

## House Bill No. 763

An act relating to Monroe County; amending chapter 69-1191, Laws of Florida, as amended; revising provisions relating to the Utility Board of the City of Key West; authorizing the board to sell tangible personal property related to its utility services under certain circumstances; providing for salaries of board members to be set by resolution; authorizing the board to extend beyond the limits of Monroe County any public utilities under its jurisdiction under certain circumstances; providing for issuance of refunding revenue bonds by the board; authorizing the board to issue commercial paper notes and variable rate bonds and enter into interest rate swap transactions; revising notice provisions relating to sale of bonds; providing for sale of bonds at competitive or negotiated sale rather than public sale; revising eligibility requirements for a special utility rate; authorizing the board to make expenditures for advertising the utility system; authorizing the board to expend funds for emergency purchases; changing a time period for delivery of annual audits to the City Commission of the City of Key West; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Sections 1, 8, 11, and 13 of chapter 69-1191, Laws of Florida, as amended, and section 17 of chapter 69-1191, Laws of Florida, are amended to read:

Section 1. There is hereby created the Utility Board of the City of Key West, Florida, to be composed of five (5) members as particularly hereinafter set forth. Such Utility Board created by this act shall be and is hereby made the successor to the Utility Board of the City of Key West, Florida, heretofore created and existing by and under the provisions of chapter 65-1770, Laws of Florida, and acts amendatory thereto. The full, complete and exclusive power and right to manage, operate, maintain, control, extend, extend beyond the limits of the City of Key West, Florida, ~~in Monroe County, Florida,~~ improve, finance and re-finance the electric public utility now owned by the City of Key West, Florida, and the nonexclusive right to build, construct, operate, and acquire other public utilities, by purchase, gift, grant, lease, rental or otherwise, from time to time, from the United States Government, its departments, agencies, bureaus and commissions, and from the State of Florida and any of its political subdivisions, and corporations which are publicly or privately owned or operated, and by the right of eminent domain, shall be carried on by such Utility Board composed of five (5) members, all of whom shall be elected by the qualified electors of the City of Key West, Florida, at large, as hereinafter set forth. Furthermore, said Utility Board shall have the power and right to sell at retail or wholesale certain tangible personal property related to its utility services, including, but not limited to, generators, protection and conservation equipment, and appliances. The term "public utility," as used herein, shall include, but not be limited to, cable and telecommunication facilities. Nothing herein shall grant the right of eminent domain as to cable or telecommunication facilities. The name of

the Utility Board shall be "Utility Board of the City of Key West, Florida," and said board shall function and operate as hereinafter provided. Said Utility Board shall have the right to sue and be sued, may adopt and use a seal and change it at pleasure, and may use in the conduct of its business the trade name of "City Electric System," the use of which heretofore by its predecessor board is approved, confirmed and validated; further, said Utility Board may change such trade name and from time to time adopt such trade names as it deems expedient and proper in the conduct of its business, operations and activities.

Section 8. The Chairman of the Utility Board shall receive a monthly salary as compensation for his services in an amount set by majority vote of the board, ~~pursuant to resolution not to exceed \$700 per month~~. The other members of the board shall receive a monthly salary as compensation for their services in an amount set by majority vote of the board, pursuant to resolution not to exceed \$600 per month. All compensations set forth herein shall be payable as an operating expense of the electric public utility.

Section 11. The Utility Board of the City of Key West, Florida, shall have the full, complete and exclusive power and right to manage, operate, maintain, control, extend, extend beyond the limits of the City of Key West, Florida, in Monroe County, Florida, the electric public utility owned by said city, including the maintenance, operation, extension and improvement thereof, and including all lines, poles, wires, pipes, mains and all additions to and extensions of the same, and all buildings, stations, substations, machinery, appliances, land and property, real, personal and mixed, used or intended for use in or in connection with said electric public utility, and the Utility Board shall have all of the powers in connection with such other public utilities hereafter constructed or acquired by said board that are granted by this act to said board with respect to the electric public utility now owned by said city. The Board shall have the power and right to extend its utilities services beyond the limits of Monroe County, Florida. As it relates to the extension of services of the electric public utility, the power to extend services beyond the limits of Monroe County, Florida, shall become effective only if the Legislature enacts legislation permitting any person other than the Utility Board to sell electric energy to customers of the Utility Board. The said Utility Board shall have exclusive power and authority to determine what improvements shall be made to all such public utilities. The said Utility Board shall adopt annual budgets and amend the same from time to time, but in so doing shall conform to the requirements, if any, of any existing ordinance or resolution authorizing the issuance of revenue bonds now outstanding or hereafter issued against the income of the said ~~electric public Utility Board. Revenue bonds, as may be issued determined by said the Utility Board of the City of Key West, Florida,~~ for the purpose of refunding outstanding revenue bonds as well as for any other purposes which the Utility Board of said city deems proper in the management, operation, maintenance, control, improvement, extension, betterment, financing and refinancing of the electric public utility owned by the City of Key West, Florida, as well as for purposes of acquisition, purchase, building and construction and operation of additional public utilities which are deemed proper by said Utility Board, and revenue bonds may also be issued against the income of

