

As Engrossed: 2/7/91, 2/11/91

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**

A Bill

SENATE BILL 332

4 **By: Senators Hoofman, Bookout, Russ, Cassady, Everett and Todd**

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For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE §§ 14-207-103 AND 14-207-
9 104, THE SAME BEING SECTIONS 3 AND 4 OF ACT 639 OF 1989,
10 TO MAKE THE ACQUISITION BY MUNICIPALLY-OWNED ELECTRIC
11 UTILITIES OF THE PROPERTIES, FACILITIES, AND CUSTOMERS OF
12 PUBLIC UTILITIES UPON ANNEXATION MANDATORY, UNLESS THE
13 MUNICIPALITY AND PUBLIC UTILITY AGREE OTHERWISE; TO
14 DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES."

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

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18 SECTION 1. Arkansas Code § 14-207-103, the same being Section 3 of Act
19 639 of 1989, is hereby amended to read as follows:

20 "14-207-103. Right to acquire properties and facilities.

21 (a) Unless otherwise agreed, within three (3) years after the
22 certification of annexation, whether voluntary or involuntary according to
23 applicable law, Arkansas municipal corporations or consolidated municipal
24 utility improvement districts (municipality) owning and operating electric
25 utility systems shall acquire any or all properties, facilities, and customers
26 of electric public utilities serving within newly annexed areas in accordance
27 with the provisions of this subchapter.

28 (b) The municipality shall give a six-month's written notice to the
29 public utility of its intent to acquire any or all properties, facilities, and
30 customers of the public utility within newly annexed areas.

31 (c) *It is the specific intent and purpose of this section to provide*
32 *that, without a specific agreement between the annexing municipality and the*
33 *electric public utility to the contrary, the only means by which the annexing*
34 *municipality may engage in providing electric utility service within newly*
35 *annexed area is through acquisition, pursuant to the provisions of this*

1 *subchapter, of the properties, facilities and customers of the electric public*
2 *utility already serving in such newly annexed area."*

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4 SECTION 2. Arkansas Code § 14-207-104, the same being Section 4 of Act
5 639 of 1989, is hereby amended to read as follows:

6 "14-207-104. Procedures and valuation formula.

7 Unless otherwise agreed, all acquisitions of electric public utility
8 properties, facilities, and customers by municipalities described in
9 14-207-102 shall be governed by the following procedures and valuation
10 formula:

11 (1) After the six-month notification by the municipality of its
12 election to acquire public utility system properties, facilities, and
13 customers, the municipality shall pay to the electric public utility an amount
14 equal to the following:

15 (A) The present-day reproduction cost, new, of the properties and
16 facilities being acquired, less depreciation computed on a straight-line
17 basis; plus

18 (B) An amount equal to the cost of constructing any necessary
19 facilities to reintegrate the system of the electric public utility outside
20 the annexed area after detaching the portion to be sold.

21 (2) In the event that the electric public utility system does not
22 provide wholesale power service to the municipality acquiring its properties,
23 facilities, and customers, the municipality and the electric public utility
24 shall, for a period of six (6) months after the notification required by
25 14-207-103, consistent with the laws, rules and regulations of appropriate
26 regulatory authorities and existing power supply agreements, negotiate, in
27 good faith, for power contracts which would provide for the purchase of power
28 by the municipality from the electric public utility for an amount of power
29 equivalent to the loss of any sales to customers of the electric public
30 utility acquired by the municipality under this subchapter. In the event that
31 the municipality ceases the receipt of wholesale power service from the
32 electric public utility system consistent with the terms of the wholesale
33 power supply agreement prior to five (5) years after the acquisition of
34 electric public utility system properties, facilities, and customers under
35 this subchapter, then the municipality will pay, pro rata for the remainder of

1 such five-year period in accordance with subdivision (3)(B) of this section.

2 (3) In the event that such an agreement pursuant to subdivision (2) of
3 this section cannot be reached within such six-month period, then the
4 municipality will pay the public utility for facilities in addition to amounts
5 required by subdivision (1) of this section either:

6 (A) Two hundred thirty percent (230%) of gross revenues less
7 gross receipts taxes received by the public utility for the twelve-month
8 period preceding notification from customers in the annexed area; or

9 (B) The amount required by subdivision (3)(A) of this section
10 payable over five (5) years with interest at the then prevailing AAA insured
11 tax exempt municipal bond interest rate."

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13 SECTION 3. All provisions of this act of general and permanent nature
14 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
15 Revision Commission shall incorporate the same in the Code.

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17 SECTION 4. If any provisions of this act or the application thereof to
18 any person or circumstance is held invalid, the invalidity shall not affect
19 other provisions or applications of the act which can be given effect without
20 the invalid provisions or application, and to this end the provisions of this
21 act are declared to be severable.

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23 SECTION 5. All laws and parts of laws in conflict with this act are
24 hereby repealed.

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26 SECTION 6. Emergency. It is hereby found and determined by the
27 Seventy-Eighth General Assembly of the State of Arkansas that the municipally-
28 owned utility's acquisition and purchase of the property of a public utility
29 may result in an adverse impact on the customers of the public utility, that
30 Act 639 of 1989 was enacted to alleviate this situation but confusion over the
31 permissive or mandatory nature of the law has not fulfilled that intent, and
32 that some Sections of Act 639, codified as Arkansas Code, Title 14, Chapter
33 207, need to be clarified to insure the procedures are understood to be
34 mandatory. Therefore, in order to clarify the full intent of Arkansas Code,
35 Title 14, Chapter 207, an emergency is hereby declared to exist, and this act

1 being necessary for the immediate preservation of the public peace, health,
2 and safety, shall be in full force and effect from and after its passage and
3 approval.

4 */s/Hoofman, et al*

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