

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Senators Bookout, Russ, Gibson, Cassady, Walters, Gordon, Hardin, Hoofman, Bearden,**  
5 **Todd, Ross and Everett**

# A Bill

**SENATE BILL**

## For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE §14-207-101, §14-207-103,  
10 §14-207-104 and §14-207-106 CONCERNING THE ACQUISITION OF  
11 THE PROPERTIES, FACILITIES AND CUSTOMERS OF AN ELECTRIC  
12 PUBLIC UTILITY BY A MUNICIPALITY WHICH OWNS OR OPERATES AN  
13 ELECTRIC UTILITY SYSTEM; AND FOR OTHER PURPOSES."

14  
15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

16  
17 SECTION 1. Ark. Code Ann. §14-207-101, the same being Section 1 of Act  
18 639 of 1989, is hereby amended to read as follows:

19  
20 "14-207-101. Definitions.

21 As used herein the following terms shall have the following definitions:

22 (1) Municipality shall mean both Arkansas municipal corporations and  
23 consolidated municipal utility improvement districts;

24 (2) Electric public utility and electric public utility system  
25 shall include persons, corporations, and other entities providing electric  
26 power to the public at wholesale or retail, but shall not include electric  
27 cooperative corporations providing electric power predominantly for resale.

28 (3) Franchise or franchise agreement shall mean an agreement  
29 between a municipality which owns or operates an electric utility system and  
30 an electric public utility (including but not limited to franchise agreements  
31 within the meaning of Act 324 of 1935, as amended), whereby the electric  
32 public utility continues to serve customers in its allocated service area and  
33 pays to the municipality which owns or operates an electric utility system  
34 franchise fees in accordance with applicable law and the rules and regulations  
35 of the Arkansas Public Service Commission."

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

SECTION 2. Ark. Code Ann. §14-207-103, the same being Section 3 of Act 639 of 1989, is hereby amended to read as follows:

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

(a) Unless otherwise agreed between a municipality which owns or operates an electric utility system and an electric public utility, the inclusion by annexation, whether voluntary or involuntary according to applicable law, of any part of the assigned service area of an electric public utility within the boundaries of any Arkansas municipality shall not in any respect impair or affect the rights of the electric public utility to continue and extend electric service throughout any part of its assigned service area unless a municipality which owns or operates an electric utility system elects, within three (3) years after the certification of annexation, to purchase from the electric public utility all customers, distribution properties and facilities reasonably utilized or reasonably necessary to serve customers of the electric public utility within the annexed areas in accordance with the provisions of this subchapter. If the municipality which owns or operates an electric utility system and the electric public utility agree to a franchise agreement for a specific term of years, unless otherwise agreed, the municipality's obligation to elect to acquire public utility properties within a period of three (3) years as required by this subsection shall not commence until the termination of the franchise agreement. A municipality which owns or operates an electric utility system and an electric public utility may agree to franchise agreements defined in §14-207-101(3) whether or not the service territory of the electric public utility is brought into the municipality's corporate limits before or after the effective date of this Act.

Unless otherwise agreed between a municipality which owns or operates an electric utility system and an electric public utility, a municipality may not undertake or commence any construction or operation of any equipment or facilities for the supplying of electric service, or extension thereof, to the annexed areas without having made a timely election and complying with the provisions of this subchapter. Any violation shall vest the affected electric public utility with a right to injunctive relief.

1           (b) The municipality shall give a six-months' written notice to the  
2 electric public utility of its election to acquire from the electric public  
3 utility all customers, distribution properties and facilities reasonably  
4 utilized or reasonably necessary to serve customers of the electric public  
5 utility within the annexed areas. Within the six-month period after the  
6 notification, the municipality and the electric public utility shall meet and  
7 negotiate in good faith the terms of the acquisition, including, as an  
8 alternative, granting the electric public utility a franchise or franchise  
9 agreement to serve the annexed area. In the event that the electric public  
10 utility system does not provide wholesale power service to the municipality  
11 acquiring its properties, facilities and customers, the municipality and the  
12 electric public utility shall also negotiate, consistent with the laws, rules  
13 and regulations of appropriate authorities and existing power supply  
14 agreements, for power contracts which would provide for the purchase of power  
15 by the municipality from the electric public utility for an amount of power  
16 equivalent to the loss of any sales to customers of the electric public  
17 utility acquired by the municipality under this subchapter."

18

19           SECTION 3. Ark. Code Ann. §14-207-104, the same being Section 4 of Act  
20 639 of 1989, is hereby amended to read as follows:

21

22           "14-207-104. Procedures and valuation formula.