any additional public utilities so acquired, and the granting of such authority to the Utility Board of the City of Key West, Florida, to issue revenue bonds against income of the electric public utility owned by said city, or against the income of any additional public utilities hereafter acquired by said Utility Board, is exclusive to said board, and the governing body of said city shall not have the right to issue any such bonds or otherwise incur any indebtedness or obligations whereby the income of said electric public utilities owned by the Utility Board of the City of Key West utility, or the income of any additional public utilities, hereafter acquired by said Utility Board, becomes charged for the payment thereof. The maturity dates and rate of interest of any bonds issued hereunder shall be determined and fixed by the Utility Board of the City of Key West, Florida, and said board shall have the exclusive right to sell said bonds at prices to be determined by said board. The Utility Board of the City of Key West, Florida, is authorized and empowered to adopt such resolutions as may be necessary or advisable in connection with the authorization, execution, issuance, sale, and delivery of the revenue bonds authorized hereunder. Prior to the validation and issuance of any bonds authorized hereunder, said board shall obtain the approval of the City Commission of the City of Key West, Florida, by appropriate ordinance. The Utility Board shall further have the power to issue commercial paper notes and variable rate bonds and to enter into interest rate swap transactions as determined from time to time to be in the best interests of the ratepayers of the electric public utility of the City.

~~Prior to any sale of bonds, the Utility Board shall cause notice to be given by publication in some daily newspaper published and having a general circulation in the City of Key West, Florida, that said board will receive bids for the purchase of the bonds at the office of the Utility Board in said city. Said notice shall be published twice, and the first publication shall be given no less than fifteen (15) days prior to the date set for receiving the bids. Said notice shall specify the amount of the bonds offered for sale and shall state that the bids shall be sealed bids, shall give the schedule of the maturities of the proposed bonds and such other pertinent information as may be prescribed in the resolution authorizing the issuance of such bonds or any resolution subsequent thereto. Bidders may be invited to name the rate or rates of interest and invite bids thereon. In addition to publication of notice of the proposed sale, the Utility Board shall also give notice in writing of the proposed sale, enclosing a copy of such advertisement, to the Chairman of the Florida Development Commission, and to at least three (3) recognized bond dealers in the State, such notices to be given not less than ten (10) days prior to the bids.~~

All Bonds and refunding bonds issued pursuant to this act ~~may~~ shall be sold at competitive or negotiated public sale, provided any negotiated sale shall comply with section 218.385, Florida Statutes and shall be awarded to the bidder whose bid produces the lowest net interest cost to the Utility Board. The net cost of bonds shall be determined by taking the aggregate amount of interest at the rate or rates specified in the bonds, computed from the date of the bonds to the date of the various stated maturities thereof, and deducting therefrom the amount of any premium offered in excess of the par value of the bonds or adding thereto the amount of any discount offered below the par value of the bonds, with interest computed on a three hundred

sixty (360) day year basis. The Utility Board shall reserve the right to reject any or all bids.

