

Appointment v. Election of Utility District Commissioners

**A Study of Senate Bill 500, House Bill 479
and Senate Bill 830, House Bill 1295**



TACIR Staff Report

January 2012



Tennessee Advisory Commission on Intergovernmental Relations
www.tn.gov/tacir



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January 2012

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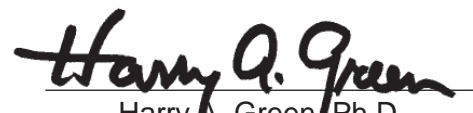
Dear Chairman Yager:

Transmitted herewith is a staff report on Senate Bill 500 by Senator Burks (House Bill 479 (Curtiss)) and Senate Bill 830 by Senator Summerville (House Bill 1295 (Hensley)), which were referred by the Committee to TACIR for study. Those bills would change the commissioner selection method from appointment by county mayor to customer elections in the Bon De Croft Utility District in White County and in all of the utility districts in Lawrence County. The staff report was received by the Tennessee Advisory Commission on Intergovernmental Relations at its December 7, 2011, meeting and is hereby submitted for your consideration.

Sincerely,



Senator Mark Norris
Chairman



Harry A. Green, Ph.D.
Executive Director

**Appointment v. Election
of Utility District Commissioners**
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and Senate Bill 830, House Bill 1295**

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Table of Contents

Executive Summary	3
Purpose	4
Overview of the Senate Bills	4
Senate Bill 500 (House Bill 479).....	4
Senate Bill 830 (House Bill 1295).....	5
Staff Recommendation	6
Methodology	7
Background	7
Utility District Powers	8
Utility District Oversight.....	8
Utility District Governance.....	9
Methods for Selecting Boards of Commissioners	10
Appointments by County Mayor.....	11
Election by Customers.....	11
Information About the Utility Districts Affected by Senate Bill 500, House Bill 479, and Senate Bill 830, House Bill 1295	15
Water Rates	15
Financially Distressed Districts.....	16
Excessive Water Loss.....	17
Water Quality.....	19
Analysis	20
Review of Past Research.....	20
Additional Points.....	22
Appendix 1	31
Senate Bill 500, House Bill 479 with House Amendment 1 (HA441)	
Appendix 2	37
Senate Bill 830, House Bill 1295 with House Amendment 1 (HA241)	
Appendix 3	43
People Consulted for This Study	

Executive Summary

Senate Bill 500 and House Bill 479 would change the utility district commissioner selection method for the Bon De Croft Utility District in White County from appointment by county mayor to election by the customers. Senate Bill 830 and House Bill 1295 would do the same for all of the utility districts in Lawrence County.

Elections are the basis of democracy in this country. Although there are advantages to electing utility district commissioners, past research demonstrates that appointment by county mayor is a better choice. This method provides a certain measure of accountability to customers since the customers may provide input to the county mayor on who they think is the best nominee for the position. As an elected official, the county mayor must be responsive to the concerns of his or her constituents or risk not being re-elected.

Appointment also allows for input from commissioners because the county mayor is required to choose a commissioner from a list of nominees provided by the utility district commissioners. As the persons most knowledgeable about district operations, current commissioners understand best the qualifications needed to serve in the position.

There are some drawbacks to elections. Elections expose commissioners to political influences, and commissioners or candidates may, therefore, promise to lower rates, which could be detrimental to the district. Individuals may run for office to further their own interests, such as a developer with an interest in extending lines into an area he or she is developing. Election costs may also be burdensome for smaller districts.

Research by staff shows that elections don't necessarily ensure that a utility district will be better run. There are a number of utility districts with elected commissioners that are financially distressed and under the oversight of the UMRB. One had water quality violations in 2011.

Voting commissioners off the board is not the only alternative customers have to deal with their complaints about management. State law provides several mechanisms for dealing with their

The bills sent to TACIR for study would change the commissioner selection method from appointment by county mayor to customer elections in utility districts in White and Lawrence counties.

concerns and complaints. These include rate and decision reviews and ouster proceedings. Customers can also be confident in knowing that the Utility Management Review Board (UMRB), the Division of Municipal Audit in the Comptroller’s Office, and the Tennessee Department of Environment and Conservation oversee the districts and are working with the districts to help ensure they are run well.

For these reasons, the staff determined that appointment by county mayor appears to best serve the public’s interest and remains the recommended method for selecting commissioners.

Purpose

The Tennessee General Assembly’s Senate State and Local Government Committee referred Senate Bill 500 by Senator Burks (House Bill 479 (Curtiss)) and Senate Bill 830 by Senator Summerville (House Bill 1295 (Hensley)) to TACIR for study. These two bills would change the commissioner selection method from appointment by county mayor to customer elections in the Bon De Croft Utility District in White County and in all of the utility districts in Lawrence County. Many customers are dissatisfied with the decisions that current commissioners have made in managing their districts. These customers think that the bills are their only means to secure meaningful change in these districts.

Overview of the Senate Bills

Senate Bill 500 (House Bill 479)

Senate Bill 500 (House Bill 479) would change the method of selecting commissioners in a utility district in the eastern part of White County that serves at least 1,000 customers from appointment by county mayor to election by customers. The bill’s sponsors stated that it was their intent that this bill apply to the Bon De Croft Utility District. This district provides only water service.

The original bill does not include language outlining the procedures for conducting the elections. Rather, it gives the board of commissioners the authority to prescribe the manner in which the

elections would be held. House Amendment 1 included more specific language outlining how the elections would be conducted.

- To be eligible to vote, the voter must be a customer who resides in the district.
- To qualify for the election, a person must submit a nominating petition signed by 25 customers who reside in the district.
- The election must be held on a Saturday from 9:00 a.m. to 5:00 p.m. at a local school, fire hall, or at the utility district office.
- The incumbent commissioners must provide notice of the election to customers in the local newspaper and by mail 30 days before the election.
- In the event of a tie, the county legislative body would cast the deciding vote.
- If less than 30% of the customers vote in the election, then the county legislative body would elect a person from the list of nominees running in the election. This would not apply if the position is uncontested.

The estimated fiscal impact of the bill according to the fiscal note was not significant. The original bill and House Amendment 1 (HA 441) passed in the House after the bill was referred to TACIR for study by the Senate State and Local Committee.

Senate Bill 830 (House Bill 1295)

Senate Bill 830 (House Bill 1295) would change the method of selecting commissioners from appointment by county mayor to election by customers in all the utility districts in Lawrence County, including Fall River Road, Iron City, Leoma, Northeast Lawrence, Summertown, and West Point utility districts. These districts supply only water service. The bill sets forth specific requirements for elections:

- To be eligible to vote, the voter must be a customer who resides in the district.

- To qualify for the election, a person must submit a nominating petition signed by 10 customers who reside in the district.
- The election must be held on a Saturday from 9:00 a.m. to 3:00 p.m. at a community center, fire hall, or at the utility district office.
- The incumbent commissioners must provide notice of the election to customers in the local newspaper and by mail.
- In the event of a tie, the county legislative body would cast the deciding vote.
- Results of the election are to be entered in the county clerk's office.

House Amendment 1 (HA 241) adds language requiring that commissioners be elected as appointed terms of office expire. It also provides that the term of office will begin at the first regularly scheduled meeting of the board following the election. The original bill and House Amendment 1 passed the House after the bill was referred to TACIR for study by the Senate State and Local Government Committee. In the fiscal note, it was estimated that the bill would increase local expenditures of the affected utility districts by \$2,300 annually. This figure represents the cost to the districts collectively not individually.

