

Part 6

Cable Television, Internet and Related Services

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7-52-601. Authority to operate services.

(a) Each municipality operating an electric plant described in 7-52-401 has the power and is authorized within its service area, under this part and on behalf of its municipality acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, sometimes referred to as governing board in this part, to acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge or otherwise dispose of any system, plant, or equipment for the provision of cable service, two-way video transmission, video programming, Internet services, or any other like system, plant, or equipment within or without the corporate or county limits of such municipality, and, with the consent of such other municipality, within the corporate or county limits of any other municipality. A municipality may only provide cable service, two-way video transmission, video programming, Internet services or other like service through its board or supervisory body having responsibility for the municipality's electric plant. A municipality providing any of the services authorized by this section may not dispose of all or substantially all of the system, plant, and equipment used to provide such services, except upon compliance with the procedures set forth in 7-52-132.

(b) The services permitted by this part do not include telephone, telegraph, and telecommunications services permitted under part 4 of this chapter.

(c) Notwithstanding subsection (a), a municipality shall not have any power or authority under subsection (a) in any area where a privately-held cable television operator is providing cable service over a cable system and in total serves six thousand (6,000) or fewer subscribers over one (1) or more cable systems.

(d) Notwithstanding subsection (a), a municipality shall not have any power or authority under subsection (a) in any area of any existing telephone cooperative that has been providing cable service for not less than ten (10) years under the authority of the federal communications commission.

(e) (1) Notwithstanding this section, the comptroller of the treasury shall select, not later than August 1, 2003, a municipal electric system providing services in accordance with this part to provide, as a pilot project, the services permitted under this section beyond its service area but not beyond the boundaries of the county in which such municipal electric system is principally located; provided, that:

(A) The municipal electric system receives a resolution from the legislative body of the county regarding service in unincorporated areas of the county, or any other municipality within such county regarding service within such municipality, requesting the municipal electric system to provide such services to its residents; and

(B) The municipal electric system obtains the consent of each electric cooperative or other municipal electric system in whose territory the municipal electric system will provide such services.

(2) The comptroller shall expand the pilot project established in subdivision (e)(1) to include one (1) municipal electric system located in the eastern grand division of the state that proposes to provide services in accordance with this part. Not later than August 1, 2004, the comptroller shall select the municipal electric system pilot project pursuant to this subdivision (e)(2), subject to the requirements of subdivisions (e)(1)(A) and (e)(1)(B).

(3) The comptroller shall report to the general assembly, not later than January 31, 2008, with recommendations regarding whether the pilot projects permitted by this part should be continued or expanded to other systems. The comptroller shall evaluate the efficiency and profitability of the pilot project services of the municipal electric system in making such recommendation; provided, that the comptroller shall not so evaluate a pilot project system that is not providing service in competition with another cable service provider.

(4) There shall be no other municipal electric system selected to provide pilot project services until the comptroller issues the recommendation required by subdivision (e)(3).

Acts 1999, ch. 481, 1; 2003, ch. 59, 1; 2004, ch. 587, 1.

Cross-References. Grand divisions, title 4, ch. 1, part 2.

Attorney General Opinions. Interlocal agreements to provide cable services. OAG 12-15, 2012 Tenn. AG LEXIS 15 (2/15/12).

Municipal electric system providing internet and video programming. OAG 12-70, 2012 Tenn. AG LEXIS 70 (7/11/12).

Generally, an energy authority may extend water and wastewater services outside its electric service area with the consent of any municipality or utility district into which service is to be extended. An energy authority may provide telecommunications service which includes telephone, cable television, and Internet (broadband) service only within its electric service area and with the permission of any other municipality located within its service area, into which service is to be extended. OAG 21-06, 2021 Tenn. AG LEXIS 6 (5/10/2021).

7-52-602. Business plan Public notice and hearing Referendum.

