

Council Substitute for House Bill No. 1077

An act relating to the City of Key West, Monroe County; amending chapter 69-1191, Laws of Florida; changing the name of the City Electric System to “Keys Energy Services”; revising the term for the board member representing group I; providing for selection of the chairperson; revising requirements and the time allowed for the filling of a vacancy; providing that the board does not need certain approval for the issuing of bonds; removing certain residency requirements for senior citizen and disabled veteran discounts; removing a surety requirement for contractors improving or repairing the electric system; providing that the board may accept the lowest cost or best bid for construction projects; providing the public notice requirements before a sealed bid may be opened; providing that terms of a renewed or extended contract must be satisfactory to the board; providing that a contract or extended or renewed contract must be executed within 24 months prior to the proposed purchase of commodities or services by the board; providing for surplus property; providing for disposition of assets of the utility; providing that the board shall adopt resolutions setting certain reimbursements; revising the appraisal requirements necessary for the utility board to purchase land; providing an effective date.

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

Section 1. Sections 1, 2, 3, 6, 11, 13, 15, 16, 19, and 20 of chapter 69-1191, Laws of Florida, as amended, 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, Acts of the Legislature Year 1965, and acts amendatory thereto. The full, complete and exclusive power and right to manage, operate, maintain, control, extend, and extend beyond the limits of the City of Key West, Florida, ~~in~~ 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 "Keys Energy Services," "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 2. The first election for the nomination or election of candidates for members of the Utility Board of said city shall be held no earlier than forty-five (45) days and no later than sixty (60) days from the date this act shall become law and on the first Tuesday in November biannually thereafter, commencing with the election of 1971 and shall be held concurrent with the election for the office of City Commission of the City of Key West, Florida. Such elections shall be non-partisan elections and every person voting in said election shall be entitled to vote for as many candidates for the utility board as there are members to be elected to said board. The name of any qualified elector of the City of Key West who meets the qualifications for ~~chairman and~~ member of said utility board, as set forth in this act, may appear upon the election ballot as a candidate for the office of ~~chairman/~~ ~~member or~~ member of the utility board, upon said elector paying to the City of Key West, Florida, the sum of one hundred dollars (\$100.00) and said sum shall be deposited with the City Clerk of said city at his office not later than 5:00 p.m. on the date set for the closing of qualification by the election officials, for the first election under the provisions of this act, and thereafter the second Tuesday in October of the year in which subsequent elections under this act are to be held. A qualifying fee for such candidate for such office, and said elector shall submit to the said city clerk concurrently therewith the sworn statement of his or her name, address, occupation, willingness to serve if elected and shall indicate on such sworn statement his or her desire for his or her name to appear on the ballot as a candidate for such office. Provided, however, that any person who holds an elective office in the government of the City of Key West, Florida, County of Monroe, the State of Florida, or any political agency, board or commission is compensated by wages, salaries or otherwise shall not be eligible to serve concurrently as a member of the board created by this act. Only the name or names of candidates complying with this section shall appear on the ballot as a candidate for nomination or election. No candidate having qualified and thereafter withdrawing or becoming disqualified under the provisions of this act shall be entitled to a refund of the aforesaid qualifying fee paid.

Section 3. The utility board shall consist of five (5) members who shall be elected from the city at large in groups numbered I, II, III, IV, and V. ~~One (1) of said members shall be the chairman and shall be elected by the people from the group to be numbered I. And all persons desiring to qualify as candidates for chairman shall file in group numbered I.~~ All persons desiring to qualify for members shall file in groups numbered I, II, III, IV or V. ~~The member in group number I shall be elected in the regular municipal general~~

