

CHAPTER NO. 69

HOUSE BILL NO. 2416

By Representatives Hackworth, Ferguson, Winningham

Substituted for: Senate Bill No. 2401

By Senators McNally, Kilby

AN ACT to amend Chapter 503 of the Private Acts of 1951; as amended by Chapter 294 of the Private Acts of 1959, Chapter 131 of the Private Acts of 1967, Chapter 187 of the Private Acts of 1988, and all other acts amendatory thereto and to repeal Chapter 294 of the Private Acts of 1959, relative to the Oak Ridge Utility District.

WHEREAS, the Oak Ridge Utility District was created by the General Assembly in 1951 for the purpose of acquiring, constructing, reconstructing, improving, bettering, extending, repairing, maintaining and operating, and furnishing of gas and gas related services for the District and all territories adjacent thereto; and

WHEREAS, in the act creating the District, jurisdictional boundaries were established and within such boundaries, the District was vested with the authority to purchase from and furnish and sell to any municipality, any public institution, the state, any agency of the United States Government, any private person or corporation, and the public generally, natural and artificial gas and gas related services; and

WHEREAS, it is in the best interest of the District and the territories adjacent to such District that the jurisdictional boundaries be expanded; and

WHEREAS, Chapter 294 of the Private Acts of 1959 expanded the authority of the District to provide sewer, water and electrical and related services, and called for a referendum before exercising such authority, a power never exercised by the Board of Commissioners of such District; and

WHEREAS, it is in the interest of the Oak Ridge Utility District and the public in general to repeal the authority granted to the District by the 1959 action of the general assembly; now, therefore,

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

SECTION 1. Chapter 503 of the Private Acts of 1951; as amended by Chapter 294 of the Private Acts of 1959, Chapter 131 of the Private Acts of 1967, Chapter 187 of the Private Acts of 1988, and all other acts amendatory thereto, are hereby amended in their entireties, such that said act, as amended, shall read as follows:

SECTION 1. There is hereby created as an instrumentality of the State of Tennessee, a municipal corporation to be known and designated as "Oak Ridge Utility District", to be comprised of the following territory lying in Anderson and Roane Counties:

All that tract or parcel of land designated within the corporate limits of the City of Oak Ridge, Tennessee; all that tract or parcel of land designated within the corporate limits of the city of Kingston, Tennessee; all that tract or parcel of land designated as Lake Hills Subdivision which is within Anderson County, Tennessee but outside of the corporate limits of the City of Oak Ridge, Tennessee; and certain tracts or parcels of land situated within Roane County, Tennessee, but outside of the corporate city limits of both Oak Ridge, Tennessee and Kingston, Tennessee all of which is more particularly described as follows:

Beginning at a point in the Clinch River near river mile 21.1 where Roane and Loudon Counties join; then following the Roane and Loudon County Line in a southwesterly direction until it intercepts the McMinn County Line; then along the Roane and McMinn County Line until it intercepts the Meigs County Line; then along the Roane and Meigs County Line until it intercepts the center-line of the Tennessee River; thence commencing upstream along the centerline of the Tennessee River until it intersects the centerline of the Clinch River; then upstream along the center-line of the Clinch River until it intersects the center-line of the Emory River; then upstream along the center-line of the Emory River to a point at the confluence of the Emory River and the Little Emory River; thence northeasterly upstream along the Little Emory River to the centerline of the Clacks Gap Bridge; thence coinciding with a service area boundary established by agreement between Oak Ridge Utility District and Powell-Clinch Utility District dated June 5, 1996 and described as follows: from the centerline of Clacks Gap Bridge along Clacks Gap Road to its beginning point at Mays Valley Road including its intersection with Old Elverton Road West and including Old Elverton Road West; all of Mays Valley Road to its intersection with Dyllis Road including but not limited to all current and future secondary roadways situated adjacent thereto, including Rose Lane and Annie Cox Lane; all of Dyllis Road from its beginning point at its intersection with Mays Valley Road to its intersection with Blair Road and Old Harriman Highway, including secondary roads situated adjacent thereto, including Ray's Park Road and Orchard Valley Drive, Pine Ridge Road from its intersection with Dyllis Road to the service gate across Pine Ridge Road; Blair Road from its intersection with Dyllis Road and Old Harriman Highway to Poplar Creek Road; Poplar Creek Road to its intersection with Mahoney Road and all current and future properties and secondary roadways, including but not limited to Hartland Estates; all of Sugar Road, Honeysuckle Lane, and Patterson Lane; Mahoney Road to its intersection with the Roane County/ Anderson County Line; then along the Roane County/ Anderson County Line to its intersection with Johnson Road; then north along Johnson Road to its next intersection with the Roane County/ Anderson County Line. The proposed franchise boundary shall then run south along the Roane and Anderson County Line until the Oak Ridge city limits boundary is encountered. In addition to the existing corporate limits for the City of Oak Ridge, the boundary shall then follow the southwestern boundary of the corporate limits until the point of beginning is reached.

