



# TACIR

**The Tennessee Advisory Commission  
on Intergovernmental Relations**



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Suite 508  
226 Capitol Blvd. Building  
Nashville, TN 37243-0760  
Phone: (615) 741-3012  
Fax: (615) 532-2443  
[www.tn.gov/tacir](http://www.tn.gov/tacir)

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## ***MEMORANDUM***

**TO:** TACIR Commission Members

**FROM:** Harry A. Green  
Executive Director

**DATE:** June 30, 2010

**SUBJECT:** Water and Wastewater Authorities

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SB 1780/HB 1267 (S: Beavers; H: Lynn) was referred to the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) for study by the House Local Government Subcommittee. This bill would put specific language in the law requiring that a purchase, lease, or lease-purchase by a water and wastewater treatment authority

*“must be preceded by competitive bidding or competitive proposals only if the purchase, lease, or lease-purchase exceeds the amount established in the county purchasing law of 1983. Water and waste water treatment authorities shall follow the procedure for competitive bidding in accordance with the county purchasing law of 1983, codified at TCA 5-14-204.”*

Included in this tab for Commission approval is a research brief examining the issues related to this bill.

## Competitive Bidding and Water and Wastewater Authorities

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### Existing Water and Wastewater Treatment Authorities Competitive Bidding Policies

Currently, the water and wastewater treatment authority statutes do not include specific language that require an authority to use competitive bidding. TCA § 68-221-607 gives water and wastewater treatment authorities the power to

*“Adopt by majority vote of the board the purchasing procedures for utility districts as defined in title 7, chapter 82, part 8.”*

TCA Title 7, Chapter 82, Part 8 requires the entity to adopt a purchasing policy which contains provisions requiring “competitive bidding in appropriate circumstances”. A number of water and wastewater authorities already use a competitive bidding policy despite the fact that current law does not contain specific language requiring them to adopt such policies. The chart below outlines the competitive bidding policies of the existing water and wastewater treatment authorities.

Water and Wastewater Treatment Authority	Competitive Bidding Policy
Cheatham County Water and Wastewater Authority	Authority uses county’s purchasing procedures which require competitive bidding. <sup>1</sup>
Hamilton County Water and Wastewater Authority	Authority uses the county’s purchasing procedures which require competitive bidding. <sup>2</sup>
Williamson County Water and Wastewater Authority	Authority does not own or operate a wastewater system. It only issues regulations

<sup>1</sup>Frank Luppe, Treasurer of the Cheatham County Water and Wastewater Authority, telephone conversation, April 22, 2010.

<sup>2</sup>Cleveland Grimes, Executive Director of the Hamilton County Water and Wastewater Authority, telephone conversation, March 23, 2010.

	for alternative wastewater systems. Therefore, they do not have a competitive bidding policy. <sup>3</sup>
Wilson County Water and Wastewater Authority	Authority adopted the purchasing policies for utility districts defined in TCA § 7-82-801. The Authority's purchasing policy requires competitive bids for purchases/expenditures exceeding \$10,000. <sup>4</sup>

### Other Water and Wastewater Utilities Required by Law to Use Competitive Bidding

Water and wastewater treatment authorities are somewhat unique in that there is no specific language in the law directing them to use competitive bidding. Tennessee law requires other similar public utilities to use competitive bidding.

Entity	Statute	Competitive Bidding Requirements
County Water and Wastewater Utilities	TCA § 5-14-204, TCA § 5-14-205, TCA § 5-14-108, TCA § 5-14-110, TCA § 5-21-119, TCA § 5-21-120	Varies depending on which county purchasing law the county operates under. The County Purchasing Law of 1983 requires bids for purchases over \$10,000 except in a few narrowly defined circumstances.
Municipal Water and Wastewater Utilities	TCA § 6-56-304, TCA § 6-56-305 & TCA § 6-56-306	Purchases greater than \$2,500 must be competitively bid. <sup>5</sup>
Regional Water and Wastewater Authorities	TCA § 68-221-1318	It stipulates that "the national policy in favor of competition shall ensure a policy of competitive bidding for all authorities." It requires an authority to be subject to the applicable purchasing laws of the creating governmental entity, or if two (2) or more creating governmental entities form a

<sup>3</sup> Kristi Earwood, Attorney for the Williamson County Water and Wastewater Authority, telephone conversation, March 24, 2010.

<sup>4</sup> Wilson County Water and Wastewater Authority audit report for 2007 and 2008.

<sup>5</sup> This is the general requirement for municipalities as outlined in the Municipal Purchasing Law. There are more specific bid requirements in TCA § 6-19-104 for municipalities operating under the city manager-commission charter and TCA § 6-35-204 for municipalities operating under the city manager-council charter.

		regional water and wastewater treatment authority, then an authority shall be subject to the County Purchasing Law of 1983.
Utility Districts	TCA § 7-82-801	The board of commissioners of each utility district is required to adopt a policy governing all purchases, leases, and lease-purchase agreements of the district which shall contain provisions requiring competitive bidding in appropriate circumstances.

### **SB 1780/HB 1267**

SB 1780/HB 1267 would require water and wastewater treatment authorities to use the competitive bidding procedures outlined in TCA § 5-14-204. The statute specifies that all purchases, leases and lease-purchase agreements be subject to competitive bid except for purchases less than \$10,000 and in a few other narrowly defined situations such as the existence of a single source of supply.

### **Staff Observations**

The purposes of competitive bidding are to

- prevent fraud, corruption, and favoritism;<sup>6</sup>
- provide a fair opportunity for bidding on public contracts;<sup>7</sup> and
- avoid misuse of public funds.<sup>8</sup>

Amending the law by putting specific language in the water and wastewater treatment authority statute to require the authorities to use competitive bidding would be consistent with good public policy. One could argue that the General Assembly has an interest in ensuring that authority customers are protected from fraud and corruption. Competitive bidding might also help to ensure that authority funds are handled properly.

Statutes for other water and wastewater utilities include specific language requiring competitive bidding. For example, the Regional Water and Wastewater Treatment Authority Act, which is similar to the Water and Wastewater Treatment Authority Act,

<sup>6</sup> *Johnson City v. Carnegie Realty Co.*, 661 64 S.W.2d 507, 509 (Tenn. 1933).

<sup>7</sup> *64 Am Jur 2d Public Works and Contracts § 36*

<sup>8</sup> *State ex. rel. Leech v. Wright* 622 S.W. 2d 807, 816 (Tenn. 1981).

includes language that “the national policy in favor of competition shall ensure a policy of competitive bidding for all authorities.”

Despite the absence of specific language in the Water and Wastewater Treatment Authority Act requiring competitive bidding, three water and wastewater treatment authorities already use competitive bidding. Therefore, TACIR staff suggest that if the General Assembly chooses to incorporate specific language into the statute requiring competitive bidding it should consider grandfathering in the existing water and wastewater authorities which already use competitive bidding.