23

24           In the event that an agreement pursuant to §14-207-103(a) or (b) cannot  
25 be reached within such six-month period, the municipality shall pay to the  
26 electric public utility an amount equal to the following:

27           (1) The present-day reproduction cost, new, of the properties and  
28 facilities being acquired, less depreciation computed on a straight-line  
29 basis; plus

30           (2) An amount equal to the cost of constructing any necessary  
31 facilities to reintegrate the system of the electric public utility outside  
32 the annexed area after detaching the portion to be sold; plus

33           (3) In the event that the electric public utility system does not  
34 provide wholesale power service to the municipality acquiring its properties,  
35 facilities, and customers under this subchapter, then, in addition to the

1 amounts required by subdivisions (1) and (2) of this section, the municipality  
2 shall pay the electric public utility either:

3           (A) Three hundred fifty-five percent (355%) of gross revenues  
4 less gross receipts taxes received by the electric public utility for the  
5 twelve-month period preceding notification from customers in the annexed area;  
6 or

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

10           In the event that the electric public utility system ceases to provide  
11 wholesale power service to the municipality prior to five (5) years after the  
12 acquisition of the properties, facilities and customers of the electric power  
13 utility under this subchapter, then the municipality will pay, pro rata for  
14 the remainder of such five-year period, in accordance with subdivision (3)(B)  
15 of this section."

16

17           SECTION 4. Ark. Code Ann. §14-207-106, the same being Section 6 of Act  
18 639 of 1989, is hereby amended to read as follows:

19

20           "14-207-106. Exercise of power of eminent domain.

21           (a) At the conclusion of the six-month notification period, in the  
22 event that agreement is not reached pursuant to §14-207-103(a) or (b), or the  
23 municipality and the electric public utility disagree on the valuations  
24 described in §14-207-104, but no later than three (3) years from certification  
25 of annexation or three (3) years from termination of any franchise agreement  
26 authorized by this Act, the municipality may, after paying, or, if applicable,  
27 commencing payment of, any amounts not in dispute and depositing into the  
28 registry of the court the amount in dispute, or such lesser amounts as the  
29 court, after hearing, determines to be just, exercise the right and power of  
30 eminent domain under the procedures of §18-15-301 et seq., and may take  
31 possession of the properties and facilities and commence service to the  
32 customers as of the date it makes the deposit; provided, however, that any  
33 compensation or damages for the properties, facilities and customers taken  
34 shall be determined in accordance with §14-207-104.

35           (b) The date of taking for the purposes of this subchapter shall be

1 either the date the deposit authorized by this section is made or, in the  
2 event no deposit is made, the date of the court award."

3

4 SECTION 5. All provisions of this Act of a general and permanent nature  
5 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
6 Revision Commission shall incorporate the same in the Code.

7

8 SECTION 6. If any provisions of this Act or the application thereof to  
9 any person or circumstances is held invalid, such invalidity shall not affect  
10 other provisions or applications of the Act which can be given effect without  
11 the invalid provision or application, and to this end the provisions of this  
12 Act are declared to be severable.

13

14 SECTION 7. All laws and parts of laws in conflict herewith are hereby  
15 repealed. Specifically, A.C.A. §14-207-103, §14-207-104 and §14-207-106 where  
16 in conflict with this Act are hereby repealed. This Act shall be applicable  
17 to all acquisitions of electric public utility properties coming within  
18 municipalities owning or operating electric utility systems on or after the  
19 effective date of this Act. Acquisitions of electric public utility  
20 properties located within municipalities owning or operating electric utility  
21 systems prior to the effective date of this Act shall be governed by Act 639  
22 of 1989 (including provisions specifically repealed by this Section) or other  
23 law, if any, applicable prior to the effective date of this Act.

24

25 SECTION 8. Emergency. It is hereby found and determined by the  
26 Seventy-Eighth General Assembly of the State of Arkansas that the acquisition  
27 of the properties, facilities and customers of an electric public utility by a  
28 municipality which owns or operates an electric utility system may result in  
29 an adverse impact on the electric public utility, that Act 639 of 1989 was  
30 enacted to alleviate this situation but that certain sections of Act 639 of  
31 1989, codified as Arkansas Code, Title 14, Chapter 207, need to be amended to  
32 strengthen and clarify the procedures. Therefore, in order to strengthen and  
33 clarify the intent of Arkansas Code, Title 14, Chapter 207, an emergency is  
34 hereby declared to exist, and this Act being necessary for the immediate  
35 preservation of the public peace, health, and safety, shall be in full force

1 and effect from and after its passage and approval.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27