

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Representative Luker**

A Bill

ACT 617 OF 1995
HOUSE BILL 1544

For An Act To Be Entitled

8 "THE RURAL WATERWORKS FACILITIES BOARDS ACT; AND FOR OTHER
9 PURPOSES."

Subtitle

12 "THE RURAL WATERWORKS FACILITIES BOARDS
13 ACT."

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

17 SECTION 1. This act may be referred to and cited as the "Rural
18 Waterworks Facilities Boards Act."

20 SECTION 2. It is determined by the General Assembly that adequate rural
21 waterworks and rural water distribution systems are essential to the health,
22 safety, and economic welfare of the people of this state. In order to meet
23 these public needs, it is essential that public financing be provided for the
24 facilities and it is the purpose of this act to provide an alternative method
25 of financing for those facilities.

27 SECTION 3. As used in this act, unless the context otherwise requires:

28 (1) "Acquire" means to obtain by gift, purchase, or other arrangement,
29 any project or any portion of a project, whether theretofore constructed and
30 equipped, theretofore partially constructed and equipped, or being constructed
31 and equipped at the time of acquisition, for such consideration and pursuant
32 to such terms and conditions as the board shall determine;

33 (2) "Construct" means to acquire or build, in whole or in part, in such
34 manner and by such method, including contracting therefor, and if the latter,
35 by negotiation or bidding upon such terms and pursuant to such advertising as
36 determined by the board, as will most effectively serve the purposes of this

1 act;

2 (3) "Equip" means to install or place in or on any building or
3 structure equipment of any and every kind, whether or not affixed, including,
4 without limitation, building service equipment, fixtures, heating equipment,
5 air conditioning equipment, machinery, furniture, furnishings, and personal
6 property of every kind;

7 (4) "Facilities" means real property, personal property, or mixed
8 property of any and every kind including, without limitation, rights-of-way,
9 utilities, materials, equipment, fixtures, machinery, furniture, furnishings,
10 buildings, and other improvements of every kind;

11 (5) "Lease" means to lease *as lessor or lessee* for such rentals, for
12 such periods, and upon such terms and conditions as the board shall agree
13 *including without limitation* such extension and purchase options for such
14 prices and upon such terms and conditions as the board shall agree;

15 (6) "Lend" means to extend credit, make a loan to, acquire the
16 obligations of, and generally, without limitation, engage in the financing of
17 any facilities which the board has the authority to construct, acquire, or
18 equip pursuant to this act, upon such terms and with such security as the
19 board deems suitable;

20 (7) "Ordinance" means an ordinance of a quorum court;

21 (8) "Rural waterworks facilities board" or "board" means any board
22 organized under this act;

23 (9) "Sell" means to sell for such price, in such manner, and upon such
24 terms as the board shall determine including, without limitation, public or
25 private sale, and if public, pursuant to such advertisement as the board shall
26 determine, for cash or on credit payable in lump sum or in such installments
27 as the board shall determine, and if on credit, with or without interest and
28 *at such rate as the board may determine*;

29 (10) "*Wastewater facilities*" means *facilities for the collection,*
30 *treatment and disposal of wastewater, but shall not include solid or hazardous*
31 *waste*;

32 (11) "Waterworks facilities" means facilities for the furnishing of
33 water for domestic, commercial, agricultural, and industrial purposes
34 including, without limitation, mains, hydrants, meters, valves, standpipes,
35 storage tanks, pumping tanks, intakes, wells, impounding reservoirs,

1 purification plants, and lakes, watercourses.

2

3 SECTION 4. This act shall be deemed to provide an additional and
4 alternative method for the doing of the things authorized hereby and shall be
5 regarded as supplemental and additional to powers conferred by other laws.

6

7 SECTION 5. This act shall be liberally construed to effect the purposes
8 of it.

9

10 SECTION 6. (a) Any county is authorized to create one (1) or more rural
11 waterworks facilities boards and to empower each board to own, acquire,
12 construct, reconstruct, extend, equip, improve, operate, maintain, sell,
13 lease, contract concerning, or otherwise deal in or dispose of waterworks
14 *facilities and wastewater* facilities or any interest in such facilities
15 including, without limitation, leasehold interests in and mortgages on such
16 facilities.

17 (b) Boards created under this act are not administrative boards
18 under the County Government Code § 14-14-101 et seq.