election commencing in 2007 and at each general election every four (4) years thereafter. Members in groups numbered II and III shall be elected in the special general election in 1969 as provided for herein at each regular municipal general election each four (4) years thereafter, commencing in 1973 and at each general election each (4) years thereafter. Members in groups numbered IV and V shall be elected at the special general election provided for herein in 1969 and at the regular municipal general election to be held in 1971 for a term of four (4) years and at each general election thereafter for a term of four (4) years. The member elected as chairman shall be elected at the special general election in 1969, as provided for herein, and shall hold office until the regular general municipal election in 1971 to hold office for two (2) years and shall be elected at the general election in 1971 and every general municipal election thereafter. The member elected as chairman and All members shall to hold office until their successors are elected and qualified from 12:00 noon of the day after the canvass of the vote and the declaration of the results of the election. The chairman and All members shall be subject to removal for good and sufficient cause by a four-fifths (4/5) vote of the city commission. If a candidate for chairman or member receives a majority of votes in the primary election in the candidate's his group, the candidate he shall be considered elected upon and after the canvass of the vote and the declaration of the result of the election as herein-after provided. If there is be no majority, two (2) candidates for nomination to the office of chairman or member who receives the greatest vote in the primary election each group shall be placed on the ballot at the next regular or special municipal general election following the primary as provided in the city charter of the City of Key West, Florida. The candidate for nomination receiving the greater vote in the regular or special municipal general election following the primary election if otherwise qualified shall be elected to office from the group in which candidate he is qualified. One (1) of said members shall serve as Chairperson of the Utility Board. The Chairperson shall be selected from the five (5) members by the five (5) members during an organizational meeting in December immediately following an election and serve as such until the next organizational meeting following an election. A member may serve as Chairperson for consecutive terms.

Section 6. (1) The office of members of the Utility Board shall become vacant upon his or her death, resignation, removal from office in any manner authorized by law, or forfeiture of his office, or as otherwise provided herein.

(2) A member of the Utility Board shall forfeit his office if he (1) lacks at any time during his term of office any qualification for the office prescribed by law; (2) violates any express prohibition of this law; (3) is convicted of a crime involving moral turpitude; or (4) fails to attend three (3) consecutive regular meeting of the Utility Board without being excused by the board.

(3) A vacancy in the board shall be filled for the remainder of the unexpired term, if any, at the next regular election, but a quorum of the remaining members of said board shall by majority vote appoint a qualified person to fill the vacancy until the person elected to serve the remainder of the unexpired term takes office. If the board fails to do so within ~~sixty~~ thirty days following the occurrence of the vacancy, the City Commission of the City of Key West, Florida shall appoint a member to fill the said vacancy for

the unexpired term. Notwithstanding the requirement that a quorum of the board consists of three (3) members, if at any time the membership of the board is reduced to less than three (3), the City Commission of said city shall fill the vacancies for the unexpired term.

(4) The City Commission of the City of Key West, Florida shall be the judge of the election and qualification of the members of the Utility Board and of the grounds for forfeiture of their office and for that purpose shall have power to subpoena witnesses, take testimony and require the production of records. A member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing on demand; and notice of such hearing shall be published in one (1) or more newspapers of general circulation in said city at least one (1) week in advance of the hearing. Removal from said office should be by a four-fifths ($\frac{4}{5}$) vote of the City Commission. Decisions made by the City Commission of the City of Key West, Florida under this section shall be subject to review by the courts.

Section 11. (1) POWERS OF THE BOARD.—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, sub-stations, 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.

(2) BUDGETS.—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 Utility Board.

(3) REVENUE BONDS AND OTHER FINANCING MATTERS.—Revenue bonds may be issued by said Utility Board 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 by said board 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 public utilities owned by the Utility Board of the City of Key West, 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, 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 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. Bonds and refunding bonds issued pursuant to this act may be sold at competitive or negotiated sale, provided any negotiated sale shall comply with section 218.385, Florida Statutes.

(4) CONTRACTUAL RIGHTS.—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 herein before 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 herein before 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, material, 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 the same.

(5) SENIOR CITIZEN AND DISABLED VETERAN DISCOUNT.—The Utility Board shall grant a special lower rate and charge for electricity on the residential account of any personal who meets low income standards adopted by the Utility Board, who ~~has been~~ is 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) 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 ~~is~~ 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) 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.

(6) ACCOUNTING MATTERS.—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~~

(7) EMINENT DOMAIN.—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 right 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 proceeding 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.

(8) ADVERTISING.—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 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.

Section 13. (1) CONSTRUCTION PROJECTS.—All construction, reconstruction, repairs or work of any nature made by the Utility Board, where the entire costs, 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 the 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 cost or best 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 obligor in the undertaking, as though such person or corporation were named therein, provided the action is brought within on (1) year after the time the cause of action accrues.~~

(2) POWER OF AUTHORITY.—Nothing in this section shall be construed to limit the power of authority to construct, repair or improve the utility electric system, or any part thereof, or any addition, betterment or extension thereto, directly by the officers, agents an employees of the Utility Board, or otherwise than by contract.