Staff Recommendation

Senate Bill 500, House Bill 479 and Senate Bill 830, House Bill 1295 should not be passed by the Tennessee General Assembly.

Elections are the basis of democracy in this country. There are obvious advantages to the election of utility district commissioners. However, past research has identified that appointment by county mayor is the best method for choosing commissioners. It provides accountability since the county mayor must be responsive to the concerns of his constituents or risk not being re-elected. The fact that the commissioners provide a list of nominees also allows input from individuals knowledgeable about district operations who know the qualifications needed to serve in the position.

At times, the customers may feel frustrated with the way the districts are being run, but state law provides several mechanisms

for dealing with customer complaints. These include rate and decision reviews and ouster proceedings. Voting commissioners off a board is not the only option. Customers can also be confident in knowing that the Utility Management Review Board (UMRB), the Division of Municipal Audit in the Comptroller's Office and the Tennessee Department of Environment and Conservation oversee the districts and are working with the districts to help ensure they are run well.

Appointment by county mayor does still seems to be the best method for selecting commissioners and appears to best serve the public's interest. It is recommended by the staff that Senate Bill 500, House Bill 479 and Senate Bill 830, House Bill 1295 not be passed by the General Assembly.

Methodology

The conclusion and analysis in this report are based on information from a number of sources, including

- a review of relevant literature;
- an examination of state and federal statutes, Tennessee Attorney General Opinions, state rules and regulations, and state court cases pertaining to utility districts;
- a review and analysis of financial audits of utility districts; and
- interviews with individuals with expertise or an interest in the utility districts.

Background

The General Assembly passed the Utility District Act in 1937, authorizing the creation of utility districts throughout Tennessee.¹ At the time the law was passed, some rural and suburban residents were unable to receive necessary utility services because local entities could not or would not provide those resources to remote areas. With financial assistance from the Farmer's Home Administration, the new law enabled utility districts to meet

¹The Utility District Act is codified at TCA § 7-82-101 *et seq.*

The General Assembly passed the Utility District Act in 1937, authorizing the creation of utility districts throughout Tennessee.

Utility districts are special districts that are authorized by law to provide a wide variety of public services to customers.

the demand in those outlying areas.² Today, there are 185 utility districts serving the citizens of Tennessee.³

Utility District Powers

Utility districts are special districts that are authorized by law to provide a wide variety of public services to customers, although most of the existing districts provide only water, sewer, or gas services. Utility districts have no authority to collect or impose taxes, but they charge fees for the services they provide pursuant to Tennessee Code Annotated § 7-82-301.

Under Tennessee Code Annotated § 7-82-304, utility districts may sue and be sued, have a seal, hold and dispose of real property, make and enter into contracts, incur debts, collect and revise rates, pledge revenues, issue and secure the payment of revenue bonds, use public rights-of-way subject to the consent of local governing authorities, work with other utility districts or municipalities to exercise powers granted to them under the law, and provide funding to chambers of commerce and economic and community organizations pursuant to an adopted resolution.

Utility District Oversight

Financial and operational oversight of the utility districts rests primarily with two bodies: the Utility Management Review Board (UMRB) and the Division of Municipal Audit in the Comptroller's Office.⁴ The UMRB consists of nine members. The Commissioner of Environment and Conservation and the Comptroller of the Treasury or their designees serve as ex-officio members. Seven other members are appointed by the Governor for four-year terms. Three members must be experienced utility district managers, and three must be experienced utility district commissioners. One member must be a consumer residing in the state. That individual may have

²Tennessee Comptroller of the Treasury, *Special Report: Utility Districts in Tennessee*, (Nashville, 1993), 3.

³Utility Management Review Board, *Annual Report of the Utility Management Review Board*, (Nashville, 2010), <http://www.comptroller1.state.tn.us/umrb/>.

⁴The Tennessee Regulatory Authority has the authority to review rates in certain utility districts pursuant to Tennessee Code Annotated § 7-82-102(b). The Tennessee Department of Environment and Conservation also has oversight over the districts on water quality matters.

residential development experience but may not be involved with utility district management or operation.

The UMRB has a number of statutory responsibilities outlined in Tennessee Code Annotated § 7-82-701 *et seq.* It has the duty to

- provide technical assistance to utility districts upon request,
- review a utility district board’s decision upon written request of a customer or any member of the general public,
- conduct a hearing to determine if a utility district commissioner should be removed from office,
- assist financially distressed districts in developing a plan to resolve their financial issues,
- review and approve the creation of new utility districts, and
- establish rules for excessive unaccounted for water losses.

The Division of Municipal Audit in the Comptroller’s Office reviews the annual utility district audits to ensure that the audits are prepared in accordance with generally accepted governmental auditing standards pursuant to Tennessee Code Annotated § 7-82-401. Tennessee Code Annotated § 7-82-703 directs it to report financially distressed districts to the UMRB.

Utility District Governance

A utility district’s power is vested in a board of commissioners. Under Tennessee Code Annotated § 7-82-309, the board is authorized to act on behalf of the utility district and may engage in all acts incident to the development and operation of the district including the power to lease, buy, sell, and mortgage the district’s property. Its powers cannot exceed that of the district itself. The board is also authorized to appoint personnel and set their salaries.

A utility district’s power is vested in a board of commissioners.

The two primary methods for selecting commissioners are appointment by county mayor and election by customers.

The general law does not impose term limits on commissioners.⁵ All meetings of the board are subject to the Open Meetings Act, and district records are subject to the Public Records Act.⁶

Only residents living within the boundaries of the district or utility district customers are eligible to become a commissioner pursuant to Tennessee Code Annotated § 7-82-308(d).⁷ The law does not require that commissioners receive compensation for service on the board. Each commissioner may receive per diem payments if the district adopts a formal resolution. Commissioners are also allowed to participate in a district's group medical and life insurance coverage and group life insurance plans.

Commissioners must take 12 hours of training and education courses within one year of their initial appointment or election due to a recent amendment to Tennessee Code Annotated § 7-82-308. Incumbent commissioners are required to attend 12 hours of training within one year of their reappointment or reelection. The commissioners must certify by January 31 of each year that they have received the necessary training and education. Failure to meet this requirement will result in a waiver of any per diem payment until the paperwork is received by the utility district.

Methods for Selecting Boards of Commissioners

The two primary methods for selecting commissioners are appointment by county mayor and election by customers. The only exceptions to these two methods apply to multi-county districts. There are 12 multi-county utility districts that use the self-appointing method for selecting commissioners.⁸

⁵Some districts have set term limits through private acts. See Tenn. AG Op. No. 06-115.

⁶See Tenn. AG Op. No. 85-161.

⁷TCA § 7-82-307(g)(1) specifies that in order to be eligible to serve as a commissioner in certain water utility districts in Lawrence County an individual must be a customer and reside in the service area of the district.

⁸Tennessee Association of Utility Districts, "Utility District Commissioner Selection Methods," <http://www.taud.org/Resources/Downloads/UtilityDistrictCommissioners.htm> (accessed November 2, 2011).

Appointment by County Mayor

The vast majority of utility districts use the appointment by county mayor method for selecting commissioners. Public Chapter 392, Acts of 2011, made sweeping changes to the utility district statutes. One of these involved amending the law to change the commissioner selection method from self-appointment to appointment by county mayor in 41 districts.

Tennessee Code Annotated § 7-82-307 outlines the procedures for appointing commissioners by the county mayor method. This method requires the board or its remaining members to submit a list of three nominees to the county mayor. The list of nominees is to be in order of preference. Within 21 days of receiving the list, the county mayor may enter an order either appointing one of the nominees or rejecting the entire list. Alternately, the mayor may refrain from taking any action. If the county mayor refrains from any action, the first name on the list shall be appointed to fill the vacancy.