19

20 SECTION 7. (a) Each board shall be created by ordinance of the quorum
21 court. The ordinance shall give the board a name which:

22 (1) Shall include the name of the creating county;

23 (2) Shall be descriptive of the powers granted to the board; and

24 (3) Shall be distinctive from the name given to any other board
25 created by the county;

26 (4) Shall specify the powers granted to the board; and

27 (5) May place specific limitations on the exercise of the powers
28 granted, including limitations on the board's area of operations, the use of
29 *waterworks facilities and wastewater* facilities and the board's authority to
30 issue bonds.

31 (b) Unless limited by the creating ordinance, each board created shall
32 be authorized to accomplish *waterworks facilities and wastewater* facilities
33 projects within or partly within and partly without the county.

34

35 SECTION 8. (a) Each board shall consist of five (5) members unless

1 there is an expansion of the board to provide services outside the county
2 which created it.

3 (b) (1) The initial members shall be appointed by the county judge of
4 the creating county for terms of one (1), two (2), three (3), four (4), and
5 five (5) years, respectively.

6 (2) Successor members shall be elected by a majority of the board
7 for terms of five (5) years each.

8 (3) Each member shall serve until his successor is elected and
9 qualified.

10 (4) A member shall be eligible to succeed himself.

11 (c) Each member shall qualify by taking and filing with the clerk of
12 the county creating the board his oath of office in which he shall swear to
13 support the Constitution of the United States and the Constitution of the
14 State of Arkansas and to discharge faithfully his duties in the manner
15 provided by law.

16 (d) In the event of a vacancy in the membership of the board, however
17 caused, a majority of the board shall elect a successor member to serve the
18 unexpired term.

19 (e) The members of the board shall receive no compensation for their
20 services, but shall be entitled to reimbursement for reasonable and necessary
21 expenses incurred in the performance of their duties.

22 (f) Any member of the board may be removed for misfeasance,
23 malfeasance, or willful neglect of duty by the county judge of the county
24 which created the board, after reasonable notice of and an opportunity to be
25 heard concerning the alleged grounds for removal.

26 (g) (1) (A) If the jurisdiction of a board, pursuant to interlocal
27 agreements, expands to provide services outside the boundaries of the county
28 from which it obtains power, then not more than two (2) additional members per
29 county may be added pursuant to the terms of any relevant interlocal
30 agreement.

31 (B) These members shall initially be appointed by the county
32 judge of the *non-creating county*, and shall serve for a term agreed upon in
33 the interlocal agreement, provided that the term shall not exceed five (5)
34 years.

35 (2) The other provisions of this section shall apply to these

1 additional members, provided that no additional member shall be eligible to
2 serve as chairman of the board.

3

4 SECTION 9. (a) (1) The members of each board shall meet and organize by
5 electing one of their number as chairman, one as vice-chairman, one as
6 secretary, and one as treasurer, and such officers shall be elected annually
7 thereafter in like manner.

8 (2) The duties of secretary and treasurer may be performed by the
9 same member.

10 (b) The board may also appoint an executive director who shall serve at
11 the pleasure of the board and receive such compensation as shall be fixed by
12 the board.

13

14 SECTION 10. (a) (1) Each board shall meet upon the call of its
15 chairman, or a majority of its members, and at such times as may be specified
16 in its bylaws for regular meetings. A majority of its members shall constitute
17 a quorum for the transaction of business.

18 (2) The affirmative vote of a majority of the members present at a
19 meeting of the board shall be necessary for any action taken by the board.

20 (3) Any action taken by the board shall be by resolution, and such
21 resolution shall take effect immediately unless a later effective date is
22 specified in the resolution.

23 (4) No vacancy in the membership of the board shall impair the right
24 of a quorum to exercise all the rights and perform all the duties of the
25 board.

26 (b) (1) The secretary of the board shall keep a record of the
27 proceedings of the board and shall be custodian of all books, documents, and
28 papers filed with the board and of the minute book or journal of the board and
29 of its official seal.

30 (2) The secretary may cause copies to be made of all minutes and
31 other records and documents of the board. He may give certificates under the
32 official seal of the board to the effect that the copies are true copies, and
33 all persons dealing with the board may rely upon the certificates.

34 (3) Records and documents of the boards shall be preserved and
35 maintained at such locations and in such manner as prescribed by ordinance of

1 the county which created the boards.