The detailed service area description found in the June 5, 1996 agreement between Oak Ridge Utility District and Powell-Clinch Utility District

shall not be superseded by the approximate service area boundary description written herein. The Oak Ridge Utility District retains the right to serve all current and future properties located adjacent thereto and secondary roadways situated adjacent to the boundary roads described above.

Total area included in the above description is one hundred eighty-nine thousand (189,000) acres more or less.

The territory of the District shall also include the tracts described herein, as well as any tract or parcel of land hereafter incorporated within the City of Oak Ridge and/or the city of Kingston, if such tract or parcel is not served by another utility District, and any additional territories within said counties and such other counties which are contiguous to said counties and that are not presently served by any other holder of a franchise, upon consent of the applicable governing body of such city, town, utility district, or other municipality.

It is hereby found and declared that the public convenience and necessity require the creation of said District and the creation thereof is economically sound and desirable. The District shall constitute a governmental agency and a body politic and corporate with power of perpetual succession, but without power to levy or collect taxes. Charges for service authorized by this Act shall not be construed as taxes. So long as the District continues to furnish any of the services which it is authorized to furnish under this Act, it shall be the sole public or municipal corporation empowered to furnish such services in this District, and no other person, firm or corporation shall furnish or attempt to furnish any of the services in the area embraced by the District.

SECTION 2. The District is created for the purpose of acquiring, constructing, reconstructing, improving, bettering, extending, repairing, maintaining and operating, and the furnishing of gas and gas related services in and for the District and all territories adjacent thereto; and for this purpose the District shall have power to purchase or manufacture natural or artificial gas; to process, transmit and distribute natural or artificial gas and/or services within the District and in territories adjacent thereto. Whenever the word "System" occurs in this Act, it shall be construed and interpreted to mean any system for the furnishing of gas and gas related services. The District is vested with all powers necessary and convenient for the accomplishment of the purpose of its creation. To carry out the purpose of this Act, the District shall have the power and authority to purchase from, and furnish and sell to any municipality, any public institution, the State, any agency of the United States Government, any private person or corporation, and the public generally, natural and artificial gas and gas related services authorized by this Act. No enumeration of particular powers herein created shall be construed to impair or limit any general grant of power or powers of the same class or classes as those enumerated.

SECTION 3. The Board of Commissioners of Oak Ridge Utility District shall administer and operate said District. Said Commissioners shall serve respectively in the established order named for five (5) year terms, with each term ending on a yearly rotation. Each term shall run from July 1 of the year appointed to June 30 of the fifth year thereafter. Members shall hold office until their successors are elected and qualified. Only persons resident within the boundaries of the District shall be eligible for election to the Board of Commissioners.