If the county mayor rejects the first list, the board submits a second list of three non-identical nominees to the county mayor within 60 days. Again, the nominees are to be listed in order of preference. Within 21 days of receiving the second list, the county mayor may enter an order either appointing one of the nominees or rejecting the entire list. The mayor may again refrain from taking any action. If the county mayor refrains from any action, the first name on the list shall be appointed to fill the vacancy.

If the county mayor rejects the second list, the board submits a third list of three non-identical nominees to the county mayor within 60 days. The law requires the county mayor to make an appointment from the third list of nominees.

Election by Customers

Customers elect the commissioners in 10 utility districts.⁹ There is no uniform procedure for conducting utility district elections under state law. Instead, each district is authorized to conduct elections either through a general law of local application or a private act. All of the laws authorizing elections in these utility districts

⁹Ibid.

The vast majority of utility districts use the appointment by county mayor method for selecting commissioners.

were passed before Public Chapter 392. TACIR staff contacted these districts for phone interviews to obtain information on how elections are conducted in each of these districts.

Bedford County Utility District (Bedford County)

A written notice of the vacant position is sent to customers. A nominating meeting is held at which customers may nominate candidates. If there is only one candidate, no election is held. To be eligible for election to the board, a person must reside in the district, not hold any elected office, and must have graduated from high school. There is one at-large commission member. Each of the remaining board members are elected from each of the areas formerly served by the Southwest Bedford Public Utility District, the Northwest Bedford Public Utility District, Bedford Public Utility District, and the Normandy Road Water Cooperative. These four entities were merged to create the Bedford County Utility District.

A month before the election, the district publishes a notice of the election and a list of candidates in the local newspaper. Elections are held on Saturday. The ballots are put into a locked box, and the commissioners count the ballots. Customers are allowed to observe the count.

Belvidere Rural Utility District (Franklin County)

The district publishes a notice of the upcoming election in the newspaper. Notice is also printed on the customers' bills. To be eligible to run, a customer must submit a nominating petition signed by 10 district customers. The election is held the second Thursday in February during the business day. The utility district staff counts the ballots before the commissioners at a utility district meeting scheduled for that night. An election is held even if there is only one person on the ballot.

Castalian Springs-Bethpage Utility District (Sumner County)

A notice of the election is printed on the customers' bills by the district. The district also publishes notice of the upcoming election in the newspaper. To be eligible to run, an individual must be a customer but is not required to reside in the district. The sitting commissioners choose three candidates for the ballot. Customers

may also apply to be on the ballot by submitting a petition signed by at least 10 district customers.

Elections are held during the business day at the district office, usually the second Thursday of the month to coincide with the board of commissioners meeting. The district has purchased two voting machines, and customers cast their votes on the machines. Independent poll workers from the county election commission come to the office to work during the election. An individual from the county election commission also comes to the office to operate the voting machines. Votes are tallied by the machine.

Center Grove-Winchester Springs Utility District (Franklin County)

The district publishes a notice of the upcoming election in the local newspaper and on the customers' bills. In order to run in the election, a customer's billing address must also be his or her primary residence. The customer must also submit a nominating petition signed by at least 10 district customers. A list of qualified candidates is published in the paper before the election. The election is held on the day of the district's April board of commissioners meeting. It takes place during the business day from 2:00 p.m. to 5:00 p.m. Ballots are counted at the board of commissioners meeting that evening. Elections are held even if there is only one candidate for the vacant position.

Citizens Gas Utility District (Scott and Morgan Counties)

Sixty days before the election, the district puts a vacancy notice in the local newspaper. To be eligible to run for office, the candidate has to submit a nominating form signed by at least 10 customers. Elections are usually held on the fourth Saturday in August. The board of commissioners chooses three or four customers to count the votes.

First Utility District (UD) of Carter County (Carter County)

The district publishes a notice of vacancy in the local newspaper and sends notice to the customers. The district holds nominating meetings on the main floor of the courthouse before the board of commissioners meeting. To be eligible to run, a customer must reside in the district. The district publishes two notices in the newspaper showing the election date and time, and a list of

qualified candidates. Elections are held on the fourth Saturday after the nominating meeting in the courthouse. The votes are counted in the courtroom, and customers are allowed to observe the count. In the past, the district has paid workers from the local election commission to work the elections.

First Utility District (UD) of Hardin County (Hardin County)

A written notice of the vacant position is sent to the customers by the district. Only customers who reside in the district are eligible to serve as a commissioner. Customers interested in running for office must submit a nominating form signed by at least 25 customers. The district mails a list of qualified candidates to customers before the election. The election is held during the week during normal business hours. An independent group of individuals counts the votes. This group includes customers.

Huntsville Utility District (Scott County)

The district publishes notice of the vacancy in the local newspaper for two consecutive weeks. Candidates for vacant positions must live in the district and be a customer. To qualify as a candidate, the customer must submit a nominating petition signed by at least 25 customers. The utility district is divided into four smaller districts and there is one commissioner from each of those districts. There is also one at-large commissioner. The election is held on the third Saturday in August. The commissioners select one or two customers to work the elections. Two workers from the local election commission also come out to assist in the election.

Sewanee Utility District (Franklin and Marion Counties)

A notice of the election is printed on the customers' bills by the district. Each month the district publishes notice of the monthly board of commissioners meeting in the newspaper, and they include a mention of upcoming elections in this public notice. Customers must submit a petition signed by at least 10 customers in order to be put on the ballot. Voting begins on the first business day in January at the office and continues until the board meeting that is held on the fourth Tuesday in January. Votes are counted at the board of commissioners meeting. The commissioners select two customers to count the votes. Four of the commissioners are at-large, and one of the commissioners is from Marion County. They

hold elections even if there is only one candidate running, and they accept write-ins.

West Cumberland Utility District (Cumberland County)

Notice of the elections is published on the customers' bills by the district. The district also publishes notice of elections in the local newspaper. Commissioners pick three names for each vacancy. Customers may also qualify to run in the election by submitting a nominating petition signed by at least 10 customers. The district holds elections during the business day. An individual from the local election commission brings a voting machine to the utility district office on which the customers cast their votes. The machine tallies the votes. The district does not pay for this service.

Information About the Utility Districts Affected by Senate Bill 500, House Bill 479, and Senate Bill 830, House Bill 1295

Supporters of Senate Bill 500, House Bill 479, and Senate Bill 830, House Bill 1295, allege that the utility districts affected by the bills are being mismanaged by their boards of commissioners. In an effort to discern what, if any, issues these districts may be facing, the TACIR staff collected information about districts which are under the oversight of UMRB for financial distress and excessive water loss. Staff also collected information on the districts' water quality violations and water rates.

Water Rates

Tennessee Code Annotated § 7-82-403 requires the board of commissioners to charge rates that are sufficient to cover their operation and maintenance costs and debt payments. The supporters of Senate Bill 830, House Bill 1295, and Senate Bill 500, House Bill 479, assert that their districts' water rates are too high. Water rates can vary dramatically and be influenced by a number of factors, including source of water (ground or surface water), system density, local terrain, the need to expand or renovate a system, loss of a major water consumer, increased costs for water treatment due to new regulations or contamination, and

Tennessee Code Annotated § 7-82-403 requires the board of commissioners to charge rates that are sufficient to cover their operation and maintenance costs and debt payments.

emergencies.¹⁰ TACIR staff did not attempt to judge the fairness of the districts' water rates in this study. Table 1 simply shows the rates of the districts for informational purposes.

