

Title 4. Business and Commercial Law

Chapter I. Arkansas Natural Resources Commission, Department of Agriculture

Subchapter A. Generally

Part 1. Water Authorities

Subpart 1. General Provisions

4 CAR § 1-101. Purpose and enabling legislation.

This part implements Arkansas Code § 4-35-101 et seq., and § 4-35-201 et seq., by establishing a procedure by which two (2) or more persons or a qualified corporation may form or convert to a water authority for one (1) or more of these allowed purposes:

(1) To sell, transmit, and distribute potable water to members of the public and others; or

(2) To collect, remove, reduce, treat, purify, dispose, and handle:

(A) Liquid and solid waste;

(B) Sewage;

(C) Industrial waste; and

(D) Refuse.

Authority. Arkansas Code § 4-35-105.

4 CAR § 1-102. Definitions.

As used in this part:

(1) "Applicant" means two (2) or more persons or a qualified corporation seeking to form or convert to a water authority for one (1) or more allowed purposes;

(2) "Application" means all documents submitted by the applicant to the Director of the Arkansas Natural Resources Commission as required in 4 CAR §§ 1-201 and 1-301;

(3) "Certificate of Existence" means the document issued by the Director of the Arkansas Natural Resources Commission which brings a water authority into existence;

(4) "Commission" means the Arkansas Natural Resources Commission;

(5) "Director" means the Director/Ex-Officio Secretary of the Arkansas Natural Resources Commission;

(6) "Qualified corporation" means any nonprofit corporation originally formed pursuant to the Arkansas Nonprofit Corporation Act of 1993, codified at § 4-28-201 et seq., or a predecessor statute formed for one (1) or more of the allowed purposes;

(7) "Service area" means a specific region for which applicant has received water plan compliance approval to provide water or sewer service pursuant to the Water Plan Compliance Review Procedures, 15 CAR pt. 22;

(8) "Users" means members of the public and commercial, industrial, and other users who receive services directly from a water authority;

(9) "Water authority" means a public body politic and governmental entity organized pursuant to the Water Authority Act, Arkansas Code § 4-35-101 et seq.; and

(10) "Water plan approval", "water plan compliance", or "water plan certification" means authorization from the Arkansas Natural Resources Commission to construct, operate, manage, or maintain a water development project.

Authority. Arkansas Code § 4-35-105.

4 CAR § 1-103. Hearing.

The Director of the Arkansas Natural Resources Commission at his or her discretion may conduct a hearing:

(1) With respect to any application for a Certificate of Existence under this part; or

(2) For approval of an amendment to a water authority's articles or bylaws requested pursuant to this part.

Authority. Arkansas Code § 4-35-105.

4 CAR § 1-104. Approval of service area requires water plan certification.

(a) The Director of the Arkansas Natural Resources Commission's decision to issue a Certificate of Existence to an applicant approves formation or conversion to a water authority.

(b) Any applicant proposing to provide water or sewer service:

(1) Must obtain approval of service area through the Water Plan Compliance Review Procedures, 15 CAR pt. 22; and

(2) Will need to apply to that program independently of the water authority application.

(c) Any applicant who has already received water plan compliance approval to provide water or sewer service to a service area will retain such approval as a water authority.

(d)(1) The director must provide written approval for any amendment to an article or bylaw that would change a water authority's water or sewer service area.

(2) Before the director will provide written approval, the authority must first receive water plan compliance approval pursuant to the Water Plan Compliance Review Procedures.

Authority. Arkansas Code § 4-35-105.

Subpart 2. Formation of a Water Authority

4 CAR § 1-201. Formation of water authority — Application.

Two (2) or more persons, which may include cities, counties, public bodies, or nonprofit corporations, may apply to form a water authority by presenting to and filing the following with the Director of the Arkansas Natural Resources Commission:

(1) Articles of formation and constitution which must include the following information:

- (A) The name of the water authority, which must be "The _____ Public Water Authority of the State of Arkansas" or similar name;
- (B) The location of the water authority's principal office;
- (C) The number of directors of the water authority, which must be:
 - (i) At least five (5); and
 - (ii) Subject to change and modification as provided in its bylaws;
- (D) The names and addresses of the proposed initial board of directors of the water authority;
- (E) The name and address of the water authority's agent for service of process;
- (F) A general description of the area to which the authority will provide service; and
 - (G) A brief statement:
 - (i) Showing the necessity to form the proposed water authority; and
 - (ii) Describing the benefits to be received by the residents and property owners who will receive service from the authority;
- (2) A copy of the applicant's proposed bylaws;
- (3) A statement and certification from the Secretary of State that the name of the proposed water authority is not identical with that of any other water authority or so nearly similar thereto as to lead to confusion and uncertainty;
- (4) A filing and review fee of seven hundred fifty dollars (\$750), which the Arkansas Natural Resources Commission will deposit into the Arkansas Water Development Fund as provided in Arkansas Code §§ 15-20-209 and 15-22-514;
- (5) Any other information that the initial board of directors may deem necessary and appropriate; and
- (6) Any other information and documents which the Director of the Arkansas Natural Resources Commission may designate and require.