Whenever a vacancy occurs and thirty (30) days prior to the expiration of the term of office of any Commissioner, the chief executive officer (City Manager, or in the event there is no City Manager, then the Mayor) of the City of Oak Ridge, shall meet with the Board of Commissioners of the District exclusive of the Commissioner whose term of office has expired or is about to expire or whose term of office is vacant. Such remaining members and such chief executive officer shall thereupon nominate, by a majority vote, a Commissioner as a successor, and the name of the person so nominated shall be submitted to the governing body of the City of Oak Ridge. Within twenty (20) days from the submission of such name to the governing body of the City of Oak Ridge, the governing body shall act upon the nomination and advise the District thereof. In the event that the person nominated shall fail to receive the approval of a majority vote of the governing body of the City of Oak Ridge, a new nomination shall be made and submitted in accordance with the procedure provided herein until approval of such nomination shall be obtained. Not more than one (1) member of the governing body of any one city or county shall be a member of the Board of Commissioners of said District. All vacancies, other than those arising by the normal expiration of the term of a Commissioner, shall be filled for the unexpired term only.

Commissioners shall receive no salary for their services, but each Commissioner shall be entitled to receive a fee of Fifty Dollars (\$50.00) for attendance at each meeting of the Board, and to reimbursement for all expenses incurred in connection with the performance of the commissioner's duties. No more than Fifty Dollars (\$50.00) shall be paid to a Commissioner for attendance fees for meetings held in any one (1) month, but this limitation in payment of attendance fees shall in no way affect the number of meetings the Board may hold in any one (1) month. In addition to attendance fees, the District may provide the members of the Board of Commissioners group medical insurance coverage and group life insurance coverage as may be provided other employees, or it may provide payment of premiums for an equivalent or similar group medical insurance coverage and group life insurance coverage in which a Commissioner may be participating; provided, that such payment of such medical insurance coverage and group life insurance coverage does not exceed the per person cost of the District's group medical insurance coverage and group life insurance coverage for its employees.

The Board may delegate to one (1) or more of its members or its agents and employees such powers and duties as it may deem proper, but at its first meeting and at the first meeting of each calendar year thereafter it shall elect one (1) of its members to serve as Chairman of the Board of Commissioners, and another of its members to serve as Secretary of the Board of Commissioners. The Chairman and Secretary shall each be residents of the City of Oak Ridge, Tennessee. The Secretary shall keep a record of all proceedings of the Commission which shall be available for inspection as other public records, and shall be custodian of all official records of the District.

Said Commissioners shall at all times be subject to the provisions of the general "Ouster Law" of Tennessee as set out Tennessee Code Annotated, Title 8, Chapter 47, Part 1.

Said Board of Commissioners shall employ a Certified Public Accountant to audit its books and records and shall publish, on or before December 31 of each year, in a newspaper of general circulation within the District, a financial statement showing its receipts and disbursements, with the purpose thereof, and reflecting the true financial condition of the District for the period ending September 30 annually.

The Board of Commissioners is hereby authorized to increase the number of members of the Board of Commissioners to a total of up to nine (9) members, so long as at least five (5) members of the Board of Commissioners shall be residents of the City of Oak Ridge, Tennessee. Each new board member's initial term shall run concurrently with the board member's term who has the longest period of time remaining in their current term and which is not already running concurrently with the term of another board member, so that no more than two (2) board members' terms shall run concurrently. The term of each board member thereafter shall be for a period of five (5) years. Except as herein necessarily modified, the method of nomination and election of Commissioners shall remain the same.

SECTION 4. The District shall have the power:

(a) To sue and be sued.

(b) To have a seal.

(c) To acquire by purchase, gift, devise, lease or exercise of the power of eminent domain or other mode of acquisition, hold, and dispose of real and personal property of every kind within or without the District, whether or not subject to mortgage or any other liens.

(d) To make and enter into contracts, conveyances, mortgages, deeds of trust, bonds or leases.

(e) To incur debts, to borrow money, to issue negotiable bonds and to provide for the rights of holders thereof.

(f) To fix, maintain, collect, and revise rates and charges for any service.

(g) To pledge all or any part of its revenues.

(h) To make such covenants in connection with the issuance of bonds, or to secure the payment of bonds, that a private business corporation can make under the general laws of the State, notwithstanding that such covenants may operate as limitations on the exercise of any power granted by this Act. Such covenants shall constitute a contract between the District and the owners of such bonds.