Table 1. Water Rates of the Utility Districts Affected by Senate Bill 500, House Bill 479 and Senate Bill 830, House Bill 1295				
District	County	Year	Minimum Water Rate	Rate for Additional Water
Bon De Croft	White	2010	\$18.50 for the first 1,500 gallons	\$8.00 per 1,000 gallons
Fall River	Lawrence	2010	\$18.00 for the first 1,500 gallons*	\$8.50 per 1,000 gallons
Iron City	Lawrence	2010	\$30.00 for the first 2,000 gallons	Residential - \$8.80 per 1,000 gallons Commercial - \$7.20 per 1,000 gallons
Leoma	Lawrence	2010	Residential - \$8.50 for the first 2,000 gallons Commercial - \$8.50 for the first 1,500 gallons	Residential - \$3.25 per 1,000 gallons Commercial - \$3.25 per 1,000 gallons
Northeast Lawrence	Lawrence	2010	\$16.75 for the first 1,500 gallons	\$8.00 per 1,000 gallons
Summertown	Lawrence	2010	\$12.50 for the first 1,500 gallons	\$3.75 per 1,500 gallons
West Point	Lawrence	2010	\$23.00 for the first 2,000 gallons	\$4.50 per 2,000 gallons

* The minimum water rate increased to \$20.00 per first 1,000 in 2011. Utility Management Review Board, "Utility Management Review Board Agenda October 2011 Meeting," (Nashville, 2011).
 Source: 2010 Utility District Financial Audits

Any districts found to be "financially distressed" are referred to the UMRB.

Financially Distressed Districts

Utility districts are required to be self-sufficient. Each utility district is required to be audited annually, and the Division of Municipal Audit in the Comptroller's Office reviews these district audits. Any districts found to be "financially distressed" are referred to the UMRB. Financially distressed districts are defined in Tennessee Code Annotated § 7-82-401 as districts that

- have deficit total net assets in one year or
- have a negative change in net assets for two consecutive years or
- are in default on a debt instrument.

¹⁰P. J. Cameron, "Water Sense Begins Detailed Look at Rates" *Water Sense*, 1, no. 3 (1995), <http://www.nesc.wvu.edu/ndwc/pdf/WS/WSs95.pdf>.

The UMRB and its staff work with the utility district to develop a plan to help bring a district into compliance. Tennessee Code Annotated § 7-82-703 gives the UMRB the authority to require a financially distressed district to prescribe a rate structure that will bring it into statutory compliance. Pursuant to Tennessee Code Annotated § 7-82-704, the UMRB also has the authority to negotiate a merger of a financially distressed district with another utility district or county or municipal utility system, if it determines it is in the public’s best interest to do so. After the plan for the financially distressed district is approved by the UMRB, the UMRB will monitor the implementation of the plan and will continue to work with the district as needed to help it resolve its issues.

Of the districts affected by Senate Bill 830, House Bill 1295 and Senate Bill 500, House Bill 479, four are currently under the oversight of the UMRB for being financially distressed. Table 2 shows which districts are under the oversight of the UMRB and why.

Tennessee Code Annotated § 7-82-703 gives the UMRB the authority to require a financially distressed district to prescribe a rate structure that will bring it into statutory compliance.

Table 2. Utility Districts Affected by Senate Bill 500, House Bill 479 and Senate Bill 830, House Bill 1295 under the Oversight of the UMRB for Financial Distress

Utility District	Number of Ratepayers	Under the Oversight of the UMRB for Financial Distress	Reason
Bon De Croft	1,268	No	
Fall River Road	1,085	Yes	Two consecutive years with a negative change in net assets based on the fiscal year ending December 31, 2010
Iron City	252	Yes	Ten consecutive years with a negative change in net assets
Leoma	1,196	Yes	Two consecutive years with a negative change in net assets based on the fiscal year ending December 31, 2010
Northeast Lawrence	1,214	No	
Summertown	1,350	No	
West Point	134	Yes	Default on outstanding debt

Source: Utility Management Review Board, 2010 Utility District Financial Audits

Excessive Water Loss

Utility districts can also come under the oversight of the UMRB for excessive water loss pursuant to Tennessee Code Annotated § 7-82-

709. Lost water can result in lost revenue for the utility districts.¹¹ Reducing water loss can result not only in economic savings but in other benefits, including

- increased knowledge about the distribution system, which can be used, for example, to respond more quickly to emergencies and to set priorities for replacement or rehabilitation programs,
- more efficient use of existing supplies and delayed capacity expansion,
- improved relations with both the public and utility employees,
- improved environmental quality,
- increased fire fighting capability,
- reduced property damage, reduced legal liability, and reduced insurance because of the fewer main breaks, and
- reduced risk of contamination.¹²

Table 3. Utility Districts Affected by Senate Bill 500, House Bill 479 and Senate Bill 830, House Bill 1295 under the Oversight of the UMRB for Excessive Water Loss

Utility District	Under the Oversight of the UMRB for Excessive Water Loss	Percentage of Water Loss
Bon De Croft	No	
Fall River Road	Yes	45%
Iron City	Yes	38.4%
Leoma	No	
Northeast Lawrence	No	
Summertown	No	
West Point	Yes	41%

Source: Utility Management Review Board, 2010 Utility District Financial Audits.

Tennessee Code Annotated § 7-82-401(h)(1) requires a district to report its average unaccounted-for water in its annual audit. Any utility district that reports a water loss of 35% or higher is referred to the UMRB.¹³ The UMRB works with an affected district to help reduce water loss to an acceptable level.

Table 3 shows the districts affected by Senate Bill 830, House Bill 1295, and Senate Bill 500, House Bill 479, that are currently under the oversight of the UMRB for excessive water loss.

¹¹Zacharia M. Lahlou, "Leak Detection and Water Loss Control," National Drinking Water Clearinghouse, (May 2001), http://www.nesc.wvu.edu/ndwc/pdf/ot/tb/tb_leakdetection.pdf.

¹² Ibid.

¹³Utility Management Review Board, *Annual Report*.

Water Quality

The Safe Drinking Water Act (SDWA) is the primary federal law that regulates drinking water in this country. The SDWA requires the U.S. Environmental Protection Agency (EPA) to set drinking water standards for the U.S. public water systems. The EPA works with states, local governments, and water suppliers to help ensure the standards are met.

The EPA sets drinking water standards through a three-step process:

- First, it identifies contaminants that may pose a risk to public health and that occur in drinking water at a frequency and level that make it potentially unsafe.
- Second, it sets a maximum containment level goal for each contaminant, which is set at a level below which there is no known or expected health risk.
- Third, it specifies the maximum containment level, which is the greatest amount of contaminant that will be allowed in the public water supply.¹⁴

In 1996, Congress passed an amendment to the SDWA that requires water suppliers to inform customers about the source and quality of their drinking water with an annual water quality report (Consumer Confidence Report).

Enforcement of drinking water standards has been delegated to state governments with the exception of Wyoming.¹⁵ The Tennessee Department of Environment and Conservation, through its Division of Water Supply, is responsible for enforcing drinking water standards in Tennessee. The Division of Water Supply has a number of mechanisms to enforce compliance. These include Notices of Violation and/or Non-Compliance, technical assistance, Compliance Review and/or Show Cause meetings, and Administrative Orders with monetary civil penalties. Most

The Safe Drinking Water Act (SDWA) is the primary federal law that regulates drinking water in this country.

¹⁴U.S. Environmental Protection Agency, *Understanding the Safe Drinking Water Act*, (Washington DC, 2004), http://www.epa.gov/ogwdw/sdwa/pdfs/fs_30ann_sdwa_web.pdf.

