

AN ACT relating to the incorporation of areas containing city-owned utility infrastructure.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 81A IS CREATED TO READ AS FOLLOWS:

*(1) As used in this section, "utility infrastructure" means physical property existing in rights of way or easements that are used for any of the following:*

*(a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, light, heat, power, or other uses;*

*(b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, light, heat, power, or other uses;*

*(c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;*

*(d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation; and*

*(e) The collection, transmission, or treatment of sewage for the public, for compensation.*

*(2) In addition to the other requirements of this chapter, a city annexing or proposing to annex any area that includes the utility infrastructure owned by another city shall comply with the provisions of this section.*

*(3) A city which proposes to annex any unincorporated area under the provisions of KRS 81A.420 shall send notice of the proposed annexation to the mayor of each city government owning utility infrastructure within the area proposed to be annexed. The notice shall be sent by certified mail, return receipt requested, no later than fourteen (14) days prior to the meeting at which the ordinance proposing the annexation will receive its second reading. The notice shall:*

(a) Include the time, date, and location of the meeting at which the proposed ordinance will receive its second reading;

(b) Include a copy of the proposed ordinance; and

(c) Inform the city of its right under this section to object to the annexation.

The city clerk shall certify the list of cities to whom the notice was sent and the certified list shall be made a part of the official record of the meeting at which the proposed ordinance receives its second reading.

(4) A city annexing territory by consent of property owners pursuant to KRS 81A.412 shall comply with subsection (3) of this section by sending the notice at least fourteen (14) days prior to the meeting at which the ordinance annexing the territory will receive its second reading.

(5) Any city receiving notice under this section and owning utility infrastructure in an area to be annexed or proposed to be annexed shall have the right to object and prevent the annexation by sending a certified copy of a municipal order enacted pursuant to KRS 83A.060. The municipal order shall include a statement describing the utility infrastructure owned by the city and its location within the area to be annexed or proposed to be annexed. The objecting city may incorporate maps or other drawings into the municipal order to clearly identify utility infrastructure within the area. The certified copy of the municipal order shall be received by the city acting under KRS 81A.420 or KRS 81A.412 at any time before or at the meeting where the ordinance is scheduled to receive its second reading. The municipal order shall be either delivered personally by a designated agent of the city or sent by certified mail, return receipt requested.

(6) The city acting under KRS 81A.420 or KRS 81A.412 shall not annex any area that includes utility infrastructure owned by a city objecting under subsection (5) of this section. Provided, however, that the cities in interest may agree otherwise through an interlocal agreement established pursuant to KRS 65.210 to 65.300. If

the city annexing or proposing to annex does not receive a municipal order prior to or at the meeting where the ordinance is to receive its second reading, the city may proceed to enact an ordinance proposing to annex or annexing the area and the city owning utility infrastructure shall forfeit its right to object and shall be deemed to have consented to the annexation.

(7) If a city annexes any area containing utility infrastructure owned by another city without following the provisions of this section, the ordinance which effectuates an annexation shall be voidable in an action brought in the Circuit Court of competent jurisdiction if the court determines that the annexing city failed to substantially comply with the requirements of this section and the failure resulted in material prejudice to the substantial rights of the affected city. Such an action shall be commenced no later than one (1) year following the date the final annexation ordinance becomes effective.