

2018 SESSION

LEGISLATION NOT PREPARED BY DLS
INTRODUCED

INTRODUCED

HB1450

18105332D

HOUSE BILL NO. 1450

Offered January 17, 2018

A BILL to amend and reenact § 15.2-7207 of the Code of Virginia, relating to powers of the BVU Authority.

Patron—Campbell

Referred to Committee on Counties, Cities and Towns

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

59 for any other purpose of the Authority, and to this end the Authority shall have the power to render
60 such services, comply with such conditions, and execute such agreements and legal instruments as may
61 be necessary, convenient or desirable or imposed as a condition to such financial aid;

62 13. Subject to subdivision 15 and all existing limitations and restrictions thereon, to acquire,
63 establish, construct, enlarge, improve, maintain, equip, operate, and regulate electric, water, sewer,
64 telecommunications, internet and cable television services, including all other services that might be
65 rendered by use of its fiber optic system, and other infrastructure and facilities that are owned or
66 managed by the Authority within the territorial areas in which it operates or provides services;

67 14. To construct, install, maintain, and operate facilities and infrastructure for managing its utility,
68 consulting and operational management services. The Authority shall have the power and duty to
69 manage and operate the electric, public lighting, water, sewerage, telecommunications, internet and cable
70 television services, including all other services that might be rendered by use of its fiber optic system
71 directly subject to all existing limitations and restrictions thereon, or it may subcontract such functions.
72 The Authority shall construct, maintain, and operate all facilities necessary thereto; shall sell and
73 distribute to the public electric power, light, water, sewer, telecommunications, internet and cable
74 television, and other services as they now exist or may exist in the future subject to all existing
75 limitations and restrictions thereon; and shall collect the rates and charges provided for all such
76 services; *The Authority shall not abandon the utilization of any existing investments in such facilities
77 and fiber optic infrastructure that implement Supervisory Control and Data Acquisition Systems or
78 Advanced Metering Infrastructure prior to 2025; provided, however, in the even the Authority disposes
79 of any or all of such priorities pursuant to subsection (15) the Authority must require the purchaser to
80 continue to provide such services utilizing such facilities at the most recent annual rate paid by the
81 internal divisions of the Authority and increase at an annual rate of no greater than five percent (5%).*

82 15. To own, purchase, lease, obtain options upon, acquire by gift, grant, or bequest or otherwise
83 acquire any property, real or personal, or any interest therein, and in connection therewith to assume or
84 take subject to any indebtedness secured by such property and dispose of any or all such properties as is
85 deemed appropriate by the Board, *including, notwithstanding the provisions of the Chapter 43 of Title
86 2.2 of the Code of Virginia, executing, assigning, or transferring, without implementing the provisions of
87 Chapter 43 of Title 2.2, any internal contract between the divisions of the Authority but following such
88 sale will be between the Authority and the purchaser of the Authority's assets.* The Authority shall have
89 the power of eminent domain to acquire property and easements as needed for its electric power, light,
90 water, and sewer services within the areas it provides or can provide such services. The power of
91 eminent domain shall not include the power to acquire existing telecommunications, internet or cable
92 facilities, which is expressly prohibited, and the Authority shall not accept or receive any
93 telecommunications, internet or cable facilities from an entity that acquired such facilities by use of
94 eminent domain for the purpose of conveying them to the Authority;

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

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

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

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

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

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

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

127 B. The Authority is authorized to (i) operate only in Virginia and Tennessee; (ii) offer broadband
 128 services only in Sullivan, Unicoi, and Washington Counties, Tennessee; the City of Bristol, Virginia;
 129 and Bland, Buchanan, Dickenson, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe
 130 Counties in Virginia, together with any towns located in such counties; and (iii) offer cable television
 131 services or other video services only within the electric utility service territory of Bristol Virginia
 132 Utilities as it existed on December 31, 2009, in the City of Bristol, Virginia, Scott County, and
 133 Washington County, including within the Town of Abingdon. Notwithstanding the geographic limitations
 134 of this subsection, the Authority shall have the right to sell any of its non- electric utility services at
 135 wholesale to an independent third party in which the Authority has no ownership or management
 136 interest and no economic interest apart from the sale of utility services, to allow such independent third
 137 party to distribute and sell the utility services at retail in areas outside of the Authority's geographic
 138 limitations.

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

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

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

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

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