¹⁵U.S. Environmental Protection Agency, "Wyoming Drinking Water Program," <http://www.epa.gov/region8/water/dwhome/wyomingdi.html> (accessed November 1, 2011).

Two previous state agency reports examined the issue of selecting commissioners: *Special Report: Utility Districts in Tennessee and Issues Relating to the Appointment of Utility Districts Boards of Commissioners*.

violations are corrected prior to the issuance of an Administrative Order.¹⁶

None of the districts affected by Senate Bill 830, House Bill 1295 and Senate Bill 500, House Bill 479 had any water quality violations in 2011.¹⁷

Analysis

Review of Past Research

Two previous state agency reports examined the issue of selecting commissioners: *Special Report: Utility Districts in Tennessee and Issues Relating to the Appointment of Utility Districts Boards of Commissioners*.

Special Report: Utility Districts in Tennessee

In this 1993 report, the Comptroller's Office looked at the issue of selecting commissioners. As a part of the study, the chairpersons of the boards of commissioners were surveyed and their responses on the advantages and disadvantages of the selection methods were included in the report. Among the advantages listed for the appointment method was that it reflected the objective opinion of the ranking elected official of the county. It also allows input from customers and other board members. The disadvantages of the appointment method were that it concentrates power in the hands of one or two individuals. The chairpersons also noted that with the appointment method the county mayor could be subject to political influence, and the county mayor may not be well informed about the district or its operations.

The advantages of the election method, as identified by the chairpersons, were that it makes board members responsive

¹⁶Tennessee Department of Environment and Conservation, *Annual Report of the Violations of the Federal Safe Drinking Water Act*, (Nashville, 2008), <http://www.tn.gov/environment/dws/pdf/2007ACR.pdf>.

¹⁷According to information from TDEC, the Summertown Utility District did exceed the Lead Action Level during 2011. However, this is not considered to be a water quality violation. If a system's monitoring results exceed the action level, then additional procedures/treatments/monitoring are to be undertaken. Jeff Bagwell, e-mail message to author, October 14, 2011.

to customers. Additionally, it gives the customers a voice, and everyone is familiar with the district's problems. The disadvantages listed were election costs and the difficulty in finding someone qualified who is willing to run.

District customers were also surveyed as a part of the study. The survey results indicated that 68% of respondents were not aware of how vacancies on the board were filled. Twenty-five percent indicated they were satisfied with the methods for filled vacancies in their districts. Only 4.3% said they were not satisfied. Fifty-eight percent of respondents indicated that they were not sure if their utility district commissioners represented the community. Thirty-three percent said the commissioners represent the community, and 5.4% said they did not. The authors concluded that the survey results could indicate that customers don't care how their district is run as long as they get good service at reasonable rates or they are not informed about their districts' boards and operations, or both.

The authors noted that it was, "difficult to determine the optimal method of selecting utility district commissioners." They determined that appointment of commissioners by the county mayor from a list supplied by the board best served the public's interest. The reasons given for concluding that appointment was the best method were

- concerns about the lack of customers' knowledge about their districts,
- concerns that election by rate-payers would expose the commissioners to political influences, and commissioners or candidates could make promises to lower rates, which could be detrimental to the district,
- concerns that no one would be willing to run, and
- concerns that individuals may run for office to further their own interests, such as a developer with an interest in extending lines into an area he or she is developing.

Tennessee's utility district law offers a number of methods through which customers can take their complaints to the state level.

Issues Relating to the Appointment of Utility Districts Boards of Commissioners

TACIR staff examined several issues related to utility district boards in this 2003 study. In the report, it was noted that the method of selection favored by most of the experts consulted for the study was appointment by the county mayor. The county mayor is forced to consider many viewpoints when considering whom to appoint so he or she may be more objective than customers or other board members. However, it was noted that a county mayor could be prone to political pressure. The authors stated that elections allow for greater public input and tended to increase accountability to customers, but that there was often low voter turnout for the elections. This meant that a small pool of customers determined who would sit on the board.

Additional Points

The staff identified additional points during its study of Senate Bill 500, House Bill 479, and Senate Bill 830, House Bill 1295.

- Customers have many avenues in the existing law through which they can address their complaints. Voting commissioners off the board is not the only alternative customers have to deal with their complaints about management.

Changing the commissioner selection method is not the only option customers have for seeking redress of their grievances. Depending upon the facts and circumstances, customers may be able to take legal action in court against the commissioners and/or the district. A group of customers of the Bon De Croft Utility District recently filed suit against utility district staff and utility district commissioners requesting that the named defendants be ousted from office pursuant to the general ouster law, Tennessee Code Annotated § 8-47-101 *et seq*, due to their misconduct. In addition, Tennessee's utility district law offers a number of methods through which customers can take their complaints to the state level.

Commissioner Ouster

Tennessee Code Annotated 7-82-307(b)(1) authorizes customers to petition the UMRB for ouster of a commissioner.¹⁸ After filing a notice of intent to petition for the ouster of a commissioner(s) with the UMRB, the customer is required to compile a petition signed by at least 20% of the customers of the utility district within 90 days. Upon certifying the petition, the UMRB notifies the Administrative Procedures Division of the Tennessee Department of State. An Administrative Law Judge (ALJ) is appointed, and the ALJ, sitting alone, conducts a contested case hearing.¹⁹

The ALJ sends an initial order to the parties after the hearing. Each party has 15 days to file a petition for reconsideration by the ALJ or appeal with the UMRB, after the entry of the initial order. The UMRB may, upon successful motion, review the initial order. If the UMRB chooses not to review the initial order and neither party files a petition for reconsideration or appeal, then the initial order becomes the final order.

If the UMRB receives a petition for appeal, or if it chooses to review the initial order, each party is given the opportunity to present briefs and may be afforded an opportunity to present an oral argument. The UMRB deliberates the matter in public and then makes a determination based on a majority vote of those present and voting. A written final order is rendered within 60 days after oral argument. Either party may file a petition for reconsideration by the UMRB, and any party may seek judicial review of the final order by filing a petition in the Davidson County Chancery Court.

Rate Review

The law also gives customers the right to protest water rates according to the provisions of Tennessee Code Annotated § 7-82-402. A customer may file a rate protest with the board of commissioners within 30 days after the district's financial statement is published in the local newspaper. Any protestant may request that the

¹⁸Information on the ouster procedures also came from the "Commissioner Removal Guidance Customer Petition" sheet provided by the UMRB staff.

¹⁹Tennessee Code Annotated § 4-5-102(3) defines "contested case" as a proceeding, including a declaratory proceeding, in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing.

Tennessee Code
Annotated 7-82-307(b)
(1) authorizes customers
to petition the UMRB for
ouster of a commissioner.

UMRB review the board’s decision on rates. The UMRB’s decision may also be subject to judicial review.

Tennessee Code Annotated § 7-82-102 authorizes a customer to directly petition the UMRB to review a district’s rates.²⁰ Aggrieved customers must submit a petition, signed by at least 10% of a district’s customers, in order to get a district’s rates reviewed by the UMRB.

Review of Board of Commissioner Decisions

Most utility districts are required by Tennessee Code Annotated § 7-82-402(b) to maintain a customer complaint policy.²¹ Once a utility district board makes a decision on a customer’s complaint, the customer may appeal the decision to the UMRB.²² The UMRB has the duty to review any decision of any utility district under Tennessee Code Annotated § 7-82-702(7) upon simple written request of any utility district customer, or any member of the public, within 30 days. The UMRB’s review is limited to looking at whether or not the district has had rules and regulations governing customer complaints, as required by law, and whether the district considered and resolved the complaint according to the rules and regulations.²³ The UMRB may hold a hearing on the matter if it deems it appropriate. Once a final decision is made on the matter by the UMRB, a customer may seek judicial review of the decision.

