

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4  
5 By: Representative Vess  
6 By: Senator Mahony  
7

# A Bill

HOUSE BILL 2126

## For An Act To Be Entitled

9 "AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF METROPOLITAN  
10 WATER DISTRICTS, TO PROVIDE FOR THEIR FORMATION AND OTHER  
11 PROCEDURES, TO PRESCRIBE THEIR POWERS AND AUTHORITY UNDER  
12 A BOARD OF DIRECTORS, AND TO PERMIT THEM TO SET RATES FOR  
13 WATER SERVICES AND THE AUTHORITY TO EXTEND SERVICE; AND  
14 FOR OTHER PURPOSES."

## Subtitle

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17 "AN ACT PROVIDING FOR THE CREATION OF  
18 METROPOLITAN WATER DISTRICTS AND  
19 PRESCRIBING POWERS AND AUTHORITY, AND TO  
20 PERMIT THEM TO SET RATES AND EXTEND  
21 SERVICE."  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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25 SECTION 1. This act shall be known and may be cited as the  
26 "Metropolitan Water District Act."

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28 SECTION 2. Definitions. As used in this act, unless the context  
29 otherwise requires:

30 (1) "District" means a metropolitan water district formed pursuant to  
31 this act.

32 (2) "Local government" means cities of the first and second class,  
33 incorporated towns, counties, improvement districts, public facilities boards,  
34 and regional water districts.

35 (3) "Person" means any individual, firm, association, corporation,  
36 partnership, association, government or governmental agency, and any other

1 legal entity.

2       (4) "Primary service area" means the geographical area within which  
 3 inside city rates were charged pursuant to Arkansas Code § 14-234-110 at the  
 4 time of the filing of the articles of agreement.

5       (5) "Waterworks system" means and includes a waterworks system in its  
 6 entirety, or any integral part thereof, including mains, hydrants, meters,  
 7 valves, standpipes, storage tanks, pumping stations, intakes, wells,  
 8 impounding reservoirs, and treatment plants.

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 10       SECTION 3. Construction. This act, being necessary for the public  
 11 health, safety, and welfare, shall be liberally construed to carry out its  
 12 purposes.

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 14       SECTION 4. Formation. Any two or more local governments may form a  
 15 metropolitan water district having the powers and for the purposes established  
 16 by this act and any local government may join a metropolitan water district  
 17 established pursuant to this act. A metropolitan water district shall be a  
 18 political subdivision of the State.

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 20       SECTION 5. Procedure. Local governments desiring to form a  
 21 metropolitan water district shall file articles of agreement with the  
 22 Secretary of State which shall contain:

23       (1) A statement describing the reasons for formation of the district and  
 24 the benefits to be derived therefrom;

25       (2) The proposed name of the district;

26       (3) The number, method of selection, and terms of members of the Board  
 27 of Directors of the district and the names of the original Board of Directors;

28       (4) The effective date of the creation of the district;

29       (5) A description of the primary service area of the district;

30       (6) A statement describing the procedure for the distribution of the  
 31 assets of the district in the event of dissolution; and

32       (7) Other terms and conditions deemed appropriate by the local  
 33 governments forming the district, including but not limited to provisions to  
 34 protect the customers of the local governments forming the district.

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 36       SECTION 6. Additional Parties. The Board of Directors of a metropolitan

1 water district may authorize additional local governments to join the district  
 2 by filing a certificate with the Secretary of State executed by the local  
 3 government and all of the Board of Directors of the district, which  
 4 certificate shall set forth the terms and conditions upon which the other  
 5 local government joins the district.

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7 SECTION 7. Appropriations of Funds. A local government executing  
 8 articles of agreement or the certificate described in Section 6 of this act  
 9 may appropriate funds to the district and sell, lease, give or otherwise  
 10 supply assets and other property, including beneficial interests therein,  
 11 personnel, or services to the district which are necessary or useful for the  
 12 district to function as a metropolitan water district and to comply with the  
 13 terms and conditions of its articles of agreement or certificate.