Authority. Arkansas Code §§ 15-20-209, 4-35-105.

4 CAR § 1-202. Review procedure.

(a) When the Director of the Arkansas Natural Resources Commission receives an application, the director must review it to ascertain its completeness and accuracy.

(b) The applicant must provide any additional items or information requested by the director.

Authority. Arkansas Code § 4-35-105.

4 CAR § 1-203. Approval of formation.

(a) Based upon the application and any information deemed pertinent by the Director of the Arkansas Natural Resources Commission, the director will determine whether to issue a Certificate of Existence.

(b) The director will:

- (1) Approve or disapprove formation; and
- (2) State reasons for disapproval in writing.

(c) The water authority may request a hearing regarding an unfavorable determination in accordance with the Rules of Organization and General Operation of the Arkansas Natural Resources Commission, 15 CAR pt. 1.

Authority. Arkansas Code § 4-35-105.

Subpart 3. Conversion of Existing Qualified Corporations

4 CAR § 1-301. Conversion to a water authority — Application.

Whenever a qualified corporation desires to convert to and become reconstituted as a water authority, the qualified corporation must file with the Director of the Arkansas Natural Resources Commission:

(1) A resolution duly adopted by the applicant's board of directors evidencing the desire to convert to and become reconstituted as a water authority and certifying that the applicant:

(A) Was initially formed as a nonprofit corporation;

(B) Cannot directly access the tax-exempt capital markets other than through a conduit issuer; and

(C) Desires to realize interest rate savings as a result of its conversion and reconstitution as a water authority;

(2) Articles of conversion and reconstitution which must be signed by a majority of the water authority's proposed initial board of directors and which must state the following information:

(A) The name of the water authority, which must be "The _____ Public Water Authority of the State of Arkansas" or similar name;

(B) The location of the water authority's principal office;

(C) The number of directors of the water authority, which number must be at least five (5) and subject to change and modification as provided in its bylaws;

(D) The names and addresses of the proposed initial board of directors of the water authority;

(E) The name and address of the water authority's agent for service of process;
and

(F) The qualified corporation's existing service area and a general description of any other areas to which the authority would like to provide service;

(3) A copy of the water authority's proposed bylaws along with any other information which the proposed initial board of directors may deem necessary and appropriate;

(4) A statement and certification from the Secretary of State that the name of the proposed public water authority is not identical with that of any other water authority, or so nearly similar thereto as to lead to confusion and uncertainty;

(5) A filing and review fee of seven hundred fifty dollars (\$750), which the Arkansas Natural Resources Commission must deposit in the Arkansas Water Development Fund as provided in Arkansas Code §§ 15-20-209 and 15-22-514;

(6) Any other information that the proposed initial board of directors may deem necessary and appropriate; and

(7) Any other information and documents which the Director of the Arkansas Natural Resources Commission may designate and require.

Authority. Arkansas Code §§ 15-20-209, 4-35-105.

4 CAR § 1-302. No members.

(a)(1) In addition to the requirements of 4 CAR § 1-301, if the qualified corporation seeking to become a water authority has members, the qualified corporation must also submit a resolution approved by the members that conforms to the requirements of 4 CAR § 1-301(1).

(2) Membership approval of conversion must be obtained in the manner determined prior to conversion under the qualified corporation's:

- (A) Articles;
- (B) Bylaws; or
- (C) Applicable statutes.

(3) After conversion, the water authority will have no members.

(b) Any entity that converted to a water authority according to the Arkansas Natural Resources Commission's rules and existing law prior to Acts 2003, No. 1330, will be deemed to have complied with this part.

Authority. Arkansas Code § 4-35-105.

4 CAR § 1-303. Review procedure.

(a) When the Director of the Arkansas Natural Resources Commission receives an application, the director will review it to ascertain its completeness and accuracy.