Table 4. Utility Districts Which Elect Commissioners Status of UMRB Oversight			
District	County	Under the Oversight of the UMRB	Reason
Bedford	Bedford	Yes	Seven consecutive years with a negative change in net assets as of FY 2010 and a negative total net assets (gas system)
Belvidere	Franklin	No	
Castalian Springs-Bethpage	Sumner	No	
Center Grove-Winchester Springs	Franklin	No	
Citizens Gas	Scott/Morgan	Yes	Two consecutive years with a negative change in net assets
First UD of Carter	Carter	Yes	Excessive water loss
First UD of Hardin	Hardin	Yes	Two consecutive years with a negative change in net assets as of December 31, 2010
Huntsville	Scott	No	
Sewanee	Franklin	No	
West Cumberland	Cumberland	No	

Source: Utility Management Review Board

²⁰TCA § 7-82-103 exempts certain districts from the provisions of TCA § 7-82-102.

²¹TCA § 7-82-103 exempts certain districts from this requirement including water districts with less than 1,000 customers and some natural gas districts.

²²Tenn. AG Op. No. 93-26.

²³Tenn. Comp. R. & Regs.1715-01-.05.

- There is no guarantee that changing the commissioner selection method from appointment to election will result in a better run district.

Utility districts with elected boards can still suffer the same problems as utility districts with appointed commissioners. As Table 4 shows, utility districts with elected commissioners can and do come under the oversight of the UMRB for financial distress and excessive water loss as do appointed utility districts.

These districts can also have water quality issues. Table 5 shows which utility districts with elected boards had water quality violations in 2011. Districts with elected boards can be subject to criminal misdeeds as was the First UD of Carter County, whose former utility district manager was convicted of theft, forgery, fraudulent use of a credit card, and official misconduct.²⁴ There are no guarantees that commissioners who are elected will make better decisions than those who are appointed.

**Table 5. Utility Districts Which Elect Commissioners
Water Quality Violations (2011)**

Utility District	County	Water Quality Violation 2011	Contaminant
Bedford County	Bedford	No	
Belvidere	Franklin	No	
Castalian Springs-Bethpage	Sumner	Yes	Total Haloacetic Acids and Trihalomethanes
Center Grove-Winchester	Franklin	No	
Citizens Gas	Scott/Morgan	No	
First UD of Carter County	Carter	No	
First UD of Hardin	Hardin	No	
Huntsville	Scott	No	
Sewanee	Franklin/Marion	No	
West Cumberland	Cumberland	No	

Source: Tennessee Department of Environment and Conservation

- If the amended version of Senate Bill 500, House Bill 479 passes in the General Assembly, commissioners could end up being selected by the county legislative body, rather than by customers. This is due to a provision in the Amendment that stipulates the county legislative body will appoint a commissioner if there is less than a 30% voter turnout.

Senate Bill 500, House Bill 479, would change the method of selecting commissioners from appointment to election by customers in the Bon De Croft Utility District. The original bill does not include

²⁴John Thompson, "Ex-utility director sentenced to one year," *Johnson City Press*, February 24, 2011, <http://www.johnsoncitypress.com/News/article.php?id=86978>.

language outlining the procedures for conducting the elections. It does, however, give the board of commissioners the authority to prescribe the manner in which the elections would be held. House Amendment 1, which was passed by the full House, included more specific language outlining how the elections would be conducted.

House Amendment 1 included the following language in subsection (5)(C)(iv):

Unless a position is uncontested, if less than thirty percent (30%) of the customers of the utility district cast a vote at the election, such election shall be declared to be null and void and the county legislative body shall elect a person to fill the vacancy from the list of qualified nominees running for election.

This means that the commissioner would be chosen by the county legislative body—rather than the customers—if less than 30% of the customers vote in the election .

TACIR staff conducted phone interviews with the staff of the utility districts with elected boards and asked them to estimate the average voter turnout at the elections. As Table 6 shows, the turnout for most of these tends to be low, anywhere from less than 1% to around 16%. The only exception was the First UD of Hardin County where the staff estimated an average voter turnout of 50%.

The results of the informal survey seem to suggest that in most, if not all, of the elections in the Bon De Croft Utility District, the voter turnout is likely to be

Utility District	Voter Turnout	Number of Ratepayers	Percentage of Customers Voting
Bedford	100-400	6,431 water 261 gas	N/A ¹
Belvidere ²	20-80	514 water	4% to 16%
Castalian Springs-Bethpage	Less than 5%; 52 voted in the last election	3,797 water	Less than 5%
Center Grove-Winchester Springs	20-150; 200 voted one time	2,312 water	1% to 9%
Citizens Gas	usually 400-500; last year's election 700; this year's election 1,200	9,654 gas (active meters)	4% to 12%
First UD of Carter County	1 or 2 up to 300-400	3,189 water (number of metered taps)	.03% to 13%
First UD of Hardin County	50% of customers	2,665 water	50%
Huntsville	20 if there is only one candidate; 400-600 if election is contested	4,689 water	0.43% to 13%
Sewanee	70	1,337 water 676 sewer	N/A ³
West Cumberland	150-200	1,846 water	8% to 11%

¹This district offers both water and gas services. The TACIR staff did not attempt to calculate the percentage of district customers voting in this district since the staff could not be certain of the total number of customers in the district. Some customers may receive both services while others may receive only one service.

²The Belvidere Utility District number of ratepayers comes from the 2009 utility district audit which is the latest available audit report.

³This district offers both water and sewer services. The TACIR staff did not attempt to calculate the percentage of district customers voting in this district since the staff could not be certain of the total number of customers in the district. Some customers may receive both services while others may receive only one service.

Population Source: 2010 Utility District Financial Audit

less than 30%. This means that the county legislative body, not the customers, would likely be choosing the commissioners in most if not all of the elections.

Having the county legislative body choose the commissioners may not in and of itself be a bad thing, but Senate Bill 500, House Bill 479 was presented as a bill that would put the choice of commissioners in the hands of the customers, not the county legislative body. It was argued that Senate Bill 500, House Bill 479 was needed because mismanagement of the district demanded that the commissioners be removed by vote of the customers. This bill, if passed with House Amendment 1, would simply transfer the appointing authority from the county mayor to the county legislative body, with some additional input from customers. Thus, one could argue that there is little to be gained by having the county legislative body rather than the county mayor choose the commissioners.

- Election expenses may be burdensome for smaller districts.

The cost of elections has been identified as one of the disadvantages of electing commissioners.²⁵ The estimated election costs in utility districts vary from less than \$200 to \$2,800 per election, as shown in Table 7. These cost estimates were provided by utility district staff.

The cost of elections has been identified as one of the disadvantages of electing commissioners.

Table 7. Election Costs in Utility Districts Which Elect Commissioners		
Utility District	Number of Ratepayers	Estimated Costs per Election
Bedford	6,431 water 261 gas	\$2,000
Belvidere	514 water	Around \$200
Castalian Springs- Bethpage	3,797 water	Around \$500
Center Grove- Winchester Springs	2,312 water	Less than \$200
Citizens Gas	9,654 gas	Unable to give an estimate
First UD of Carter County	3,189 water	Up to \$2,800 per election
First UD of Hardin County	2,665 water	\$2,000 to \$2,500
Huntsville	4,689 water	Around \$1,000
Sewanee	1,337 water 676 sewer	Nominal expense of printing paper ballot
West Cumberland	1,846 water	Around \$200

Population Source: 2010 Utility District Financial Audits

²⁵Tennessee Department of the Comptroller, 8.

