

Stricken language would be deleted from and underlined language would be added to present law.
Act 711 of the Regular Session

State of Arkansas
91st General Assembly
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As Engrossed: S3/6/17 S3/13/17
A Bill

SENATE BILL 435

By: Senators Bond, L. Chesterfield, Elliott, J. English, J. Hutchinson
By: Representatives Tucker, E. Armstrong, F. Allen, Davis, Blake

For An Act To Be Entitled

AN ACT TO AMEND THE FREEDOM OF INFORMATION ACT OF 1967 CONCERNING WATER SYSTEMS; TO AMEND THE LAW CONCERNING CONSOLIDATED WATERWORKS SYSTEMS; CONCERNING THE ISSUANCE OF REVENUE BONDS BY A CONSOLIDATED WATERWORKS SYSTEM; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE FREEDOM OF INFORMATION ACT; TO AMEND THE LAW CONCERNING CONSOLIDATED WATERWORKS SYSTEMS; CONCERNING THE ISSUANCE OF REVENUE BONDS BY A CONSOLIDATED WATERWORKS SYSTEM; AND TO DECLARE AND EMERGENCY.

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

SECTION 1. Arkansas Code § 25-19-105(b)(20), concerning the exemptions to the Freedom of Information Act of 1967, is amended to read as follows:

(20)(A) Except as provided in subdivision (b)(20)(B) of this section, personal ~~Personal~~ information of current and former public water system customers and municipally owned utility system customers, including without limitation:

- ~~(A)(i)~~ Home and mobile telephone numbers;
- ~~(B)(ii)~~ Personal email addresses;
- ~~(C)(iii)~~ Home and business addressees; and



~~(D)~~(iv) Customer usage data.

(B) Personal information of a current or former water system customer or municipally owned utility system customer may be disclosed to:

(i) The current or former water system customer, who may receive his or her own information;

(ii) A person who serves as the attorney, guardian, or other representative of the current or former water system customer, who may receive the information of his or her client, ward, or principal;

(iii) A tenant of the current or former water system customer or municipally owned utility system customer, who may receive notice of pending termination of service;

(iv) A federal or state office or agency for the purpose of participating in research being conducted by such federal or state office or agency, if the federal or state office or agency agrees to prohibit disclosure of the personal information;

(v) For the purpose of facilitating a shared billing arrangement, a county, municipality, improvement district, urban service district, public utility, public facilities board, or public water authority that provides or provided a service to the current or former water system customer or municipally owned utility system customer; or

(vi) An agent or vendor of the water system or municipally owned utility system that provides a billing or administrative service to the water system or municipally owned utility system provided that the agent or vendor and the water system or municipally owned utility system enter an agreement that prohibits disclosure by the agent or vendor of the water system or municipally owned utility system of the personal information of a current or former water system customer or municipally owned utility system customer to any other person.

SECTION 2. Arkansas Code § 25-20-103 is amended to read as follows:

25-20-103. Definitions.

As used in this chapter:

(1) "Public agency" means any:

(A) School district;

(B) Political subdivision of this state;

- (C) Agency of the state government or of the United States;
 - (D) Political subdivision of another state;
 - (E) Water district created under the provisions of The Regional Water Distribution District Act, § 14-116-101 et seq.;
 - (F) Governing body of a municipal electric utility as defined in § 25-20-402; and
 - (G) Fire department organized under the laws of this state if the fire department:
 - (i) Offers fire protection services to unincorporated areas; and
 - (ii) Has received approval by its quorum court for participation in an interlocal cooperation agreement; ~~and~~
- (2) "Retail customer" means a person other than a municipality, improvement district, or other entity that:
- (A) Sells and distributes water subject to regulation by the Department of Health;
 - (B) Maintains a service account with a public body formed under the Consolidated Waterworks Authorization Act § 25-20-301 et seq. for the provision of water to a person or the occupants of a single family dwelling, multitenant dwelling, business premises, or government facility; and
 - (C) Is not explicitly permitted to resell potable water to another person;
- (3) "State" means a state of the United States and the District of Columbia;
- (4) "Surplus water" means water available for distribution or sale aside from water necessarily required of the public body for distribution to its existing retail customers;
- (5) "Wastewater system" means a wastewater and collection system formed under state law that includes without limitation land, mains, interceptors, collector lines, manholes, force mains, valves, pumping stations, pumps, treatment and pretreatment plants and units thereof, other real and personal property, buildings, structures, other improvements, and facilities as necessary or advisable for the proper and efficient operation of the wastewater system; and

(6) "Water system" means and includes a waterworks and distribution system in its entirety or any integral parts of thereof which is formed under state law and includes without limitation land, mains, pipelines, hydrants, meters, valves, standpipes, storage tanks, storage basins, pumping tanks, intakes, wells, clear water wells, impounding reservoirs, lakes, watercourses, pumps, purification plants and units thereof, filtration plants and units thereof, as well as all other real and personal property, buildings, structures, and other improvements or facilities as necessary or advisable for the proper and efficient operation of the water system.

