

HOUSE BILL 2043

By Montgomery

AN ACT to amend Tennessee Code Annotated, Title 7,
Chapter 82, relative to removal of utility district
commissioners by the utility management review
board.

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

SECTION 1. Tennessee Code Annotated, Section 7-82-307(b), is amended by deleting existing subdivisions (b)(2) and (b)(3) in their entirety and by substituting instead the following:

(b)

(2)

(A) If a utility district is under the jurisdiction of the utility management review board pursuant to § 7-82-701(a), then the utility management review board may initiate a contested case hearing on the question of whether a member or members of the board of commissioners of the utility district should be removed from office on the grounds that either:

(i) The utility district failed to comply with an order of the utility management review board, which shall include failing to comply with an order concerning excessive unaccounted for water losses;

(ii) A member or members of the board of commissioners of the utility district failed to fulfill the commissioner's or commissioners' fiduciary responsibility in the operation or oversight of the district;

(iii) A member or members of the board of commissioners of the utility district committed misconduct in connection with such office; or

(iv) A member or members of the board of commissioners of the utility district failed to fulfill any duty imposed by law on such office, including taking appropriate actions pursuant to § 7-82-709(b) to reduce unaccounted for water loss to an acceptable level as determined by the board.

(B) If the comptroller of the treasury investigates or conducts an audit of a utility district, the comptroller shall forward to the utility management review board any published investigative audit reports involving a utility district incorporated under this chapter, and the utility management review board shall review those reports. If after such review or if a contested case hearing initiated under subdivision (b)(2)(A) is based on information obtained in an investigation or audit conducted by the comptroller of the treasury, the utility management review board must find, by a majority vote of all its members prior to initiating such contested case hearing on the question of whether a member or members of the board of commissioners of the utility district should be removed from office, that there is probable cause that a member or members of the board of commissioners of the utility district knowingly or willfully committed misconduct in office, knowingly or willfully failed to fulfill any duty imposed upon the member by law, or knowingly or willfully failed to fulfill the commissioner's or commissioners' fiduciary responsibility in the operation or oversight of the district.

(C) Failure of a member to vote in favor of a rate structure prescribed by the utility management review board that has been adopted by the utility district does not in itself constitute grounds for removal.

(3)

(A) If the utility management review board concludes by a public vote of six (6) or more of its members that evidence presented during the contested case hearing clearly and convincingly proves that a member or members of the board of commissioners of the utility district should be removed from office, then the utility management review board shall issue an order removing such member or members from office. For contested cases initiated pursuant to subdivision (b)(2)(B) or initiated based on information obtained in an investigation or audit conducted by the comptroller of the treasury, the comptroller of the treasury or his designee under § 7-82-701(b)(1) shall have no vote, and the utility management review board shall only order the removal of a member or members of the board of commissioners of the utility district for knowing or willful misconduct in office, knowing or willfully failure to fulfill a duty imposed upon the member by law, or knowing or willful failure to fulfill the commissioner's or commissioners' fiduciary responsibility in the operation or oversight of the district.

(B) The provisions of subdivisions (b)(2) and (b)(3) shall not be construed as limiting any civil or criminal liability of any such member of the board of commissioners or the applicability of the ouster law, compiled in title 8, chapter 47.

SECTION 2. Tennessee Code Annotated, Section 7-82-702, is amended by deleting existing subdivision (13) in its entirety and by substituting instead the following:

(13) As provided in § 7-82-307(b), conduct a contested case hearing and issue an order on the question of whether a member or members of a utility district board should be removed from office and a new board or member appointed or elected;

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