Said Utility Board shall have the exclusive right and power to buy, purchase, contract for exchange, lease and convey by deed or such other lawful means as permitted by the laws of Florida, whether special, local or general, without the consent or approval of the City Commission or other governing body of the City of Key West, Florida, or its municipal successor, from time to time, any of the property, real, personal or mixed, specified or referred to hereinbefore in this act, for such price or prices and on such terms, provisions and under such conditions as herein set forth at the time or times it determines that such property, real, personal or mixed, is excess to the needs of the electric public utility, or such other public utilities the Utility Board acquires. Said board shall have the full and complete power and exclusive authority to accept gifts, contributions, contributions in aid of construction, properties, whether real, personal or mixed, from the United States Government or any of its departments, bureaus, commissions or agencies, and the said full and complete power and exclusive authority hereinbefore provided shall also apply to the acceptance of gifts, contributions, contributions in aid from the State of Florida, or any of its political subdivisions, departments, bureaus, commissions, or agencies, corporations, publicly or privately owned or operated, private persons and individuals. The Utility Board created by this act shall have the full and complete power and exclusive authority to contract with the United States Government, or any of its departments, bureaus, commissions or agencies, other public utilities, the State of Florida, or any of its political subdivisions, departments, bureaus, commissions or agencies, corporations, either publicly or privately owned and operated, private persons or individuals, for the acquisition, purchase and operation of other public utilities and said Utility Board may determine in its judgment, and to purchase, contract for the sale, lease or exchange of any products and services, materials and commodities, by-products and water, steam or heat from all or any of its activities or operations. The said Utility Board shall have full and complete power and exclusive authority to fix rates and charges for electricity and charges or prices for any other real and personal property, products and services, materials and commodities, by-products of and from all or any of its activities or operations, furnished or sold by said Utility Board, and to provide for the collection of same. The Utility Board shall grant a special lower rate and charge for electricity on the residential account of any person who meets low income standards adopted by the Utility Board, who has been a permanent resident of the geographical service area covered by the Utility Board in furnishing electricity in Monroe County, Florida, for three (3) consecutive years prior to requesting such special lower rate or charge and who is sixty-two (62) ~~sixty (60)~~ years of age or older or a totally and permanently disabled American veteran. As used in this section "residential account" means an account for a person residing in a house, mobile home, condominium, apartment, or other housing unit. Submission of an affidavit that the applicant claiming the special lower rate and charge under this section has been a permanent resident of the geographical service area heretofore mentioned for three (3) years immediately preceding the date of application, and who is sixty-two (62) ~~sixty (60)~~ years of age or older or a totally and permanently disabled American veteran, shall be prima facie proof of such residence,

disability, and age. The affidavit shall include the annual income of the applicant. All bills for electricity and electric service and for the furnishing and sale of the products and services, materials and commodities, by-products and water, steam or heat and by-products of and from all or any activities or operations, shall be collected and accounted for by said Utility Board, and all disbursements in connection with the foregoing, shall be ordered paid out only upon approval of said board; or pursuant to policies adopted by said board or pursuant to policies established by resolution adopted by the Utility Board; and said board acting by, for, and in the name of the City of Key West, Florida, a municipal corporation, and any municipal successor thereto, existing under the laws of Florida, shall have the vested rights which are herein conferred of eminent domain, for the purpose of acquiring lands and rights-of-way necessary and expedient for the location, establishment, construction, maintenance and operation of the works and projects authorized in this act, and for the acquisition and construction of any and all kinds and classes of real, personal or mixed property, tangible or intangible, whatsoever, which shall be deemed necessary, convenient or appropriate to accomplish the purposes and objects authorized by this act, provided, however, said Utility Board shall at all times be governed by and conform to the provisions of any proceedings authorizing and providing for the issuance of bonds, or other obligations of said city, which by their terms are secured by or payable from the revenues of the electric public utility, or the revenues of any of the additional public utilities acquired by said Utility Board.

The Utility Board is hereby authorized to purchase advertising, including, but not limited to, advertising from recognized, established advertising media, such as newspapers, radio and television, as a proper expenditure of the system. The Utility Board may make expenditures that are reasonable and necessary for advertising the Board's utility system or systems, including advertising events and programs which are sponsored by the Utility Board or in which the Utility Board participates. Furthermore, nothing in this paragraph shall be construed to prevent the Utility Board from sponsoring charitable events or events which would benefit the Utility Board or its utility system or systems. The Utility Board shall not make contributions and donations and charge such contributions and donations to advertising the utility system.