2

3 SECTION 11. Each board is authorized and empowered:

4 (1) To have perpetual succession as a body politic and corporate and to
5 adopt bylaws for the regulation of its affairs and the conduct of its
6 business;

7 (2) To adopt an official seal and alter it at pleasure;

8 (3) To maintain an office at such place in the county creating the
9 board as it may designate;

10 (4) To sue and be sued in its own name;

11 (5) To fix, charge, and collect rents, fees, and charges for the use of
12 any waterworks facilities;

13 (6) To employ and pay compensation to such employees and agents,
14 including attorneys, consulting engineers, architects, surveyors, accountants,
15 financial experts, and such other employees and agents as may be necessary in
16 its judgment, and to fix their compensation;

17 (7) To accomplish waterworks *facilities and wastewater facilities*
18 projects as authorized by this act and the ordinance creating the board;

19 (8) To do any and all other acts and things in this act authorized or
20 required to be done, whether or not included in the powers mentioned in this
21 section;

22 (9) To lend money, directly or indirectly, for the financing of the
23 construction, acquisition, and equipment of all or a portion of a waterworks
24 *facility and/or wastewater facility* project;

25 (10) To invest money, including a major portion of the proceeds of any
26 issue of bonds for the term of the bonds or a shorter period, in consideration
27 of a contract to make payment or payments to provide for the payment of the
28 principal, premium, if any, and interest on the bonds when due;

29 (11) To do any and all other things necessary or convenient to
30 accomplish the purposes of this act.

31

32 SECTION 12. (a) Any county may acquire facilities for a waterworks
33 *facility and/or wastewater facility* project, or any portion thereof, including
34 a project site, by gift, purchase, lease, or condemnation, and may transfer
35 any such facilities to a board created by the county by sale, lease, or gift.

1 (b) Transfer may be authorized by ordinance of the quorum court without
2 regard to the requirements, restrictions, limitations, or other provisions
3 contained in any other law.

4 (c) Boards may exercise the power of eminent domain in accordance with
5 the procedures prescribed by § 18-15-201 et seq.

6

7 SECTION 13. It is declared that each board created pursuant to this act
8 will be performing public functions and will be a public instrumentality of
9 the county creating the board. Accordingly, all properties at any time owned
10 by the board and the income therefrom shall be exempt from all taxation in the
11 State of Arkansas.

12

13 SECTION 14. (a) Boards are authorized to use any available funds and
14 revenues for the accomplishment of all or a portion of waterworks *facilities*
15 *and/or wastewater* facilities projects and may issue bonds, as authorized by
16 this act, for the accomplishment of all or a portion of waterworks *facilities*
17 *and/or wastewater* facilities projects, either alone or together with other
18 available funds and revenues.

19 (b) Bonds may be issued in principal amounts as shall be sufficient to
20 pay the costs of issuing bonds, the amount necessary for a reserve, if deemed
21 desirable, the amount necessary to provide for debt service until revenues for
22 the payment thereof are available, the amount necessary to acquire a contract
23 providing for payments to the board at a rate or rates at least sufficient to
24 provide for, alone or with any other revenues that may be pledged, debt
25 service on the bonds, if deemed desirable, and to pay any other costs and
26 expenditures of whatever nature incidental to the accomplishment of all or a
27 portion of the waterworks *facilities* or *wastewater* facilities project involved
28 and the placing of it in operation.

29 (c) Each board shall annually contract with a certified public
30 accountant to perform an audit of the board's revenues which are not pledged
31 to outstanding bonded indebtedness. The board shall furnish a copy of the
32 audit report to the quorum court of the county which created the board and the
33 board shall make the audit report available to the public for inspection under
34 the Freedom of Information Act, § 25-19-101 et seq.

35

1 SECTION 15. (a) (1) The issuance of bonds shall be by resolution of the
2 board.

3 (2) As the resolution authorizing their issuance may provide, the
4 bonds may:

5 (A) Be coupon bonds payable to bearer, but subject to
6 registration as to principal or as to principal and interest;

7 (B) Be exchangeable for bonds of another denomination;

8 (C) Be in such form and denominations;

9 (D) Be made payable at such places within or without the state;

10 (E) Be issued in one (1) or more series;

11 (F) Bear such date or dates, and mature at such time or times,
12 not exceeding forty (40) years from the respective dates;

13 (G) Bear interest at such rate or rates;

14 (H) Be payable in such medium of payment;

15 (I) Be subject to such terms of redemption; and

16 (J) Contain such terms, covenants, and conditions including,
17 without limitation, those pertaining to:

18 (i) The custody and application of the proceeds of the bonds;

19 (ii) The collection and disposition of revenues;

20 (iii) The maintenance of various funds and reserves;

21 (iv) The nature and extent of the security and pledging of
22 revenues;

23 (v) The rights, duties, and obligations of the board and the
24 trustee for the holders and registered owners of the bonds; and

25 (vi) The rights of the holders and registered owners of the
26 bonds.