SECTION 3. Arkansas Code § 25-20-306(a), concerning the general powers of a public body, is amended to add an additional subdivision to read as follows:

(15) Own and operate a wastewater system that the public body acquires from a municipality, county, corporation, organization, other public body, or entity from which the public body simultaneously acquires or previously acquired a water system;

(16) Manage or operate a water system under a contract executed by the public body and a municipality, county, corporation, organization, other public body, or entity authorized by law to own and operate the water system;

(17) Purchase goods and services under applicable law for the public body; and

(18) Purchase professional services under § 19-11-1801 et seq. or by any method of competitive bidding including without limitation reverse auctions.

SECTION 4. Arkansas Code § 25-20-307(a), concerning the operation of consolidated waterworks system, is amended to read as follows:

(a) "Consolidated waterworks system" means and includes:

(1) A waterworks and distribution system in its entirety, or any integral part thereof, including land, mains, pipelines, hydrants, meters, valves, standpipes, storage tanks, storage basins, pumping tanks, intakes, wells, clear water wells, impounding reservoirs, lakes, watercourses, pumps, purification plants and units thereof, filtration plants

and units thereof, as well as all other real and personal property, buildings, structures, ~~or~~ and other improvements ~~or~~ and facilities as may be necessary or advisable for the proper and efficient operation of the public body's facilities; and

(2) One (1) or more wastewater systems, if any, acquired by the public body.

SECTION 5. Arkansas Code § 25-20-307(c)(2), concerning the operation of consolidated waterworks system, is amended to read as follows:

(2) A public body shall have a reasonable time after its creation or after its expansion by the addition of a new participating public agency to equalize any differentials in ~~water~~ rates among similarly situated classes of customers.

SECTION 6. Arkansas Code § 25-20-307(c)(3)(B), concerning the operation of consolidated waterworks system, is amended to read as follows:

(B) Within one (1) year of the creation or expansion of the public body, an independent expert completes an engineering study of the ~~water system~~ related infrastructure located within the jurisdiction of each participating public agency that identifies improvements needed to create a uniform infrastructure quality throughout the jurisdictions, rate differentials among otherwise similarly situated classes of customers are reasonably calculated to recover from customers located in the respective jurisdictions in which the improvements are made the costs incurred in making the improvements in such jurisdictions, and the public body equalizes rates among similarly situated classes of customers within ten (10) years after the date of the engineering study.

SECTION 7. Arkansas Code § 25-20-307(d), concerning the operation of consolidated waterworks system, is amended to read as follows:

(d) The inability of a public body to rely upon either safe harbor defense set out in subdivisions (c)(3)(A) and (B) of this section shall not create any implication that the public body has failed to equalize any differentials in ~~water~~ rates among similarly situated classes of customers within a reasonable period of time after its creation or expansion.

SECTION 8. Arkansas Code § 25-20-308(a)(2), concerning out-of-area sales and services, is amended to read as follows:

(2) Sell surplus water to any municipality, improvement district, or other ~~person engaged in the business of selling and distributing water to consumers, whether the municipality, improvement district, or other person~~ entity that sells and distributes water subject to regulation of the Department of Health, whether the municipality, improvement district, or other entity is located within or outside the jurisdictions of the public body's participating agencies.

SECTION 9. Arkansas Code § 25-20-310(a), concerning improvements and financing of improvements with bonds, is amended to read as follows:

(a) Whenever any public body created under this subchapter shall own or operate a consolidated waterworks system and shall desire to acquire, construct, or equip improvements, betterments, and extensions thereto, it may issue revenue bonds under the provisions of this section to pay for them. The procedure for issuance of bonds shall be as provided in this section.

SECTION 10. Arkansas Code § 25-20-310(e), concerning improvements and financing of improvements with bonds, is amended to read as follows:

(e)(1) The resolution shall fix the minimum rate or rates for water or other services provided by the consolidated water system to be collected prior to the payment of all of the bonds, with exceptions as may be provided in the resolution, and shall pledge the revenues derived from the consolidated waterworks system or any specified portion of the consolidated waterworks system for the purpose of paying the bonds and interest thereon.