Section 13. All construction, reconstruction, repairs or work of any nature made by the Utility Board, where the entire cost, value, or amount of such construction, reconstruction, repairs or work, including the labor and materials, shall exceed the amount as established by resolution adopted by the Utility Board, except construction, reconstruction, repairs, or work done by employees of the Utility Board or by labor supplied under agreement with federal government or state government, with supplies and materials purchased hereinafter provided, shall be done only under contract or contracts to be entered into by the Utility Board with the lowest responsible bidder upon proper terms, after due public notice has been given asking for competitive bids as hereinafter provided. No contract shall be entered into for construction or improvement or repair of the electric system, or any part thereof, unless the contractor shall have given an undertaking with a sufficient surety or sureties, approved by the Utility Board, and in an amount

fixed by said board, for the faithful performance of the contract. All such contracts shall provide among other things that the person or corporation entering into such contract with the Utility Board will pay for all materials furnished and services rendered for the performance of the contract, and that any person or corporation furnishing such materials or rendering such services may maintain an action to recover for the same against the obliger in the undertaking, as though such person or corporation were named therein, provided the action is brought within one (1) year after the time the cause of action accrues. Nothing in this section shall be construed to limit the power of authority to construct, repair or improve the electric system, or any part thereof, or any addition, betterment or extension thereto, directly by the officers, agents and employees of the Utility Board, or otherwise than by contract.

All supplies, equipment, machinery and materials costing more than the amount as established by resolution adopted by the Utility Board shall be purchased only after advertisement as provided hereinafter. The Utility Board shall accept the lowest bid or bids, kind, quality and material being equal, but said board shall have the right to reject any or all bids or select a single item from any bid. The provision as to bidding shall not apply to the purchase of patented and manufactured products offered for sale in a non-competitive market or solely by a manufacturer's authorized dealer.

The term "advertisement" or "due public notice" wherever used in this section shall mean a notice published at least once a week for two (2) consecutive weeks before the award of any contract, in a daily newspaper published and having a general circulation in the City of Key West, Florida, and in such other newspapers or publications as the Utility Board shall deem advisable.

No member of the Utility Board or officer or employee thereof shall either directly or indirectly be a party to, or be in any manner interested in, any contract or agreement with the Utility Board for any matter, cause or thing whatsoever in which such member shall have a financial interest or by reason whereof any liability or indebtedness shall in any way be created against such board. If any contract or agreement shall be made in violation of the provisions of this action, the same shall be null and void, and no action shall be maintained thereon against the Utility Board.

Subject to the aforesaid provisions, the Utility Board may (but without intending by this provision to limit any powers of said board) enter into and carry out such contract, or establish or comply with such rules and regulations concerning labor and materials and other related matters in connection with any construction project, or portion thereof, as the Utility Board may deem desirable; provided that the provisions of this section shall not apply to any contract or agreement between the Utility Board and any engineers, architects, attorneys, or for other professional services, or to any contract or agreement relating to fiscal advisors, fiscal agents, or investment bankers, relating to the financing of projects herein authorized.

Notwithstanding the aforesaid provisions, the Utility Board may, in its reasonable discretion, authorize and permit such expenditures of funds as

necessary for making emergency purchases or may delegate such authority to such employees and officers of the utility system or systems.

Nothing in this section shall apply to the purchase of fuel products or produced power on a single-lot basis when such fuel or power is offered for sale to the Utility Board at a below advertised price basis.

All purchases of commodities or contractual services under the provisions of local, state, and federal purchasing contracts shall be exempt from the competitive procurement requirements, provided that the following criteria are all satisfied:

(1) The terms and conditions of the original contract by the federal, state or local government are satisfactory to the Utility Board and such terms and conditions are expressly extended to other municipalities pursuant to the bid documents.

(2) The original contract by the federal, state or local government was executed within twelve (12) months prior to the proposed purchase of commodities or services by the Utility Board.

(3) The purchasing agent has performed an informal solicitation to determine if the prices of the original contract are fair and reasonable, and to assure local vendors have an opportunity to compete.

(4) The Utility Board authorizes such procurement when the cost of the commodities (materials) or contractual services (labor and materials) exceeds the amounts as established by resolution adopted by the Utility Board.

Section 17. The Utility Board of the City of Key West, Florida, shall provide for an annual audit and be subject to audit by the Legislative Auditor of the State of Florida, of all utility board accounts, and said Board is hereby authorized to pay the expenses thereof when required to do so and may provide for such more frequent audits as it deems necessary. A copy of the audit is to be delivered to the City Commission of the City of Key West, Florida, within seven (7) working days ~~twenty-four (24) hours, holidays included,~~ after the Utility Board receives its copy from the audit agency. The Utility Board shall deliver to any other authorized agency, as they may be required, additional copies of the audit. The expenses of said audit shall be paid by the Utility Board of the City of Key West, Florida.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor May 25, 2001.

Filed in Office Secretary of State May 25, 2001.