regional development agency assistance fund established in subsection (4) of this section;
  - (c) “Fund-eligible county” means one (1) of Adair, Allen, Ballard, Barren, Bell, Butler, Caldwell, Calloway, Carlisle, Christian, Clinton, Cumberland, Edmonson, Fulton, Graves, Grayson, Harlan, Hart, Henderson, Hickman, Livingston, Logan, Lyon, Marshall, McCracken, McCreary, Metcalfe, Monroe, Muhlenberg, Ohio, Russell, Simpson, Todd, Trigg, Union, Warren, Wayne, Webster, or Whitley Counties;
  - (d) “Regional development agency” or “agency” means a special purpose governmental entity as defined in KRS 65A.010(9) that is designated by a fiscal court to receive a payment pursuant to this section;
  - (e) “TVA” means the Tennessee Valley Authority; and

- (f) “TVA property” means land owned by the United States and in the custody of the TVA, together with improvements that have a fixed situs on the land, including work in progress but excluding temporary construction facilities, if these improvements either:
1. Were in existence when title to the land on which they are situated was acquired by the United States; or
  2. Are allocated by the TVA or determined by it to be allocable to power. However, manufacturing machinery as interpreted by the Department of Revenue for franchise tax determination; ash disposal systems; and coal handling facilities, including railroads, cranes and hoists, and crushing and conveying equipment, shall be excluded.
- (2) Book value shall be determined, for purposes of applying this section, as of the June 30 used by the TVA in computing the annual payment to the Commonwealth that is subject to redistribution by the Commonwealth.
- (3) Except for payments made directly by the TVA to counties, the total fiscal year payment received by the Commonwealth of Kentucky from the TVA, as authorized by Section 13 of the Tennessee Valley Authority Act<sup>1</sup>, as amended, shall be prorated thirty percent (30%) to the general fund of the Commonwealth and seventy percent (70%) among counties, cities, and school districts, as provided in subsections (6) and (7) of this section.
- (4) (a) The regional development agency assistance fund is hereby established in the State Treasury.
- (b) The fund shall be administered by the Department for Local Government for the purpose of providing funding to agencies that are designated to receive funding in a given fiscal year by the fiscal court of each fund-eligible county through the Regional Development Agency Assistance Program established in KRS 96.905.
- (c) The fund shall only receive the moneys transferred from the general fund pursuant to subsection (5) of this section.
- (d) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year. Any interest earnings of the fund shall become a part of the fund and shall not lapse.
- (5) (a) For fiscal years beginning on or after July 1, 2020, a portion of the total fiscal year payment received by the Commonwealth that is allocated to the general fund shall be transferred from the general fund to the regional development agency assistance fund established in subsection (4) of this section.
- (b) This portion shall be equal to six million dollars (\$6,000,000).
- (c) Distribution of these moneys shall be made by dividing the amount in paragraph (b) of this subsection equally among each fund-eligible county.
- (6) The payment to each county, city, and school district shall be determined by the proportion that the book value of TVA property in such taxing district, multiplied by the current tax rate, bears to the total of the book values of TVA property in all such taxing districts in the Commonwealth, multiplied by their respective tax rates. However, for purposes of this calculation, each public school district shall have its tax rate increased by thirty cents (\$0.30).
- (7) (a) As soon as practicable after the amount of payment to be made to the Commonwealth is finally determined by the TVA, the Department of Revenue shall determine the book value of TVA property in each county, city, and school district and shall prorate the payments allocated to counties, cities, and school districts under subsection (3) of this section among the distributees as provided in subsection (6) of this section.