It is possible that Senate Bill 500, House Bill 479, and Senate Bill 830, House Bill 1295, may violate Article XI, § 8 of the Tennessee Constitution.

Scheduling elections on a Saturday may be a contributing factor in driving up election costs. Of the districts with elections costs of \$1,000 or more, three indicated they held elections on Saturday. These districts are Bedford, First UD of Carter County and Huntsville. The First UD of Hardin County holds elections during the business week, but election costs were estimated to be in the \$2,000 to \$2,500 range. Of the districts with election costs estimated to be below or around \$200, all indicated that they held elections during the business week. These districts are Belvidere, Center Grove-Winchester Springs, Sewanee, and West Cumberland. Castalian Springs-Bethpage Utility District's elections are held during the week.

For smaller utility districts affected by these two bills, the costs of conducting an election could be burdensome. West Point Utility District, for example, has 134 customers and is currently under the oversight of the UMRB due to default on debt and excessive water loss. According to its 2010 audit, it had operating revenues of \$59,824 and operating income of \$20,203. It could be argued that spending \$1,000 or more on an election would strain a district when it has such low revenue and income figures.

Senate Bill 830, House Bill 1295 and Senate Bill 500, House Bill 479 (as amended by House Amendment 1) require the utility districts to hold elections on Saturday. This would likely cause election costs to be higher than they would be if they were allowed to hold elections during the week.

- **These bills may violate the Article XI, § 8 of the Tennessee Constitution.**

It is possible that Senate Bill 500, House Bill 479, and Senate Bill 830, House Bill 1295, may violate Article XI, § 8 of the Tennessee Constitution.²⁶ Tennessee Code Annotated § 7-82-307 outlines the requirements for selecting district commissioners. In the past, the statute was a labyrinth of provisions. Over the years, many amendments to the statute resulted in there being over 40 different subsections governing the selection of commissioners.

²⁶Article XI, § 8 and Article 1, § 8 provide the equal protection guarantees in the Tennessee Constitution.

One of these amendments, Chapter 861 of the Public Acts of 1990, authorized the election of commissioners in the First Utility District of Carter County. The First Utility District of Carter County filed suit alleging, among other things, that the Act violated Article XI, § 8 of the Tennessee Constitution. Article XI, § 8 prohibits the suspension of a general law for the benefit of particular individuals. In *First Utility District of Carter County v. Clark*, the Tennessee Supreme Court ruled that the Act, which authorized elections in the First Utility District of Carter County, was not unconstitutional because the legislature had not created a uniform general law of statewide application concerning the selection of commissioners.

Much has changed since that time. The statute was greatly simplified by the Utility District Commissioner Selection Reform Act (Public Chapter 618, Acts of 2004) and Public Chapter 392 in 2011. Many of the provisions of Tennessee Code Annotated § 7-82-307 governing the selection methods in individual districts were stripped out. Public Chapter 392 amended the law to require that all utility districts, except for multi-county districts and utility districts that elect commissioners, use the appointment by county mayor method. The 2004 Act also added language to the statute indicating that its passage was evidence of the “legislature’s intent to create a uniform general law of statewide application for selecting utility district commissioners.” With this language in the statute, Senate Bill 500, House Bill 479, and Senate Bill 830, House Bill 1295, if passed, could be subject to a challenge under Article XI, § 8 of the Tennessee Constitution. They are general bills of local application authorizing elections in a handful of districts and could be characterized as being in contravention of a general law of statewide application.

Appendix 1

Senate Bill 500, House Bill 479 with House Amendment 1 (HA441)

HOUSE BILL 479
By Curtiss

SENATE BILL 500

By Burks

AN ACT to amend Tennessee Code Annotated, Title 7,
Chapter 82, relative to utility districts.

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

SECTION 1. Tennessee Code Annotated, Section 7-82-307, is amended by adding the following language as a new subsection (i):

(i) Notwithstanding subdivision (a)(4) and (5), the utility subscribers of a water utility district located in the eastern portion of any county having a population of not less than twenty-three thousand one hundred (23,100) nor more than twenty-three thousand two hundred (23,200), according to the 2000 federal census or any subsequent federal census, which district serves at least one thousand (1,000) subscribers, shall fill vacancies and select commissioners of the water utility district in an election to be held at times and in such manner as prescribed by the commissioners of the water utility district.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

Amendment No. 1 to HB0479

Curtiss
Signature of Sponsor

AMEND Senate Bill No. 500

House Bill No. 479*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 7-82-307, is amended by adding the following language as a new, appropriately designated subsection:

()

(1) Notwithstanding subdivision (a)(4) and (5), the utility subscribers of a water utility district located in the eastern portion of any county having a population of not less than twenty-three thousand one hundred (23,100) nor more than twenty-three thousand two hundred (23,200), according to the 2000 federal census or any subsequent federal census, which district serves at least one thousand (1,000) subscribers, shall fill vacancies and select commissioners of the water utility district in an election to be held at times and in such manner as prescribed pursuant to this subsection.

(2)

(A) All unscheduled vacancies arising after the effective date of this act shall be filled, for the remainder of the unexpired term, in accordance with the requirements and procedures set forth in this subsection.

(B) No person shall be elected as utility commissioner nor shall a person be eligible to vote in an election for utility commissioners unless the person is a customer of the utility and resides within the service area of the utility district.

(3)

(A) On or after the effective date of this act, upon a vacancy occurring on any board of commissioners of such utility district, the board of commissioners of the utility district shall conduct an election within sixty (60) days of the vacancy.

(B) Only customers of and who reside within the utility district shall be eligible to vote. Each customer has one (1) vote, regardless of the number of meters registered to such customer and the customer voting must present a utility bill to vote.

(4) The election shall be held at a local school, fire hall or utility district office within the utility district. The board of commissioners shall schedule such election on a Saturday with the polls being open from 9:00 a.m. to 5:00 p.m. No member of the utility district's board of commissioners that is seeking election or any person or persons seeking election as a utility district commissioner shall be within one hundred (100') feet of the polling place during the time the polls are open except during the time such person is casting his or her vote.

(5)

(A) The incumbent commissioners shall give notice to all customers of the vacated, or soon to be vacant, office by mail and by publication in a local newspaper of general circulation. Each candidate and any organization of customers interested in preserving the purity of the election and in guarding against abuse of the elective franchise may appoint poll watchers; provided that no candidate or organization shall be permitted to appoint more than one (1) poll watcher. Poll watchers are permitted within the polling place during the time the election is being conducted and at the close of the election the vote shall be counted and the poll watchers shall be present. The total votes cast in each vacancy must be signed by the commissioners and the poll watcher or poll watchers in attendance. The votes shall be counted where the election was held

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by the commissioners in the sight and presence of such of the customers as choose to be present and observe such count and tally and in the presence of the poll watchers.

(B) The notice shall state that such a vacancy exists or will exist, shall state the qualifications for holding such office, shall indicate the date, place and time for the election to fill the vacancy, shall indicate the deadline for nominating petitions to be filed, and shall state that persons desiring to be placed on the ballot must submit a nominating petition signed by not less than twenty-five (25) adults who are customers of the district and who also reside in the district. The petition shall be filed at the utility district office. This notice shall be published in a local newspaper of general circulation at least thirty (30) days prior to the election. Immediately after the qualifying deadline, the remaining commissioners shall prepare a paper ballot of the nominees for the vacancy, which ballot shall be published in a local newspaper of general circulation not less than five (5) nor more than fourteen (14) days prior to the date of the election. The vacancy shall be filled by a plurality of the votes cast for the vacant position on the board. Write-in votes shall be counted.

