

HOUSE BILL 1104

By Carter

AN ACT to amend Tennessee Code Annotated, Title 20;  
Title 21; Title 65 and Title 68, Chapter 221, relative  
to water and wastewater.

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

SECTION 1. Tennessee Code Annotated, Section 68-221-607, is amended by adding the language "inspections," between the language "soundings," and the word "borings" in subdivision (a)(13), and further amend by adding the following as new subsections:

(c)

(1) In addition to the powers authorized in subsection (a), an authority located in any county having a population of not less than three hundred thirty-six thousand four hundred (336,400) nor more than three hundred thirty-six thousand five hundred (336,500), according to the 2010 federal census or any subsequent federal census, and where the water company having the highest number of customers in the county is privately owned, may petition the chancery court in the county where the authority is located for an order to compel any water company within the authority's jurisdiction to cut off the water service to a customer of the authority who:

(A) Fails to pay service charges authorized by § 68-221-608;

(B) Prevents the authority from entering lands, waters, or premises under such customer's control as authorized by subdivision (a)(13); or

(C) Violates any regulation adopted by the board pursuant to subdivision (a)(16).

(2)

(A) Prior to petitioning the chancery court for relief as authorized by subdivision (c)(1), the authority shall first submit a written request to the water company that water service be cut off to a customer who committed an act or omission identified in subdivisions (c)(1)(A)-(C). The written request shall state the basis for making the request.

(B) A copy of the written request required by subdivision (c)(2)(A) shall be attached to the complaint, or such other pleading as the court accepts in order to initiate the filing of a petition pursuant to this subsection (c). Failure to attach a copy of the written request to the pleading that initiates the action shall result in the denial of the petition.

(3) The court shall award reasonable attorneys' fees and court costs to any authority that prevails in an action filed under this subsection (c).

(d)

(1) In addition to the powers authorized in subsections (a) and (c), an authority located in any county having a population of not less than three hundred thirty-six thousand four hundred (336,400) nor more than three hundred thirty-six thousand five hundred (336,500), according to the 2010 federal census or any subsequent federal census, and where the water company having the highest number of customers in the county is privately owned, has the power, with respect to any person who owns a service lateral line that is attached to the authority's treatment works, to assess a civil penalty against such person in an amount not to exceed one thousand dollars (\$1,000) for:

(A) Each separate violation of a regulation adopted by the board pursuant to subdivision (a)(16); or

(B) Preventing the authority from entering lands, waters, or premises under such customer's control as authorized by subdivision (a)(13).

(2) Each day of continued violation constitutes a separate violation.

(3) Each authority shall, by rule, establish a schedule designating the minimum and maximum civil penalties that may be assessed under this subsection (d). In assessing civil penalties, the following factors may be considered:

(A) Whether the amount imposed will be a substantial economic deterrent to the violator;

(B) The circumstances leading to the violation;

(C) The severity of the violation and the risk of harm to the public;

(D) The economic benefits gained by the violator as a result of noncompliance; and

(E) The interest of the public.

(4)

(A) Civil penalties assessed pursuant to this subsection (d), shall become final, due and payable on the date the order in which such penalties are assessed becomes final pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; provided however, the authority is authorized to order or enter into agreements for the payment of assessed civil penalties in installments that are due and payable beyond the date on which the assessment becomes final.

(B) If the violator fails to pay an assessment when it becomes final or fails to pay according to the terms of an installment payment plan, the authority may apply to the appropriate court for a judgment and seek execution of the judgment.

(C) Jurisdiction for recovery of such penalties shall be in the chancery court of the county in which all or part of the violations occurred.

(5) All sums recovered pursuant to this subsection (d) shall be paid into the state treasury.

SECTION 2. Tennessee Code Annotated, Title 68, Chapter 221, Part 6, is amended by adding the following as a new section:

68-221-619. No action that is based on the improper exercise of any power authorized by this part may be maintained against an authority located in any county having a population of not less than three hundred thirty-six thousand four hundred (336,400) nor more than three hundred thirty-six thousand five hundred (336,500), according to the 2010 federal census or any subsequent federal census, and where the water company having the highest number of customers in the county is privately owned, unless the claimant has exhausted the following administrative remedies:

(1) The claimant shall make a complaint in writing to the board with the specific facts of the alleged violation;

(2) The board shall investigate and deny the complaint or take appropriate action to resolve any or all of the issues raised in the complaint within thirty (30) days of receiving the written complaint; and

(3) Only after the board's investigation and action may a claimant pursue any other legal action that is based on the improper exercise of any power authorized by this part.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.