27 (3) There may be successive bond issues for the purpose of financing
28 the same waterworks *facilities and/or wastewater facilities* project, and there
29 may be successive bond issues for financing the cost of reconstructing,
30 replacing, constructing additions to, extending, improving, and equipping
31 waterworks *facilities and/or wastewater facilities* projects already in
32 existence, whether or not originally financed by bonds issued under this act,
33 with each successive issue to be authorized as provided by this act.

34 (4) Priority between and among issues and successive issues as to
35 security of the pledge of revenues and lien on the waterworks *facilities*

1 and/or wastewater facilities project involved may be controlled by the
2 resolution authorizing the issuance of the bonds.

3 (5) Subject to the provisions of this section pertaining to
4 registration, the bonds shall have all the qualities of negotiable instruments
5 under the laws of the State of Arkansas.

6 (6) Without limiting the generality of the foregoing, the resolution
7 may provide for the investment of a major portion of the proceeds of the bonds
8 in consideration of a contract to make payment or payments at least
9 sufficient, alone or with other revenues pledged, to provide for principal,
10 premium, if any, and interest on the bonds, as due.

11 (b) (1) The resolution authorizing the bonds may provide for the execution
12 by the board of an indenture which defines the rights of the holders and
13 registered owners of the bonds and provides for the appointment of a trustee
14 for the holders and registered owners of the bonds.

15 (2) The indenture may control the priority between and among
16 successive issues and may contain any other terms, covenants, and conditions
17 that are deemed desirable including, without limitation, those pertaining to:

18 (A) The custody and application of proceeds of the bonds;

19 (B) The maintaining of rates and charges;

20 (C) The collection and disposition of revenues;

21 (D) The maintenance of various funds and reserves;

22 (E) The nature and extent of the security and pledging of
23 revenues;

24 (F) The rights, duties, and obligations of the board and the
25 trustee; and

26 (G) The rights of the holders and registered owners of the bonds.

27 (c) The bonds may be sold at public or private sale for such price
28 including, without limitation, sale at a discount, and in such manner as the
29 board may determine by resolution.

30 (d) (1) The bonds shall be executed by the manual or facsimile signature
31 of the chairman and by the manual or facsimile signature of the secretary of
32 the board.

33 (2) The coupons attached to the bonds may be executed by the
34 facsimile signature of the chairman of the board.

35 (3) In case any of the officers whose signatures appear on the bonds

1 or coupons shall cease to be such officers before the delivery of the bonds or
2 coupons, their signatures shall nevertheless be valid and sufficient for all
3 purposes.

4

5 SECTION 16. (a) Bonds may be issued for the purpose of refunding any
6 obligations issued under this act. Such refunding bonds may be combined with
7 bonds issued under the provisions of Section 15 into a single issue.

8 (b) When bonds are issued under this section for refunding purposes,
9 the bonds may either be sold or delivered in exchange for the outstanding
10 obligations. If sold, the proceeds may be either applied to the payment of the
11 obligations refunded or deposited in escrow for the retirement thereof either
12 at maturity or upon any authorized redemption date.

13 (c) (1) All bonds issued under this section shall in all respects be
14 authorized, issued, and secured in the manner provided for other bonds issued
15 under this act and shall have all the attributes of such bonds.

16 (2) The resolution under which the refunding bonds are issued may
17 provide that any of the refunding bonds shall have the same priority of lien
18 on the revenues pledged for their payment as was enjoyed by the obligations
19 refunded thereby.

20

21 SECTION 17. Any board established under this act may, in its
22 discretion, invest any of its funds not immediately needed for its purposes in
23 bonds issued under the provisions of this act. Bonds issued under the
24 provisions of this act shall be eligible to secure the deposit of public
25 funds.

26

27 SECTION 18. Bonds issued under this act and the income therefrom shall
28 be exempt from all state, county, and municipal taxes. This exemption includes
29 income and estate taxes.

30

31 SECTION 19. (a) It shall be plainly stated on the face of each bond
32 that it has been issued under the provisions of this act, that the bonds are
33 obligations only of the board, and that in no event shall they constitute an
34 indebtedness for which the faith and credit of the creating county or any of
35 its revenues are pledged.

1 (b) No member of the board shall be personally liable on the bonds or
2 for any damages sustained by anyone in connection with any contracts entered
3 into in carrying out the purpose and intent of this act unless he shall have
4 acted with a corrupt intent.