- (b) The Department of Revenue shall:
  - 1. Certify the payment due each county, city, and school district, including the amount distributed to the county under subsection (5) of this section, to the Finance and Administration Cabinet; and
  - 2. Notify the Department for Local Government of that certification.
- (c) Upon certification by the Department of Revenue, the Finance and Administration Cabinet shall make the payment to such district.
- (8) In each fiscal year, after the Department of Revenue has calculated the prorated payment amount that is due to each county, city, and school district under subsections (6) and (7) of this section, the Department for Local Government shall notify in writing the fiscal court of each fund-eligible county regarding the amount that the county, city, and school district shall receive for the fiscal year, including the amount distributed to the county under subsection (5) of this section.
- (9) No amount shall be taken from the fund to pay administrative expenses by the Department for Local Government.
- (10) All agencies receiving funds under this section shall provide a written report annually, no later than October 1, to the fiscal court that designated it for payment and to the Interim Joint Committee on Appropriations and Revenue. The report shall describe how the funds were expended and the results of the use of funds in terms of economic development and job creation.

#### **96.900 Estoppel to question validity of KRS 96.550 to 96.890**

Any municipality or board exercising any of the powers granted under KRS 96.550 to 96.890 or any person accepting benefits conferred thereby shall be estopped to question the validity of any provision of KRS 96.550 to 96.890.

#### **96.901 Authorization for municipal utility operating under KRS 96.550 to 96.900 to participate in group purchasing program**

- (1) A municipal utility that owns or operates an electric utility under KRS 96.550 to 96.900 may authorize:
  - (a) Membership and participation in a group purchasing program when the municipal utility deems that the purchase of power through a group purchasing program can affect economy or efficiency in the operations of the municipal utility; or
  - (b) The purchase of wholesale electric power for the purpose of resale from any person or entity when the purchase is deemed advantageous to the municipal utility.
- (2) “Group purchasing program” means a voluntary program that may consist of both public and private utilities for the purchase of wholesale electric power.
- (3) A municipal utility that is purchasing wholesale electric power for resale to the ultimate customers of the municipal utility as provided under subsection (1) of this section shall not be subject to the provisions of KRS 45A.365 and KRS 424.260.

#### **96.905 Regional Development Agency Assistance Program; grants for economic development and job creation activities; annual reports; certification of proper use of funds**

- (1) A Regional Development Agency Assistance Program is established to consist of a system of grants to agencies designated by fiscal courts of counties designated in KRS 96.895. Grants shall be administered by the Department for Local Government.



- (2) (a) Grants obtained under this program shall be used for:
  - 1. Economic development and job creation activities that the agency is empowered to undertake in that county;
  - 2. Acquiring federal, state, or private matching funds to the extent possible; and
  - 3. Debt service for approved projects.
- (b) Grants obtained under this program shall not be used for salaries or consulting fees.
- (3) Applications for grants from funds provided for in KRS 96.895 shall be made by the legislative bodies of one (1) or more counties entitled to receive money from the regional development agency assistance fund.
- (4) The Department for Local Government shall review and approve grant applications from counties for agencies that operate in, or serve the interest of, the county whose fiscal court designated it to receive funding. Multiple counties may also submit a joint application requesting that part of their allotted funds be directed to an agency for a project that affects the counties.
- (5) By October 1 of each year, the commissioner of the Department for Local Government shall provide, in writing, to each the Governor and the Legislative Research Commission a listing of all applications for grants received pursuant to this section since the last report, a listing of all grants awarded, the amount of the award, the recipient agency, and the related project.
- (6) The Department for Local Government shall require that any funds granted under this section include an agreement that the recipient agency shall certify that the funds were expended for the purpose intended. The department shall determine whether the certification should be an independent annual audit or an internal certification, taking into account the size of the agency and the financial burden an independent annual audit may impose on the agency. In the case of an independent annual audit, the audit report shall include a certification that the funds were expended for the purpose intended. A copy of the audit or certification of compliance shall be forwarded to the Department for Local Government within eighteen (18) months after the end of the fiscal year.

## CLASSIFICATION OF SEWER USERS

### 96.910 Declaration of policy of KRS 96.910 to 96.927

The public health, safety and welfare require that new and alternative measures be authorized to encourage, promote, and make more feasible the provision of facilities for the collection, treatment, and disposal of sewage by cities, by sewer service charges established with due consideration for cost of necessary new or additional facilities, benefits received and to be received, and approximate ultimate equality of financial burden.

