

PUBLIC ACTS, 1999

CHAPTER NO. 430

HOUSE BILL NO. 1450

By Representatives Rinks, Walker, Newton

Substituted for: Senate Bill No. 1547

By Senator Rochelle

AN ACT to amend Tennessee Code Annotated, Title 65, Chapter 25, and Title 7, Chapter 52, relative to electric cooperatives and municipal electric plants.

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

SECTION 1. Tennessee Code Annotated, Section 65-25-205(c), is amended by changing the period at the end of the subsection to a semi-colon and adding the following language:

provided, however, that each cooperative may, within its service area and with the authorization of its board, contract to establish a joint venture with an entity that is a current franchise holder under Title 7, Chapter 59, within the cooperative's service area and has been operating, either itself or its predecessor franchise holder, for not less than three (3) years at the time of the establishment of the joint venture (hereinafter "cable joint venture"). A cable joint venture shall be authorized to provide cable service, two-way video transmission, video programming, internet services, and other like services and shall comply in all respects with the requirements of Section 2 of this act.

SECTION 2. Tennessee Code Annotated, Title 65, Chapter 25, Part 2, is amended by adding the following language as a new, appropriately designated section:

Section _____. (a) An electric cooperative may not provide subsidies to a cable joint venture. Notwithstanding the limitations set forth in the preceding sentence, an electric cooperative participating in a cable joint venture may:

(1) Dedicate a reasonable portion of the electric plant to the provision of such service, the costs of which shall be allocated to such services by agreement of the parties to the joint venture.

(2) Lend funds, at a rate of interest not less than the highest rate then earned by the electric cooperative on invested electric plant funds, to acquire, construct, and provide working capital for the system, plant, and equipment necessary to provide any such services; provided, that such interest costs shall be allocated to the cost of such service for regulatory purposes, and further provided that no financing for a cable joint venture shall come from loans from the rural utility service of the United States Department of Agriculture unless and until such loans are specifically authorized by federal statute.

(b) To the extent that an electric cooperative offers the services authorized by Section 1 hereof in a joint venture, such cooperative shall have all the powers,

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obligations, and authority granted other entities providing such services under the applicable laws of the United States, the State of Tennessee, or local governments; provided, however, the franchise under which the joint venture shall operate shall in no way be considered an overlapping franchise nor in any way modify or amend §7-59-203.

(c) Nothing in this part shall be construed to alter or amend the process or procedure for renewal of franchises.

(d) It shall be unlawful during the negotiation of the joint venture or thereafter for any party to a cable joint venture or the local franchising authority, as defined in Title 7, Chapter 59, to use unfair or anti-competitive practices under any applicable provision of state or federal law. Such practices shall include, but are not limited to, predatory pricing, collusion, and price tying.

(e) The parties to a cable joint venture or the local franchising authority, as defined in Title 7, Chapter 59, may bring a civil action for injunctive or declaratory relief in chancery court to enforce the provisions of subsection (d) above. Venue for such action may be in any county where the unfair or anti-competitive practice is alleged to have occurred or to be threatened.

(f) If the cable joint venture or any member of the cable joint venture providing such service is exempt from paying federal, state, or local taxes, then, for regulatory purposes, the cable joint venture shall allocate to the costs of such services an amount equal to a reasonable determination of the state, local and federal taxes which would be required to be paid if the cable joint venture were not exempt and each of its members were not exempt from paying such taxes.

SECTION 3. Tennessee Code Annotated, Section 65-25-202(3) is amended by deleting the language and punctuation after "if such is the case, the primary purpose" and substituting a period (.) after "purpose".

SECTION 4. Tennessee Code Annotated, Title 65, Chapter 25, Part 2, is amended by adding the following language as new, appropriately designated section:

Section ____ (a)

(1) Each cooperative may, within its service area and with the authorization of its board, contract to establish a joint venture with any entity for the provision of telephone, telegraph, or telecommunications services in compliance with Title 65, Chapters 4 and 5, and all other applicable state and federal laws, rules and regulations (hereinafter "telecommunications joint venture"). Notwithstanding §65-4-101(a)(2) or any other provision of this code or of any private act, a telecommunication joint venture and every member of a telecommunication joint venture shall be subject to regulation by the Tennessee regulatory authority in the same manner and to the same extent as other certified providers of telecommunications services, including, without limitation, rules or orders governing anti-competitive practices, and shall be considered as and have the duties of a public utility, as defined in § 65-4-101, but only to the extent necessary to effect such regulation and only with respect to the provision of telephone, telegraph and telecommunication services.