5 (c) The principal of and interest on the bonds shall be payable from:

6 (1) Revenues derived from the waterworks facilities *and/or*
7 *wastewater facilities projects* acquired, constructed, reconstructed, equipped,
8 extended, or improved, in whole or in part, with the proceeds of the bonds;

9 (2) Obligations of:

10 (A) The owners of waterworks *facilities and/or wastewater*
11 *facilities projects*; or

12 (B) Any person with whom the proceeds of the bonds, or a portion
13 thereof, are invested by contract or otherwise;

14 (3) Any other funds or sources of funds of the board specifically
15 pledged and which are set aside as a special fund or source, other than taxes
16 or assessments for local improvements, for the purpose of paying the principal
17 of and interest on the bonds; or

18 (4) Any combination of subdivisions (1), (2), and (3) of this
19 subsection.

20 (d) The board is authorized to pledge those revenues, obligations,
21 other special funds or sources to pay the principal of and interest on the
22 bonds.

23

24 SECTION 20. (a) The resolution or indenture referred to in Section 15
25 may, or may not, impose a foreclosable mortgage lien upon or security interest
26 in all or any portion of the lands, buildings, or facilities acquired,
27 constructed, reconstructed, extended, equipped, or improved, in whole or in
28 part, with the proceeds of bonds issued under this act, and the nature and
29 extent of the mortgage lien or security interest may be controlled by the
30 resolution or indenture including, without limitation, provisions pertaining
31 to the release of all or part of the lands, buildings, or facilities from the
32 mortgage lien or security interest and the priority of the mortgage lien or
33 security interest in the event of successive bond issues as authorized by
34 Section 15.

35 (b) Subject to such terms, conditions, and restrictions as may be

1 contained in the resolution or indenture authorizing or securing the bonds,
2 any holder or registered owner of bonds issued under the provisions of this
3 act, or a trustee, on behalf of all holders and registered owners, may, either
4 at law or in equity, enforce the mortgage lien or security interest and may,
5 by proper suit, compel the performance of the duties of the members and
6 employees of the issuing board as set forth in this act, the ordinance
7 creating the board, and the resolution or indenture authorizing or securing
8 the bonds.

9

10 SECTION 21. (a) (1) In the event of a default in the payment of the
11 principal of or interest on any bonds issued under the provisions of this act,
12 any court having jurisdiction may appoint a receiver to take charge of the
13 waterworks facilities *and/or wastewater facilities projects* upon or in which
14 there is a mortgage lien or security interest securing the bonds in default.

15 (2) The receiver shall have the power and authority to operate and
16 maintain the waterworks facilities project in receivership and to charge and
17 collect payments, fees, rents, and charges sufficient to provide for the
18 payment of any costs of receivership and operating expenses of the project in
19 receivership and to apply the revenues derived from the project in
20 receivership in conformity with this act and the resolution or trust indenture
21 securing the bonds in default.

22 (3) When the default has been cured, the receivership shall be ended
23 and the project returned to the board.

24 (b) The relief provided for in this section shall be construed to be in
25 addition and supplemental to the other remedies provided for in this act and
26 the remedies that may be provided for in the resolution or trust indenture
27 authorizing or securing the bonds, and shall be so granted and administered as
28 to accord full recognition to priority rights of bondholders as to the pledge
29 of revenues from and mortgage lien on or security interest in projects as
30 specified in and fixed by the resolution or trust indenture authorizing or
31 securing successive issues of bonds.

32

33 SECTION 22. (a) Within the first ninety (90) days of each calendar
34 year, each board shall make a written report to the quorum court of the county
35 which created the board concerning its activities for the preceding calendar

1 year.

2 (b) Each report shall set forth a complete operating and financial
3 statement covering its operation during the year.

4
5 SECTION 23. Any public facility board created under the Public
6 Facilities Boards Act (Arkansas Code 14-137-101 et seq. or its predecessor)
7 for the purpose of operating a waterworks *facility and/or a wastewater*
8 *facility* and which *is* in existence on the effective date of this act may
9 petition the quorum court which created the board to grant the board all the
10 powers conveyed by this act and if the quorum court adopts an ordinance to
11 that effect, the powers and authority granted under this act shall be
12 applicable to that public facilities board and it shall thereafter be governed
13 exclusively by the provisions of this act and none other.

14
15 SECTION 24. All provisions of this act of a general and permanent
16 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
17 Code Revision Commission shall incorporate the same in the Code.

18
19 SECTION 25. If any provision of this act or the application thereof to
20 any person or circumstance is held invalid, such invalidity shall not affect
21 other provisions or applications of the act which can be given effect without
22 the invalid provision or application, and to this end the provisions of this
23 act are declared to be severable.

24
25 SECTION 26. All laws and parts of laws in conflict with this act are
26 hereby repealed.

27 /s/Rep. Luker

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29 APPROVED: 3-14-95

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