### 96.911 Definitions for KRS 96.910 to 96.927

As used in KRS 96.910 to 96.927, unless the context otherwise requires:

- (1) “City” means an incorporated municipality of any class and a county that has adopted an urban-county government, except those communities served by a metropolitan sewer district, under the provisions of KRS Chapter 76;
- (2) “Governing body” means the municipal legislative body of a city;

- (3) “Cabinet” means the Energy and Environment Cabinet;
- (4) “Sewer” means any structure or installation for the drainage of liquid wastes, but only insofar as they relate to sanitation and the control of water pollution, as distinguished from the drainage of storm or surface waters; however, where both functions are carried out by the same system, it is to be construed as a sewer;
- (5) “Natural drainage area” means any geographical area within which liquids flow by gravity to a common point, which is necessary, reasonable, or practicable from the standpoint of sewage treatment and disposal, as approved by the cabinet.

#### **96.912 Authority to classify users**

The governing body of any city may classify sewer users upon any reasonable basis and may establish different service rates for each class, provided such rates are uniform as to all sewer users in the same class. Such classifications may be of limited or indefinite duration.

#### **96.913 Standards for classifying users**

In determining and defining special classes, the governing body of a city shall have as its objectives the interests of public health, safety, and general welfare of the entire community, and reasonable ultimate quality of financial burden to users similarly situated.

#### **96.915 Authority to apply different charges**

A city may establish a basic sewer service charge or basic schedule of graduated charges, applying to all sewer users alike, and may, in its discretion, establish and apply to one or more special classes of users additional service charges.

#### **96.916 Standards for establishing charges**

In prescribing schedules of charges, and in determining the aggregate of revenues required to be raised, the governing body shall consider the cost and value of existing, planned and foreseeably needed sewer facilities, the cost of operation and maintenance, repairs, replacements, extensions and improvements, and financial requirements for the proper servicing of existing and prospective borrowings which may be necessary, or desirable. Charges may be varied by the city in its discretion.

#### **96.918 Procedure for establishment of classification; first ordinance**

The governing body of any city desiring to establish special classes of sewer users shall initiate proceedings by adopting an ordinance to be known as the “First Ordinance,” which shall state:

- (1) The special classes of sewer users proposed to be created, the reasons and justifications for each classification, and the general geographical boundaries of each class, if susceptible of geographic identification;
- (2) Whether a basic sewer service charge is proposed;
- (3) The charges proposed initially for each special class; or, if such charges are dependent upon factors later to be determined, the formula, method, or basis upon which such charges will be established;
- (4) Whether differences in charges, or schedules thereof shall be of indefinite duration, or of limited duration;
- (5) Whether immediate construction and installation of sewer facilities, including reconstructing, replacing, repairing, extending, improving, enlarging, adding to, or completing any existing

facilities, is proposed, and if so, a brief summary of preliminary findings and recommendations of an engineer, licensed by the Commonwealth, showing the occasion for such necessity and the general nature, scope, and estimated cost thereof; and

- (6) The aggregate of revenues to be produced, and the amount of annual revenue estimated to be produced from users of each proposed special class.

#### **96.919 Publication of first ordinance**

The first ordinance shall be published pursuant to KRS Chapter 424. A certified copy of the first ordinance shall be delivered to the county judge/executive or county clerk of each county in which any area affected by the ordinance outside the city may be situated, and the county judge/executive, or county clerk, shall, upon receiving the same, cause it to be posted at the county courthouse door, as in the case of notices of judicial sales of real property.

#### **96.920 Areas proposed to be annexed**

If a city contemplates annexation of areas outside its corporate limits when the First Ordinance is published, or if annexation is then in progress, it may state that its proposed establishment of special classes of sewer users will be applicable to such areas, and is conditioned as to such areas upon the final annexation thereof.