(2) The rates to be charged for the water or other services of the consolidated waterworks system or the specified portion of the consolidated waterworks system with revenues pledged to the payment of the bonds shall be sufficient to provide:

(A) For the payment of all principal of and interest on all bonds as and when due;

(B) For the operation and maintenance of the consolidated waterworks system or the specified portion of the consolidated waterworks system with revenues pledged to the payment of the bonds; and

(C) An adequate depreciation account for the consolidated

waterworks system or the specified portion of the consolidated waterworks system with revenues pledged to the payment of the bonds.

SECTION 11. Arkansas Code § 25-20-310, concerning improvements and financing of improvements with bonds, is amended to add an additional subsection to read as follows:

(j)(1)(A) Prior to a proposed issuance of revenue bonds by a public body, the public body shall publish one (1) time in a newspaper of general circulation in the participating public agencies:

(i) Notice of the proposed issuance of bonds;

(ii) The maximum principal amount of bonds contemplated to be sold;

(iii) A general description of the project contemplated to be financed or refinanced with bond proceeds; and

(iv) The date, time, and location of a public meeting at which members of the public may obtain further information regarding the bonds and the project.

(B) Notice under subdivision (j)(1)(A) of this section shall be published at least ten (10) days prior to the date of the hearing described in subdivision (j)(1)(A)(iv) of this section.

(2) The chief executive officer of the public body or his or her designee shall be responsible for conducting the hearing and shall request all public comments that might pertain to the proposed issuance of bonds by the public body.

(3)(A) Upon compliance with the provisions of this section, other notice, hearing, or approval by the public body, any participating public agency or any governmental unit shall not be required as a condition to the issuance by a public body of its contemplated bonds or any interim financing with respect thereto.

(B) The provisions of the Revenue Bond Act of 1987, § 19-9-601 et seq., do not apply to this section and revenue bonds or interim financing issued hereunder.

(C) Notwithstanding the provisions of subdivision (i)(3)(A) of this section, the participating public agencies that have entered into the interlocal agreement forming the public body may, in the interlocal agreement, impose additional procedural requirements as a

precedent for the issuance of revenue bonds by a public body, and if that is the case, the public body shall comply with those requirements prior to the issuance of the bonds and any interim financing.

SECTION 12. Arkansas Code § 25-20-321(a), concerning the annual report and audit relating to consolidated waterworks systems, is amended to read as follows:

(a) Within the first ~~ninety (90)~~ one hundred eighty (180) days of each calendar year, each public body created under this subchapter shall make a written report to the governing bodies of the participating public agencies concerning its activities for the preceding calendar year.

SECTION 13. Arkansas Code Title 25, Chapter 20, Subchapter 3, is amended to add an additional section to read as follows:

25-20-324. Interim financing.

(a) If the issuance of revenue bonds is authorized by resolution of the board of commissioners, any public body created under this subchapter is authorized to obtain interim financing pending the delivery of all or any part of the bonds from such sources and upon such terms as the board of commissioners of the public body shall determine.

(b)(1) As evidence of any indebtedness so incurred, the public body may execute and deliver its promissory note or notes and pledge to the payment thereof any revenues authorized by this subchapter to be pledged to revenue bonds and the proceeds of the revenue bonds when issued.

(2) The public body may secure the notes in the same manner as revenue bonds issued under this subchapter.

(c) The notes shall not in any event constitute an indebtedness of, nor pledge the faith and credit of, the State of Arkansas or the participating public agencies of the public body within the meaning of any constitutional or statutory limitation.

(d) The public body may use, as distinguished from pledge, any available revenues to pay or to apply to the payment of the principal of and interest on the notes and may use the proceeds of revenue bonds, either alone or with other available revenues, to pay the principal and interest on the notes.

(e) The notes may bear such date or dates, may mature at such time or

times, not exceeding thirty-six (36) months from their respective dates, may bear interest at such rate or rates, may be in such form, may be executed in such manner, may be payable at such place or places, may contain such provisions for prepayment prior to maturity and may contain such other terms, covenants, and conditions as the resolution may provide, not inconsistent with the provisions of this subchapter pertaining to revenue bonds.

SECTION 14. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the Freedom of Information Act of 1967, § 25-19-101 et seq., places undue restrictions on water systems; that, in order to satisfy such restrictions, a water system must forego certain undertakings to the detriment of the water system and its customers; and that this act is immediately necessary so that a water system may provide information to its utility partners, other government offices, and certain members of the public in order for the water system to serve its community as efficiently and effectively as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/Bond

APPROVED: 03/27/2017