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(2) Neither an electric cooperative nor any other entity participating in a telecommunications joint venture that provides such services may provide subsidies for such services. Notwithstanding the limitations set forth in the preceding sentence, an electric cooperative participating in a telecommunications joint venture may:

(A) Dedicate a reasonable portion of the electric plant to the provision of such services, the costs of which shall be allocated to such services for regulatory purposes; and

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

(3) To the extent that it provides such services, a telecommunications joint venture has all the powers, obligations and authority granted entities providing telecommunications services under applicable laws of the United States or the State of Tennessee. To the extent that such authority and powers do not conflict with the provisions of Title 65, Chapter 4 or 5, and any rules, regulations, or orders issued thereunder, a telecommunications joint venture providing any such services shall have all the authority and powers with respect to such services as are enumerated in this chapter.

(4) If the telecommunications joint venture or any member of the telecommunications joint venture providing such service is exempt from paying federal, state, or local taxes, then for regulatory purposes, the telecommunications joint venture shall allocate to the costs of such services an amount equal to a reasonable determination of the state, local and federal taxes which would be required to be paid if the telecommunications joint venture and each of its members were not exempt from paying such taxes.

(5) The provisions of this subsection are not applicable to areas served by an incumbent local exchange telephone company or telephone cooperative with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995, or Tennessee Code Annotated, Section 65-4-201(d), is declared unconstitutional or unlawful by a court of competent jurisdiction in a final non-appealable order.

(b) Each cooperative may, within its service area and with the authorization of its board, contract to establish a joint venture with any entity to provide the transmission, transportation, distribution, delivery, or sale of natural gas, or similar products provided, however, that the entity with which the joint venture is established shall be engaged in such business at the time the contract to establish the joint venture is effective.

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SECTION 5. Tennessee Code Annotated, Section 65-25-204(a)(2) is deleted and the following language is substituted instead:

(2) Secondary purposes of:

(A) Supplying or furnishing other community utility services as provided in Tennessee Code Annotated, Section 65-25-202(3) and Section 3 of this act;

(B) Providing management or operating services by contract with any cooperative, utility district, municipality, or other entity engaged in the provision of community services or of services including, but not limited to, water, sewer, and natural gas; and

(C) Promoting economic and industrial development through participation, including either as a borrower or as a lender, in any economic or industrial development program established by any agency of the United States or of the State of Tennessee.

SECTION 6. To the extent required to give effect to this act and only to that extent, the provisions of Tennessee Code Annotated, Sections 65-25-202(13), 65-25-205, 65-25-227, 65-25-228, and 65-25-229, are hereby amended.

SECTION 7. Tennessee Code Annotated, Title 65, Chapter 25, Part 2, is amended by adding the following language as new, appropriately designated section:

Section _____. Each joint venture created pursuant to Section 1 or 4 of this act in which one or more of the owners of the joint venture is an entity subject to the taxes imposed by Tennessee Code Annotated Title 67, Chapter 4, Parts 8 and 9 (or any tax imposed in place thereof) shall itself be subject to and shall pay the taxes required by Parts 8 and 9 (or any tax imposed in place thereof).

SECTION 8. Nothing in this act shall be construed to allow an electric cooperative or a joint venture in which an electric cooperative is a member to engage in the business of providing alarm systems as defined in Tennessee Code Annotated, Section 62-32-301, et seq.

SECTION 9. This act supercedes any conflicting provisions of general law, charter or metropolitan charter provisions.

SECTION 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which shall be given effect without the invalid provision or application, and, to that end, the provisions of this act are declared to be severable.

SECTION 11. This act shall take effect upon becoming a law, the public welfare requiring it.

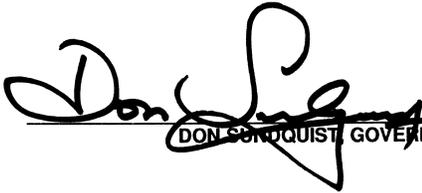
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PASSED: May 26, 1999


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 17th day of June 1999


DON SUNDQUIST, GOVERNOR