(i) To use any right of way, easement or other similar property right necessary or convenient in connection with the acquisition, improvement, operation or maintenance of a utility granted by the United States Government or any agency thereof, or the State or any political subdivision thereof.

SECTION 5. The Board of Commissioners of said District shall have the power and authority:

(a) To exercise by vote, ordinance or resolution all of the general and specific powers of the District.

(b) To make all needful rules, regulations, and by-laws for the management and the conduct of the affairs of the District and of the Board.

(c) To adopt a seal for the District, prescribe the style thereof, and alter the same at pleasure.

(d) To lease, purchase, sell, convey, and mortgage the property of the District and to execute all instruments, contracts, mortgages, deeds or bonds on behalf of the District in such manner as the Board shall direct.

(e) To inquire into any matter relating to the affairs of the District, to compel by subpoena the attendance of witnesses and the production of books and papers material to any such inquiry, to administer oaths to witnesses and to examine such witnesses.

(f) To appoint and fix the salaries and duties of such officers, experts, attorneys, agents, and employees as it deems necessary, to hold office during the pleasure of the Board and upon such terms and conditions as the Board may require.

(g) To do all things necessary or convenient to carry out its functions.

(h) To enter into all such contracts with incorporated municipalities which it may consider desirable for the conduct of its affairs, including the making of leases of property and the making of reasonable and nondiscriminatory agreements for the making of payments to such municipalities. Such municipalities are likewise authorized to enter into such agreements with said District touching upon the operation of the properties of the District within their corporate limits as may be considered desirable and may agree to lease or purchase any such properties under such terms and provisions as may be agreed upon, all of which agreements may be authorized by the respective municipalities by resolutions introduced and adopted by their governing bodies at one meeting, which resolutions need not be published and may be made immediately effective and not subject to the filing of referendum petitions.

SECTION 6.

(a) Said District shall have the power and is hereby authorized from time to time to issue its negotiable bonds, in accordance with Tennessee Code Annotated, Title 9, Chapter 21, in anticipation of the collection of revenues for the purpose of constructing, acquiring, reconstructing, improving, bettering, repairing or extending a gas system for the manufacture, processing, transmission, and distribution of natural or manufactured gas, or both, and to pledge to the payment of the interest and principal of said bonds, all or any part of the revenues derived from the operation of such system. There may be included in the costs for which bonds are to be issued, provision for adequate working capital and for the purchase and installation of appliances and equipment (including heating conversion units) to serve the customers of the District, reasonable allowances for legal, engineering and fiscal services, interest during construction and for twelve (12) months after the estimated date of completion of construction, and other preliminary expenses, including the expenses of incorporation of the

District. Said bonds shall be authorized by resolution of the Board of the District, and may be issued in one (1) or more series; may bear such date or dates; may mature at such time or times not exceeding forty (40) years from their respective dates; may bear interest at such rate or rates not exceeding the lawful percent per annum payable semi-annually; may be in such form, either coupon, or registered; may be executed in such manner; may be payable in such medium payment, at such place or places, and be subject to terms of redemption, with or without premium, and may contain such terms, covenants and conditions as such resolution or subsequent resolution may provide. Said bonds may be issued and delivered for money or property in such manner and upon such terms as the Board shall determine, provided that the interest cost to maturity of the money or property (as its value is determined by such Board, the determination of which shall be conclusive) received for any issue of said bonds shall not exceed the lawful percent per annum payable semi-annually. Pending the preparation of the definitive bonds, interim receipts or certificates, in such form and with such provisions as the Board may determine, may be issued to the purchaser or purchasers of bonds sold pursuant to this Act. Said bonds and interim receipts or certificates shall be fully negotiable within the meaning of and for all purposes of the Uniform Commercial Code, compiled in Tennessee Code Annotated, Title 47.

(b) The District may, by resolution, authorize and enter into interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, and other interest rate hedging agreements under such terms and conditions as the governing body of the District may determine under this Act and in accordance Tennessee Code Annotated, Section 7-82-502, as amended.

