CHAPTER 839

An Act to amend and reenact § 15.2-7207 of the Code of Virginia, relating to the BVU Authority.

[H 1450]

Approved April 18, 2018

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-7207 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-7207. Powers generally.

A. The Authority is hereby granted all powers reasonably necessary or appropriate to carry out the purposes of this chapter in order to provide electric, water, sewer, and telecommunication and related services, including without limitation, cable television internet, and all other services that might be lawfully rendered by use of the Authority's fiber optic system, subject to all applicable limitations and restrictions thereon. Such powers include, without limitation, except as set forth hereafter, the following:

1. To adopt bylaws for the regulation of its affairs and the conduct of its business;

2. To sue and be sued in the Authority's name;

3. To adopt a corporate seal and alter the same at its pleasure;

4. To maintain offices at such places as it may designate;

5. To appoint, employ, or engage such officers, employees, architects, engineers, attorneys, accountants, financial advisors, investment bankers, and other advisors, consultants, and agents as may be necessary or appropriate, and to fix their duties and compensation;

6. To establish personnel rules;

7. To make, assume, and enter into all contracts, leases, and arrangements necessary or incidental to the exercise of its powers, including contracts for the management or operation of all or any part of its facilities;

8. To borrow money, as hereinafter provided, and to borrow money for the purpose of meeting casual deficits in its revenues;

9. To provide electric, water, sewer, and telecommunication and related services, including without limitation, cable television, internet, and all other services that might be lawfully rendered by use of the Authority's fiber optic system as set forth in § 15.2-7208 subject to all applicable restrictions and limitations thereon;

10. To determine fees, rates, and charges for the services and products it provides, subject only to such state or federal regulation as the Tennessee Valley Authority (TVA) or other cognizant state or federal agency may impose by order, rulemaking, contract or otherwise, including, without limitation, electric, water and sewer, and internet and cable television services, including all other services that might be rendered by use of its fiber optic system, furnished by the Authority. MLEC telephone service, including rates, is regulated by the Commission. All rate increases for services other than electric, which are set by the TVA, and telephone, which are set by the Commission and applicable law, shall require a favorable vote at two meetings, one of which must be a regular meeting of the BVU Authority Board;

11. To adopt, amend, and repeal rules and regulations for the use, maintenance, and operation of its facilities and utility services and governing the conduct of persons and organizations using its facilities or obtaining its utility services and to enforce such rules and regulations and all other rules, regulations, ordinances, and statutes relating to its facilities and services, as authorized by the enacting body of such rules, regulations, ordinances, and statutes. The civil penalty for violation of any such rules and regulations shall be set forth in the rules and may be enforced by the Authority by direct action in terminating services and by the imposition of monetary penalties to be billed to the customer. The Authority may request the governing body of each locality in which it does business to impose by ordinance such penal liability for violation of such rules and regulations as such body deems appropriate;

12. Subject to subdivision 20, to apply for and accept gifts or grants of money or gifts, grants or loans of other property or other financial assistance from the United States of America and agencies and instrumentalities thereof, this Commonwealth and political subdivisions, agencies and instrumentalities thereof, or any other person or entity, for or in aid of the construction, acquisition, ownership, operation, maintenance, or repair of its infrastructure or for the payment of principal of any indebtedness of the Authority, interest thereon, or other cost incident thereto, or for the operation of any of its services, or for any other purpose of the Authority, and to this end the Authority shall have the power to render such services, comply with such conditions, and execute such agreements and legal instruments as may be necessary, convenient or desirable or imposed as a condition to such financial aid;

13. Subject to subdivision 15 and all existing limitations and restrictions thereon, to acquire, establish, construct, enlarge, improve, maintain, equip, operate, and regulate electric, water, sewer,

telecommunications, internet and cable television services, including all other services that might be rendered by use of its fiber optic system, and other infrastructure and facilities that are owned or managed by the Authority within the territorial areas in which it operates or provides services;

14. To construct, install, maintain, and operate facilities and infrastructure for managing its utility, consulting and operational management services. The Authority shall have the power and duty to manage and operate the electric, public lighting, water, sewerage, telecommunications, internet and cable television services, including all other services that might be rendered by use of its fiber optic system directly subject to all existing limitations and restrictions thereon, or it may subcontract such functions. The Authority shall construct, maintain, and operate all facilities necessary thereto; shall sell and distribute to the public electric power, light, water, sewer, telecommunications, internet and cable television, and other services as they now exist or may exist in the future subject to all existing limitations and restrictions thereon; and shall collect the rates and charges provided for all such services;