(C)

(i) The commissioners shall on the next Monday after the election forward to the chairman of the county legislative body of any county to which this subsection applies the results of the election to be entered of record in the office of the county clerk.

(ii) Subject to subdivision (iv), the nominee for a particular vacancy receiving the highest number of votes shall be declared to be elected.

(iii) In the event of a tie vote, the county legislative body shall cast the deciding vote.

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-3-

(iv) Unless a position is uncontested, if less than thirty percent (30%) of the customers of the utility district cast a vote at the election, such election shall be declared to be null and void and the county legislative body shall elect a person to fill the vacancy from the list of qualified nominees running for election.

(6) In implementing this subsection, the nominating and appointing authorities shall give due consideration to the need for racial, gender, age and ethnic minority diversity on the utility district board of commissioners.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

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Appendix 2

Senate Bill 830, House Bill 1295 with House Amendment 1 (HA241)

SENATE BILL 830

By Summerville

AN ACT to amend Tennessee Code Annotated, Section 7-82-307, relative to commissioners of certain water utility districts located in any county having a population of not less than thirty-nine thousand (39,900) nor more than forty thousand (40,000), according to the 2000 federal census or any subsequent federal census.

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

SECTION 1. Tennessee Code Annotated, Section 7-82-307, is amended by adding the following language as a new, appropriately designated subsection:

()

(1) Notwithstanding the provisions of this section or any other law to the contrary, any water utility district having less than one thousand six hundred (1,600) customers in any county having a population of not less than thirty-nine thousand (39,900) nor more than forty thousand (40,000), according to the 2000 federal census or any subsequent federal census, shall be governed by a five-member board of utility district commissioners to be elected by the customers of the utility district.

(2)

(A) The regular term of office of each utility district commissioner shall be four (4) years. All unscheduled vacancies arising after the effective date of this act shall be filled, for the remainder of the unexpired term, in accordance with the requirements and procedures set forth in this subsection.

(B) No person shall be elected as utility commissioner nor shall a person be eligible to vote in an election for utility commissioners unless the person is a customer of the utility and resides within the service area of the utility district. As

used in this subsection "customer" means a person who is regularly billed for utility service rendered by the district and pays money for such service for water that passes through the meter connection to the customer's dwelling or business on a monthly basis.

(3)

(A) On or after the effective date of this act, upon a vacancy occurring on any board of commissioners of such utility district, the board of commissioners of the utility district shall conduct an election within sixty (60) days of the vacancy.

(B) Only customers of the utility district shall be eligible to vote. Each customer has one (1) vote, regardless of the number of meters registered to such customer and the customer voting must present a utility bill to vote.

(4) The election shall be held at the community center or fire hall or utility district office within the utility district. The board of commissioners shall schedule such election on a Saturday with the polls being open from 9:00 a.m. to 3:00 p.m. No member of the utility district's board of commissioners that is seeking election or any person or persons seeking election as a utility district commissioner shall be within one hundred (100') feet of the polling place during the time the polls are open.

(5)

(A) The incumbent commissioners shall give notice to all customers of the vacated, or soon to be vacant, office by mail and by publication in a local newspaper of general circulation. Each candidate and any organization of customers interested in preserving the purity of the election and in guarding against abuse of the elective franchise may appoint poll watchers. Poll watchers are permitted within the polling place during the time the election is being conducted and at the close of the election the vote shall be counted and the poll

watchers shall be present. The total votes cast in each vacancy must be signed by the commissioners and the poll watcher or poll watchers in attendance. The votes shall be counted where the election was held by the commissioners in the sight and presence of such of the customers as choose to be present and observe such count and tally and in the presence of the poll watchers.

(B)

(i) The commissioners shall on the next Monday after the election forward to the chairman of the county legislative body of any county to which this subsection applies the results of the election to be entered of record in the office of the county clerk.

(ii) The nominee for a particular vacancy receiving the highest number of votes shall be declared to be elected.

(iii) In the event of a tie vote, the county legislative body shall cast the deciding vote.

(6) The notice shall state that such vacancy exists or will exist, shall state the qualifications for holding such office, shall indicate the date, place and time for the election to fill the vacancy, shall indicate the deadline for nominating petitions to be filed, and shall state that persons desiring to be placed on the ballot must submit a nominating petition signed by not less than ten (10) adults who are customers of the district and who also reside in the district. The petition shall be filed at the utility district office. This notice shall be published in a local newspaper of general circulation at least thirty (30) days prior to the election. Immediately after the qualifying deadline, the remaining commissioners shall prepare a paper ballot of the nominees for the vacancy, which ballot shall be published in a local newspaper of general circulation not less than five (5) nor more than fourteen (14) days prior to the date of the election. The vacancy shall be

filled by a plurality of the votes cast for the vacant position on the board. Write-in votes shall be counted.

(7) In implementing this subsection, the nominating and appointing authorities shall give due consideration to the need for racial, gender, age and ethnic minority diversity on the utility district board of commissioners.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

Commerce Committee 1

Amendment No. 1 to HB1295

McManus
Signature of Sponsor

AMEND Senate Bill No. 830*

House Bill No. 1295

By deleting subdivision (2)(A) from Section 1 and by substituting instead the following language:

(A)

(i) The regular term of office of each utility district commissioner shall be four (4) years. As appointed terms of office expire, each commissioner shall be elected in accordance with this subsection and thereafter to serve a four-year term. The term of office shall begin on the first regularly scheduled meeting of the board of commissioners held following the date of the election.

(ii) All unscheduled vacancies arising after the effective date of this act shall be filled, for the remainder of the unexpired term, in accordance with the requirements and procedures set forth in this subsection.

Appendix 3

People Consulted for this Study

Comptroller's Office

Comptroller Justin Wilson

Jason Mumpower, Executive Assistant to the Comptroller

Dennis Dycus, Director, Division of Municipal Audit

Bill Case, Supervisor of Municipal Audit

Joyce Welborn, Utility Management Review Board Coordinator

Tennessee Association of Utility Districts

Bob Freudenthal, Executive Director

John Hall, Advocacy/Finance

Utility Districts

Marie Moore, Office Manager, Bedford County Utility District

Waylon Stewart, Plant Manager, Belvidere Utility District

Bonnie Bieler, Castalian Springs-Bethpage Utility District

Danny Brock, Manager, and Tim Smith, Assistant Manager, Bon De Croft Utility District

David Stafford, Utility Manager, Center Grove-Winchester Springs Utility District

Office Staff, Citizens Gas

Dave Diddick, Manager, Fall River Utility District

Tammy Perkins, Office Manager, First Utility District of Carter County

Jennifer Phillips, Office Manager, First Utility District of Hardin County

Larry Crowley, General Manager, Huntsville Utility District

Phillip Palmer, Manager/Operator, Iron City Utility District

Bradley Lee, Manager, and Mark Mashburn, Board Commissioner, Leoma Utility District

Jarvis Curtis, Manager, Northeast Lawrence Utility District

Renee Tingle, Office Manager, Northeast Lawrence Utility District

Ben Beavers, General Manager, Sewanee Utility District

Michelle McAfferty, Office Manager, Summertown Utility District

Melissa Bryant, Office Manager, West Cumberland Utility District

Other

Jerry Austin, County Commissioner, White County

Elliot Clayton, Customer, Fall River Utility District

Alvin Klee, County Commissioner, White County

Sherry Tiedjens, Resident, Lawrence County

Ardeen Walters, Customer, Fall River Utility District

Marcie Williams, Customer, Bon De Croft Utility District