#### **96.922 Public hearing**

The First Ordinance shall provide for a public hearing at a time and place to be specified therein not less than one (1) week after publication. Such hearing shall be presided over by a person or persons designated by the governing body of the city. Written minutes of the meeting shall be kept, and shall be made a part of a written report, to be submitted by the designated presiding person or persons, to the municipal governing body of the city. At such hearing any affected sewer user, including affected prospective sewer users in any area contemplated to be annexed or in the course of annexation proceedings, may appear and be heard.

#### **96.923 Hearing rights and procedures**

Any sewer user, or prospective sewer user, within any of the proposed special classes of sewer users may appear at the public hearing in person or by a representative and may submit in writing a statement of any reasons for advocating, or objecting to, any matter set forth in the required notice. Such statement shall be attached to, or included in, the written report of the hearing. The person presiding at the hearing may require those in attendance to identify themselves as sewer users, or prospective sewer users, and may call for a vote of persons properly identified, on any pertinent matter. The results of such vote shall be included in the subsequent written report to the governing body. The hearing may be adjourned to convene again, either at a time and place announced at the hearing, or upon public notice of such time and place, to be made in the same manner as that required for First Ordinances.

#### **96.924 Final determination; second ordinance**

At any subsequent regular meeting of the governing body the written report of the public hearing concerning the first ordinance shall be submitted. At such meeting, any sewer users, or prospective sewer user, may again be heard, in person or by representative. The governing body may adopt an ordinance to be known as the "Second Ordinance" which may provide for rejection or adoption or partial adoption of the first ordinance proposals, or total or partial adoption with modifications. If the governing body shall determine that more than fifty percent (50%) of the sewer users or prospective sewer users, both in number and in source of projected revenues, object to the proposals finally adopted by the governing body, it may adopt the second ordinance only upon the affirmative vote of three-fifths (3/5) of the membership of the governing body. The second ordinance shall be published in the same manner as required with respect to first ordinance.

**96.926 User's appeal to Circuit Court**

- (1) Any sewer user, or prospective sewer user, affected by the Second Ordinance may, within thirty (30) days after publication of the Second Ordinance, file an action in the Circuit Court of the county in which the city is situated attacking the validity of the Second Ordinance from the standpoint of whether the governing body acted in conformity with the procedures made mandatory by KRS 96.910 to 96.927. Provided, however, that if any aggrieved sewer user or prospective sewer user files in the office of the city clerk a written notarized statement of intent to file such an action, the time for filing actions in the Circuit Court shall be fifteen (15) days after such notice of intent to sue is filed with the clerk, or thirty (30) days after publication of the Second Ordinance, whichever is later.
- (2) Proceedings in the Circuit Court shall be tried according to the practice prescribed for equity cases.
- (3) In the event an action is filed as provided for by this section, the effective date of the proposed sewer service charges as prescribed by the Second Ordinance shall be the date judgment is entered by the Circuit Court, if such judgment is favorable.

**96.927 Construction of KRS 96.910 to 96.927**

Proceedings under KRS 96.910 to 96.927 are purely discretionary. KRS 96.910 to 96.927 is not intended to be in derogation of any other law, and does not repeal or amend any other law.

**ENFORCEMENT OF SEWER CHARGE COLLECTIONS****96.930 Declaration of policy of KRS 96.930 to 96.943**

The General Assembly hereby recognizes and declares that the use of water in any manner tending to contaminate it, raises a correlative public duty to provide for the proper disposition thereof according to the highest public health standards, and that such public duty includes full responsibility for paying the cost of such disposition.

**96.931 Definitions for KRS 96.930 to 96.943**

As used in KRS 96.930 to 96.943, unless the context otherwise requires:

- (1) "City" means an incorporated municipality of any class;
- (2) "Governing body" means the body vested by law with the legislative power of a city;
- (3) "Sewer body" means the body vested with responsibility for the control, operation, and maintenance of a city's sewer facilities, which may be the governing body or a board, commission, or agency, created by statute or by city ordinance, or a private person, performing such functions under lawful contract with the city;
- (4) "Water supplier" means any person supplying water intended to be used, or actually used, in any manner resulting in contamination and includes the city itself, other cities and public bodies, and private operators of water-supplying facilities;
- (5) "Public health standards" means such standards as are lawfully prescribed from time to time by the secretary for health and family services, the United States Public Health Service, or any lawfully constituted county, city, or other public board, department, or agency, vested with responsibility in this area.