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

(1) Upon the approval and at the direction of the governing board, the municipal electric system shall file a detailed business plan with the office of the comptroller of the treasury that includes a three-year cost benefit analysis and that identifies and discloses the total projected direct cost and indirect cost of and revenues to be derived from providing the proposed services. The plan shall also include a description of the quality and level of services to be provided, pro forma financial statements, a detailed financing plan, marketing plan, rate structure and any other information requested by the comptroller of the treasury or the comptroller's designee;

(2) After review of the plan, the comptroller of the treasury shall provide a written analysis of the feasibility of the proposed business plan to the chief legislative body of the municipality in which the municipal electric system is located and the governing board within sixty (60) days; provided, that the calculation of the time to file the comptroller's written analysis shall not commence until the business plan is complete. Upon expiration of the sixty-day period, the governing board may proceed without the written analysis of the comptroller;

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

(4) The governing board shall conduct a public hearing on the provision of such services. No sooner than fourteen (14) days after such public hearing, the governing board may consider authorizing the provision of additional services. A municipal electric system may provide additional services only after approval by a two-thirds (2/3) majority vote of the chief legislative body of the municipality in which the municipal electric system is located or by a public referendum held pursuant to subdivision (5); and

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

**FOR THE MUNICIPAL ELECTRIC SYSTEM PROVIDING ADDITIONAL SERVICES and
AGAINST THE MUNICIPAL ELECTRIC SYSTEM PROVIDING ADDITIONAL SERVICES.**

Acts 1999, ch. 481, 1; 2010, ch. 868, 20.

7-52-603. Separate division to provide services Costs and charges.

(a) (1) (A) A municipal electric system shall establish a separate division to deliver any of the services authorized by this part. The division shall maintain its own accounting and record-keeping system. A municipal electric system may not subsidize the operation of the division with revenues from its power or other utility operations.

(B) A municipal electric system may lend funds, at a rate of interest not less than the highest rate then earned by the municipal electric system on invested electric plant funds, to acquire, construct, and provide working capital for the system, plant, and equipment necessary to provide any of the services authorized by this part; provided, that such interest costs shall be allocated to the cost of such services.

(2) The division shall be subject to the terms and conditions of those types of provisions generally provided in existing or future pole attachment agreements, including without limitation, allocation of costs for rates, insurance, and other related costs, and the responsibility for make-ready provisions, that are applicable to private providers of services provided by the division under this part.

(3) In response to facility installation, maintenance, or relocation requests made under a pole attachment agreement by a private provider of services provided by the division under this part, the municipal electric system shall provide the same response times and service quality as the municipal electric system provides for requests of the division for such services and shall provide nondiscriminatory access to these facilities. Nothing in this subsection (a) shall impair the rights of a municipal electric system under its pole attachment agreement with the private provider of services.

(b) A municipal electric system providing any of the services authorized by this part shall fully allocate any costs associated with the services provided under this part to the rates for those services.

(c) A municipal electric system providing any of the services authorized by this part shall establish and charge rates that cover all costs related to the provision of such services.

(d) A municipal electric system shall charge or allocate as costs to the division the same pole rate attachment fee as it charges any other franchise holder providing the same service.

(e) Any fee imposed by the municipality on a private provider of cable services, shall also be allocated to the division.

Acts 1999, ch. 481, 1.

7-52-604. Guidelines for accounting Audits Financial reports.

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

of such guidelines or procedures shall not be deemed a rule-making proceeding under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

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

(c) On or before June 30, 2005, the office of the comptroller of the treasury shall prepare a report to the general assembly evaluating the operations of municipal electric systems offering services permitted by this part, which shall include a recommendation as to whether the authority to provide such services should be expanded, restricted or terminated.

(d) Except for two (2) municipal electric systems located in the middle grand division of the state, no additional municipal electric system shall apply or be granted authorization to provide the services described in 7-52-601 until February 1, 2006, at which time the general assembly shall receive and consider the comptroller's report described in subsection (c); provided, however, that municipal electric systems presently operating pursuant to 7-52-601 on June 7, 2005, or having received approval pursuant to 7-52-602 as of June 7, 2005, shall not be subject to the requirements of this subsection (d).

Acts 1999, ch. 481, 1; 2005, ch. 362, 1.

Cross-References. Grand divisions, title 4, ch. 1, part 2.

Reporting requirements satisfied by notice to general assembly members of publication of report, 3-1-114.

7-52-605. Powers and obligations of service providers.