15. To own, purchase, lease, obtain options upon, acquire by gift, grant, or bequest or otherwise acquire any property, real or personal, or any interest therein, and in connection therewith to assume or take subject to any indebtedness secured by such property and dispose of any or all such properties as is deemed appropriate by the Board, *including, notwithstanding the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), executing, assigning, or transferring, without implementing the provisions of the Virginia Public Procurement Act, any internal contract between the divisions of the Authority that following such execution, assignment, or transfer will be between the Authority and the purchaser of the Authority's assets*. The Authority shall have the power of eminent domain to acquire property and easements as needed for its electric power, light, water, and sewer services within the areas it provides or can provide such services. The power of eminent domain shall not include the power to acquire existing telecommunications, internet or cable facilities, which is expressly prohibited, and the Authority shall not accept or receive any telecommunications, internet or cable facilities from an entity that acquired such facilities by use of eminent domain for the purpose of conveying them to the Authority;

16. To purchase and maintain insurance or provide indemnification on behalf of any person who is or was a director, officer, employee, or agent of the Authority and on behalf of the Authority itself against any liability asserted against it or him or incurred by it or him in any such capacity or arising out of his status as such;

17. To establish and charge such fees as it deems appropriate for attachment to or inclusion in the Authority's infrastructure, including but not limited to its poles, conduits, and co-location sites, subject to all existing limitations and restrictions thereon;

18. To fund economic development projects and, in advance of economic development projects, to enter into contracts, to borrow money and to do all other such acts as will allow it to encourage and support economic development.

Before the Authority expends any funds for an economic development project that is funded in whole or in part by funds allocated by the Board pursuant to a power purchase agreement with the Tennessee Valley Authority, a determination shall be made that the electric system benefit is expected to be commensurate with the expenditure.

Within 30 days of the end of the Authority's fiscal year, the Authority shall publish on its website the details of any incentive awarded to an economic development project;

19. To have police powers on all of the properties of the Authority within the Commonwealth, exercised through appointment of an armed conservator of the peace. The president of the Authority may apply to the circuit court for any locality in which the Authority has property for the appointment of one or more special conservators of the peace under procedures specified by Chapter 2 (§ 19.2-12 et seq.) of Title 19.2 or any successor provisions. Any such special conservator of the peace shall have, within the lands and facilities controlled by the Authority, the powers, functions, duties, responsibilities, and authority of any other armed conservator of the peace. Nothing in this section shall be construed to prevent the conservator of the peace currently serving Bristol Virginia Utilities from continuing as an armed special conservator of the peace for the Authority during the remainder of his term, if not removed for cause; and

20. To build or facilitate the building of, as the first broadband priority of the Authority, wired broadband infrastructure to serve residents in the Authority's lawful service area who are not served by any wired broadband service provider. The president of the Authority shall annually provide the Board with a report detailing (i) the number of requests for broadband services received from residents in unserved areas, (ii) the number of such requests for which the Authority has provided a connection to broadband services, and (iii) the costs of providing such broadband service.

B. The Authority is authorized to (i) operate only in Virginia and Tennessee; (ii) offer broadband services only in Sullivan, Unicoi, and Washington Counties, Tennessee; the City of Bristol, Virginia; and Bland, Buchanan, Dickenson, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe Counties in Virginia, together with any towns located in such counties; and (iii) offer cable television services or other video services only within the electric utility service territory of Bristol Virginia Utilities as it existed on December 31, 2009, in the City of Bristol, Virginia, Scott County, and

Washington County, including within the Town of Abingdon. Notwithstanding the geographic limitations of this subsection, the Authority shall have the right to sell any of its non-electric utility services at wholesale to an independent third party in which the Authority has no ownership or management interest and no economic interest apart from the sale of utility services, to allow such independent third party to distribute and sell the utility services at retail in areas outside of the Authority's geographic limitations.

C. Whenever any grant, loan, or application for such grant or loan includes or refers to funding for broadband deployment, the Authority shall ensure that (i) funds are allocated to the maximum extent possible to projects that expand broadband deployment to areas, residents, or businesses that are unserved by wired broadband; (ii) in any funding of grants for broadband deployment that include areas already served by wired broadband, such areas already served are incidental to and are crossed only for the purpose of reaching an unserved area; and (iii) any broadband network built will be operated on an open-access basis, available to multiple broadband providers, with dark fibers and capacity sufficient for competitive broadband providers to lease the same from the Authority at commercially reasonable rates.

D. The Authority shall not seek to become or establish a wireless service authority under the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) or contract for services with such an authority.

E. The Authority shall not solicit or contract with any locality or other entity possessing the power of eminent domain in order to cause such a third party to exercise its power of eminent domain to acquire any easements or other property where the Authority itself lacks such power.

F. The Authority shall not have the power to make charitable donations.

2. That an emergency exists and this act is in force from its passage.