(b) The applicant must provide any additional items or information requested by the director.

Authority. Arkansas Code § 4-35-105.

4 CAR § 1-304. Approval of conversion.

(a) Based upon the application and any information deemed pertinent by the Director of the Arkansas Natural Resources Commission, the director will determine whether to issue a Certificate of Existence.

(b) The director will:

- (1) Approve or disapprove conversion; and
- (2) State reasons for disapproval in writing.

(c) The water authority may request a hearing regarding an unfavorable determination in accordance with the Rules of Organization and General Operation of the Arkansas Natural Resources Commission, 15 CAR pt. 1.

Authority. Arkansas Code § 4-35-105.

Subpart 4. Certificate of Existence

4 CAR § 1-401. Issuance of Certificate of Existence.

(a)(1) If the application is found by the Director of the Arkansas Natural Resources Commission to be complete and accurate, the director will issue a Certificate of Existence.

(2) The water authority referred to therein will come into existence as a public body politic and governmental entity of the state under the name set forth in the Certificate of Existence.

(b) The water authority will then be vested with the rights and powers granted in Arkansas Code § 4-35-101 et seq.

Authority. Arkansas Code § 4-35-105.

4 CAR § 1-402. Filing with Secretary of State.

(a) After issuance of the Certificate of Existence, the Arkansas Natural Resources Commission will file the water authority's articles of constitution or articles of conversion and reconstitution in the office of the Secretary of State.

(b) In cases of conversion, filing with the Secretary of State will terminate and dissolve the previous corporate existence of the qualified corporation effective as of the date of the issuance of the Certificate of Existence.

Authority. Arkansas Code § 4-35-105.

Subpart 5. Amendment to Articles or Bylaws

4 CAR § 1-501. Amendment to articles.

(a) Any amendment to articles must be filed with the Director of the Arkansas Natural Resources Commission along with the following information:

- (1) The name of the water authority;
- (2) The text of the amendment adopted;
- (3) The date of each amendment's adoption; and
- (4) A statement that the amendment was approved by a sufficient vote of the board of directors.

(b) If the amendment concerns a change to the water authority's service area, the water authority must first apply for and obtain water plan approval pursuant to the Water Plan Compliance Review Procedures, 15 CAR pt. 22, before the Director of the Arkansas Natural Resources Commission will approve the amended article.

Authority. Arkansas Code § 4-35-105.

4 CAR § 1-502. Amendments to bylaws.

(a) A water authority is only required to obtain written approval for a proposed bylaw amendment from the Director of the Arkansas Natural Resources Commission if the proposed amendment changes any of the following:

- (1) The number of directors;
- (2) The procedure for nominating or electing directors; or
- (3) The water authority's service area.

(b) If the proposed amendment concerns a change to the water authority's service area, the water authority must first apply for and obtain water plan approval pursuant to the Water Plan Compliance Review Procedures, 15 CAR pt. 22, before the Director of the Arkansas Natural Resources Commission will approve the amended bylaw.

(c) The Director of the Arkansas Natural Resources Commission will review the proposed amendment and will give the water authority written notice of the decision.

(d) If the Director of the Arkansas Natural Resources Commission disapproves the proposed amendment, the Director of the Arkansas Natural Resources Commission will issue the reason or reasons for his or her decision in writing.

(e) If the water authority submitted the proposed bylaw amendment to the Director of the Arkansas Natural Resources Commission for review before following its own internal procedures for amending bylaws, the water authority will need to provide documentation to the Director of the Arkansas Natural Resources Commission showing that the amended bylaw has been validly adopted before the authority will be deemed to have complied with Arkansas Code § 4-35-208.

(f) With the exception of a proposed amendment changing service area, the water authority may request a hearing regarding an unfavorable determination in accordance with the Rules of Organization and General Operation of the Arkansas Natural Resources Commission, 15 CAR pt. 1.

Authority. Arkansas Code § 4-35-105.

Subpart 6. Dissolution

4 CAR § 1-601. Articles of dissolution.

Any water authority that intends to transfer, merge, consolidate, or otherwise dissolve its existence must file articles of dissolution with the Director of the Arkansas Natural Resources Commission.

Authority. Arkansas Code § 4-35-105.

4 CAR § 1-602. Disposal of assets.

Upon dissolution, any assets of a water authority remaining after payment of claims and liabilities of the water authority must be transferred to the:

- (1) Successor water authority, if applicable; or
- (2) Arkansas Natural Resources Commission.

Authority. Arkansas Code § 4-35-105.