**96.932 Enforcement of sewer charge collections by discontinuing water service**

In the interests of the public health, safety, and general welfare, cities may enforce collection of lawful rates and charges for the use of municipal sewer facilities by requiring that water service, whether provided publicly or privately, be discontinued until payment is made or some satisfactory arrangement is reached. Cities may delegate to sewer bodies the power to issue orders to water suppliers to discontinue service to any person who is delinquent in paying sewer charges.

**96.934 Coordination of sewer body with water supplier**

- (1) If a city is also the water supplier, the governing body may provide that rates for water service and sewer service be billed simultaneously and that water service shall be discontinued upon failure to pay any part of such charges, including penalties, interest, and reasonable fees for disconnection and reconnection;
- (2) If a city is not also the water supplier, then in the event of failure on the part of any sewer user to pay, when due, the bill for sewer service charges, the sewer body may, when such power has been delegated to it by the city, give notice in writing, signed by an authorized person, to the water supplier, to discontinue water service to premises designated in the notice, until notified otherwise. The notice shall identify the delinquent sewer user in such manner as reasonably to enable the water supplier to identify the water service connection which is to be cut off pursuant thereto. Upon receipt of such notice, the water supplier shall discontinue water service to the premises until notified otherwise by the sewer body.

**96.936 Rights of water supplier**

- (1) A water supplier may in writing served upon the city clerk, set forth (a) reasonable fees or charges for disconnecting and reconnecting water service connections, and (b) whether or not it will require that an authorized agent of the sewer body accompany its own agent or employee when disconnection is undertaken pursuant to any order to discontinue service by the sewer operator.
- (2) If, at the time a water supplier receives notice to discontinue service the terms of the written instrument delivered to the city clerk require that an authorized agent of the sewer body be present when the water connection is cut off, the water supplier shall not be required to effect the discontinuance of water service if it is unable to procure the presence of an authorized agent of the sewer body.

**96.938 Adjustments of sewer charges**

No payment of the bill for sewer service charges disputed by the sewer user shall be deemed a waiver by the sewer user of any right thereafter to claim and recover from the sewer body any and all sums improperly included in the bill. In the event of such dispute, the authorized agent of the sewer body may make adjustment for any apparent error in mathematical computation of the bill, he may tentatively agree to any proposed plan for delayed payment, or he may refer the dispute to the sewer operator for consideration. In such event the agent of the sewer body may direct that the water service not be discontinued at that time, and he shall indorse such direction upon the water supplier's discontinuance notice. If a water supplier is directed not to discontinue service, after sending an agent to perform such duty, it shall be entitled to receive its proper fee as if the discontinuance had been made.

**96.940 Contract for joint collection of charges**

Any sewer body and any water supplier may enter into a contract relating to any of the provisions of KRS 96.930 to 96.943. Such contract may provide that the water supplier shall furnish to the sewer body copies of its records, or that the water supplier will compute sewer charges for the sewer body. However, no such contract shall render nugatory the right of a sewer body, to order water suppliers to terminate water service to any premise, provided such authority has been delegated to the sewer body by the city.

**96.942 Nonliability for discontinuing service**

No water supplier who discontinues water service pursuant to an order from the sewer body as provided in KRS 96.930 to 96.943, shall incur any liability by reason thereof, except to the extent of its own negligence or other improper conduct.

**96.943 Liability for failure to discontinue service**

Any water supplier which wrongfully fails or refuses to discontinue water service pursuant to an order properly made to it by a sewer body and continues such failure or refusal for a period of thirty (30) days after receipt of the notice, shall be liable to the sewer body for any amount due from the sewer user involved.