SECTION 7. Any resolution authorizing the issuance of bonds under this Act may contain covenants, including but not limited to:

(a) The purpose or purposes to which the proceeds of the sale of said bonds may be applied and the deposit, use, and disposition thereof;

(b) The use, deposit, security of deposits, and disposition of the revenues of the District, including the creation and maintenance of reserves;

(c) The issuance of other additional bonds payable from the revenues of the District;

(d) The operation and maintenance of the system;

(e) The insurance to be carried thereon and the use, deposit, and disposition of insurance moneys;

(f) Books of account and the inspection and audit thereof and the accounting methods of the District;

(g) The non-rendering of any free service by the District; and

(h) The preservation of the system, so long as any of the bonds remain outstanding, from any mortgage, sale, lease or other encumbrance not specifically permitted by the terms of the resolution.

SECTION 8. There shall be and there is hereby created a statutory lien in the nature of a mortgage lien upon the system acquired or constructed in accordance with this Act, including all extensions and improvements thereto or combinations thereof subsequently made, which lien shall be in favor of the holder or holders of any bonds issued pursuant to this Act and all such property shall remain subject to such statutory lien until the payment in full of the principal of and interest on said bonds. Any holder of said bonds or any of the coupons representing interest thereon may either at law or in equity, by suit, action, mandamus, or other proceeding in any court of competent jurisdiction, protect and enforce such statutory lien and compel performance of all duties required by this Act, including the making and collection of sufficient rates of gas, and service or services, the proper accounting therefore, and the performance of any duties required by covenants with the holders of any bonds issued in accordance with this Act.

If any default be made in the payment of the principal of or interest of such bonds, any court having jurisdiction of the action may appoint a receiver to administer said District and said system, with power to charge and collect rates sufficient to provide for the payment of all bonds and obligations outstanding against said system and for the payment of operating expenses, and to apply the income and revenues thereof in conformity with the provisions of this Act and any covenants with bondholders.

SECTION 9. Said bonds bearing the signatures 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 District. The validity of said bonds shall not be dependent upon nor affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extensions of the system. The resolution authorizing said bonds may provide that the bonds shall contain a recital that they are issued pursuant to this Act, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

SECTION 10. No holder or holders of any bonds issued pursuant to this Act shall ever have the right to compel the levy of any tax to pay said bonds or the interest thereon. Each bond shall recite in substance that said bond and interest thereon are payable solely from the revenues pledged to the payment thereof and that said bond does not constitute a debt of the District within the meaning of any statutory limitations.

SECTION 11. The Board of Commissioners of said District issuing bonds pursuant to this Act shall prescribe and collect reasonable rates, fees, or charges for the services, facilities, and commodities rendered by its system, shall prescribe penalties for the non-payment thereof, and shall revise such rates, fees or charges from time to time whenever necessary to insure that such system shall be and always remain self-supporting. The rates, fees or charges prescribed shall be such as will always produce revenue at least sufficient (a) to provide for all expenses of operation and maintenance of the system, including reserves therefor, and (b) to pay when due all bonds and interest thereon for the payment of which such revenues are or shall have been pledged, charged or otherwise encumbered, including reserves therefor.

SECTION 12. The property and revenue of the District shall be exempt from all State, county, and municipal taxation. Bonds issued pursuant to this Act and the income therefrom shall be exempt from all State, county, and municipal taxation, except inheritance, transfer, and estate taxes and it shall be so stated on the face of said bonds. Notwithstanding the foregoing exemption language, the Board of Commissioners of the District is hereby authorized to make monetary and/or like kind payments to the municipalities located within the District's territorial boundaries for the maintenance and upkeep of right-of-ways, easements and other commonly used properties, said payments to be authorized at the sole discretion of the Board of Commissioners.

SECTION 13. Neither the Tennessee Regulatory Authority nor any other board or commission of like character heretofore or hereafter created shall have jurisdiction over the District in the management and control of its system, including the regulation of its rates, fees or charges; provided that nothing in this act shall exempt the District from being subject to all applicable federal and state pipeline safety regulations and enforcement administered by all agencies having jurisdiction.