(3) ALL OTHER PURCHASES, EXCLUDING CONSTRUCTION PROJECTS.—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 cost or best bid or bids, kind, quality and material being equal, but said Board shall have the right to reject any

or all bid 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 noncompetitive market or solely by a manufacturer's authorized dealer.

(4) ADVERTISING.—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 opening award of any sealed bid 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.

(5) CONFLICT OF INTEREST.—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 section, the same shall be null and void, and no action shall be maintained thereon against the Utility Board.

(6) OTHER PROVISIONS.—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 project herein authorized.

(7) EMERGENCY PURCHASES.—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 offers of the utility system or systems.

(8) FUEL AND POWER PURCHASES.—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.

(9) LOCAL, STATE, AND FEDERAL CONTRACTS.—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:

(a)(1) The terms and conditions of the original contract or approved renewal or extension by the federal, state or local government or electric

~~cooperative are satisfactory to the Utility Board and such terms and conditions are expressly extended to other municipalities pursuant to the bid documents.~~

~~(b)(2)~~ The original contract or approved renewal or extension by the federal, state, or local government or electric cooperative are executed within twenty-four (24) ~~twelve (12)~~ months prior to the proposed purchase of commodities or services by the Utility Board.

~~(c)(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.

~~(d)(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 15. (1) The Utility Board created by this act is hereby authorized and empowered to create, establish, provide for and adopt, maintain, operate and regulate a civil service system and plan for the security of the employees of said board, and may amend and change such system and plan from time to time. Further, said Utility Board is empowered to adopt rules and regulations for the government and operation of said civil service system and plan, and to delegate authority for the handling and management of said system and plan to designated officials or employees of said board, or a special committee or a civil service board created by said Utility Board for such purposes. Further, said Utility Board is authorized and empowered to appropriate out of its available funds any money necessary or expedient to carry out the provisions and purposes of this act that maybe be lawfully used for such purposes.

(2) The employees of the City Electric System of the City of Key West, Florida may require the Utility Board to establish a civil service board for them by an affirmative vote of the majority of the employees cast in a secret election to be held under the rules prescribed by the board. Said election shall be held within (30) days of the presentation of a petition containing the signatures of no less than ten per centum (10%) of the employees of al classes of said system requesting such an election.

Section 16. The Utility Board of the City of Key West, Florida shall have discretion to classify as surplus any of its property that is obsolete or that which is uneconomical or inefficient, or which serves no useful function. All such items valued more than the amount as established by resolution adopted by the Utility Board shall be offered as ~~Within a reasonable exercise of its discretion and having consideration for the best interest of the Utility Board, the value and condition of such properties classified surplus, and the probability of such properties being desired by the prescribed bidder to whom offered, the Utility Board first shall offer such surplus property to other governmental units within, first in the City of Key West, Florida, then in the County of Monroe and to the general public with an effective means of notification. The notification. If no accepted bid is received within a reasonable time, they shall then offer such properties for sale by advertising for~~

~~bids in a newspaper of general circulation once each week for no less than two (2) weeks. Such call for bids shall disclose the value and condition of the properties when known. The cost of transferring such properties offered for sale shall be made by the bidder making the successful bid should make the cost of transferring such properties offered for sale. Provided, however, that Any such properties as would serve no useful function and for which no bids have been received, may be disposed of by donation, destruction or abandonment. All actions taken in regard to the disposal of such properties shall be recorded in the minutes of the Utility Board of the City of Key West, Florida.~~

~~Section 19. Members of said Utility Board, and agents and employees of said board traveling on official business should be reimbursed for travel and expenses in accordance with resolutions adopted by the Utility Board Chapter 112, Florida Statutes 1967 and any amendments thereto.~~

~~Section 20. Purchase of all lands deemed necessary by the Utility Board of the City of Key West, Florida shall be made subject to the following conditions:~~

~~(1) Such purchases shall be made only upon recommendation of the engineers of record of said board who shall advise the board that the acquisition of such lands is necessary for the expansion of the system.~~

~~(2) The Utility Board shall obtain appraisals from at least three (3) licensed and certified appraisers in the State of Florida request the board of realtors of Monroe County, Florida to provide them with the names of three (3) licensed appraisers.~~

~~(3) Said appraisers shall be retained by said Utility Board under approval of the consulting engineers.~~

~~(2)(4) Said Utility Board shall pay no more than the highest agreed upon appraisal furnished by the aforesaid appraisers.~~

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

Approved by the Governor June 15, 2007.

Filed in Office Secretary of State June 15, 2007.