To the extent that it provides any of the services authorized by this part, a municipal electric system shall have all the powers, obligations, and authority granted entities providing similar services under applicable laws of the United States, the state of Tennessee or applicable municipal ordinances.

Acts 1999, ch. 481, 1.

Attorney General Opinions. Municipal electric system providing internet and video programming. OAG 12-70, 2012 Tenn. AG LEXIS 70 (7/11/12).

7-52-606. Tax payments Payments in lieu of taxes.

(a) A municipal electric system providing any of the services authorized by this part shall make tax equivalent payments with respect to such services in the manner established for electric systems under part 3 of this chapter; provided, that such payments shall not include amounts based on net system revenues as provided in 7-52-304(1)(B). For purposes of the calculation of such tax equivalent payments only, the system, plant, and equipment used to provide such services shall be considered an electric plant, and the revenues received from such services shall be considered operating revenues. The amount payable pursuant to this subsection (a) shall not exceed the

amount that would otherwise be due from a municipality were it a private provider of such services paying ad valorem taxes.

(b) In addition to the requirement of subsection (a), and notwithstanding any other law to the contrary, a division of the municipal electric system providing the cable services, Internet services, two-way video transmission or video programming services authorized by this part, is subject to payment to the appropriate units of government of an amount in lieu of the following taxes on that part of its revenues, plant and facilities dedicated or allocated to those services described in 7-52-601(a), to the same extent as if it were a private provider of such services:

- (1) Excise and franchise tax law under title 67, chapter 4, parts 20 and 21;
- (2) Sales tax law under title 67, chapter 6; and
- (3) Local privilege tax law under title 67, chapter 4, part 7.

Acts 1999, ch. 481, 1.

7-52-607. Financing powers of service providers.

Any municipality authorized by this part to provide any of the services described in this part shall have the power and is hereby authorized to borrow money, contract debts and issue its bonds or notes to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of a system or systems, or any part of the system or systems, to provide any of such services, including the acquisition of land or rights in land and the acquisition and installation of all equipment necessarily incident to the provision of such services. Any bonds or notes authorized to be issued pursuant to this section shall be issued only in accordance with the procedures, requirements and limitations set forth in chapter 34 of this title, or the Local Government Public Obligations Act of 1986, compiled in title 9, chapter 21, as elected by the municipality issuing the bonds or notes. All provisions of chapter 34 of this title, or the Local Government Public Obligations Act of 1986, relating to the authorization, issuance and sale of bonds or notes, the use and application of revenues of the system or systems being financed, powers to secure such bonds and notes, covenants and remedies for the benefit of bond or note holders with respect to such bonds or notes, validity and tax exemption with respect to such bonds or notes, and powers to refund and refinance such bonds or notes shall apply to any bonds or notes authorized hereunder and the system or systems financed thereby with the same effect as if such system or systems were a public works if proceeding under chapter 34 of this title, or a public works project if proceeding under the Local Government Public Obligations Act of 1986.

Acts 1999, ch. 481, 1.

Cross-References. Local government public obligations law, title 9, chapter 21.

Municipal utilities, title 7, chapter 34.

7-52-608. Conflicting law or provisions.

This part supersedes any conflicting provisions of general law, private act, charter or metropolitan charter provisions.

Acts 1999, ch. 481, 1.

7-52-609. Civil actions.

A franchisee under chapter 59 of this title operating in the service area of the municipal electric division providing services under this part may bring a civil action for injunctive or declaratory relief for a violation under this part, and may recover actual damages upon a showing of a willful violation under this part. Jurisdiction and venue for such action shall be in the chancery court in the county where the alleged violation is occurring or will occur. Such actions shall be scheduled for hearing as a priority by the court.

Acts 1999, ch. 481, 1.

7-52-610. Liability of service providers.

A division established by a municipal electric system to deliver any of the services authorized by this part shall not be considered a governmental entity for the purposes of the Tennessee Governmental Tort Liability Act, compiled in title [29](#), chapter 20.

Acts 1999, ch. 481, 1.

7-52-611. Customer right to action for damages.

A customer of a municipal electric system shall have a right of action to recover damages against such system pursuant to this part.