SECTION 14. The District shall have power to condemn either the fee or such right, title, interest, or easement in such property as the Board may deem necessary for any of the purposes mentioned in this Act and such property or interest in such property may be so acquired whether or not the same is owned or held for public use by corporations, associations or persons having the power of eminent domain, or otherwise held or used for public purposes, including lands held and used for cemetery purposes; provided, however, such prior public use will not be interfered with by this use. Such power of condemnation may be exercised in the mode or method of procedure prescribed by Tennessee Code Annotated, Title 29, Chapter 16, Part 1, or in the mode or method of procedure prescribed by any other applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain; provided, however, that where title to any property sought to be condemned is defective, it shall be passed by decree of Court.

SECTION 15. The actions heretofore taken by the Town Council of Oak Ridge and those residents of Oak Ridge herein appointed as Commissioners of said District to effectuate the purposes of this Act, including all leases, contracts and proceedings with the United States Atomic Energy Commission, Equitable Securities Corporation and Associates, and Goodwin Engineers, Inc., are hereby authorized, validated and declared lawful. All rights, duties and obligations of holders of bonds heretofore issued by the District shall continue in full force and effect and shall not be construed to be altered or impaired by the provisions of this act.

SECTION 16. There is hereby granted to the District the right, privilege and franchise to operate a system or systems for the furnishing of gas, and any gas related services, throughout the District and territory adjacent thereto, and to sell any gas and/or any one (1) or more gas related services to all persons and consumers therein and to such end, in all public roads, highways, streets, alleys, and other thoroughfares throughout the District and territory adjacent thereto to place, lay down, construct, erect, extend, maintain, repair, replace, and renew all pipes, pipeline, and other structures and appliances deemed by it necessary or useful for the purpose of carrying, conducting, and transmitting any one (1) or more of such services from its source or sources of supply, through, over, in, under, and upon such public roads, highways, streets, alleys, and other thoroughfares to the premises of the consumers of such services, provided

only, that said facilities be so constructed and maintained that no unnecessary annoyance shall accrue therefrom to the public health, comfort and convenience.

SECTION 17. The Board of Commissioners may provide by resolution for the issuance of bonds for the purpose of refunding any outstanding bonds of the District. The issuance of such refunding bonds, the maturities and other details thereof, the rights of the holders thereof, and the duties of the District in respect to such bonds shall be governed by the provisions of this Act in so far as such provisions may be applicable. Such refunding bonds shall either be issued in exchange for outstanding bonds, or shall be issued in such manner that the proceeds of the sale thereof will be applied to the payment of outstanding bonds becoming due, either through actual maturity or through call for redemption, not more than three (3) months after the issuance of the refunding of bonds.

SECTION 18. All laws or parts of laws in conflict herewith be and the same are hereby repealed.

SECTION 19. There is hereby granted to the Board of Commissioners of the District the authority to change the name of the District, at its discretion.

SECTION 20. The Oak Ridge Utility District is a governmental entity as provided in and for purposes of the Tennessee Governmental Tort Liability Act, codified as Tennessee Code Annotated, Title 29, Chapter 20.

SECTION 21. The Oak Ridge Utility District is a public agency as provided in and for purposes of the Interlocal Cooperation Act, codified as Tennessee Code Annotated, Title 12, Chapter 9.

SECTION 22. The Oak Ridge Utility District may be an associated municipality of an energy acquisition corporation as provided in and for the purposes of the Energy Acquisition Corporation Act, codified as Tennessee Code Annotated, Title 7, Chapter 39.

SECTION 23. If one or more of the provisions of this Act or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid, the remaining provisions of the Act and the application thereof to persons or circumstances other than those as to which it shall have been held invalid shall not be affected thereby.

SECTION 2. Chapter 294 of the Private Acts of 1959, is repealed.

SECTION 3. This Act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 27, 2005


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 17th day of June 2005


PHIL BREDESEN, GOVERNOR