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15 SECTION 8. Governmental Capacity. A metropolitan water district shall  
 16 operate its waterworks system in a governmental and not a proprietary  
 17 capacity. A metropolitan water district shall have the option of extending  
 18 its services to any person pursuant to general utility laws but shall not be  
 19 obligated to do so.

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21 SECTION 9. Powers. A metropolitan water district shall constitute a  
 22 public body corporate and politic, exercising public and essential  
 23 governmental functions and have all the powers necessary or convenient to  
 24 carry out the purposes and provisions of this act, including, but not limited  
 25 to, the following powers:

26 (1) To operate, construct, erect, purchase, lease as lessor or lessee,  
 27 expand, acquire, improve, equip, maintain, own, hold, operate and repair one  
 28 or more waterworks systems or any part thereof;

29 (2) To sue and be sued;

30 (3) To adopt a seal and alter it at pleasure, and to use it, or a  
 31 facsimile thereof, as required by law;

32 (4) To have perpetual succession;

33 (5) To make and execute contracts and other instruments necessary or  
 34 convenient to the exercise of the powers of the district;

35 (6) To sell water to any person or local government at such rates and  
 36 upon such terms and conditions as may be determined from time to time by the

1 Board of Directors, subject to the provisions of this act;

2 (7) To adopt, amend and repeal rules and regulations, from time to time,  
3 not inconsistent with this act to carry into effect the powers and purposes of  
4 the district;

5 (8) To borrow money and otherwise contract indebtedness;

6 (9) To issue its bonds, notes, or other evidences of indebtedness and to  
7 secure the payment thereof by mortgage or pledge of any or all of its  
8 property, assets, rights, privileges, licenses, rights-of-way, easements,  
9 revenues, or income;

10 (10) To own, hold, and improve real or personal property;

11 (11) To exercise the power of eminent domain to carry into effect the  
12 powers and purposes of the district;

13 (12) To purchase, lease as lessor or lessee, obtain options upon,  
14 acquire by gift, grant, or otherwise, any real or personal property, or any  
15 interest therein;

16 (13) To sell, lease, exchange, transfer, assign, pledge, or dispose of  
17 any real or personal property or any interest in it; provided that nothing  
18 herein shall authorize a district to sell a water source, treatment plant,  
19 transmission line, or other integral part of a waterworks system to a private  
20 corporation;

21 (14) To insure or provide for the insurance of any real or personal  
22 property, or operations of the district against any risk or hazards;

23 (15) To procure insurance or guarantees from the federal government of  
24 the payment of any debts, or parts of them, secured by mortgages on any  
25 property included in any of its projects;

26 (16) To establish reserves, reserve funds, sinking funds and trust  
27 funds;

28 (17) To invest any funds held in reserves or sinking funds, or any funds  
29 not required for immediate disbursement, in property or securities in which  
30 public funds may be legally invested;

31 (18) To exercise all other powers pertaining to municipal waterworks  
32 systems now or hereafter granted to any local government or municipal  
33 waterworks commissions;

34 (19) To make payments from water revenues to the general fund of a local  
35 government in lieu of taxes as provided in this act;

36 (20) To charge and collect fees, rentals and other income of any type in

1 connection with recreational activities on any property of the district, which  
 2 may be used to defray the cost of providing or maintaining recreational  
 3 facilities and protection of water supply against pollutants or other hazards  
 4 because of recreational activities;

5 (21) To make contributions to public agencies for charitable and  
 6 economic development purposes;

7 (22) To utilize all public right-of-ways, streets and easements for the  
 8 purpose of construction, repair, operation, and maintenance of water mains and  
 9 distribution lines;

10 (23) To engage in all related activities which have as their objective  
 11 the development of a dependable potable water supply and distribution system;  
 12 and

13 (24) To exercise all additional powers as may be described in the  
 14 articles of agreement.

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16 SECTION 10. Board of Directors. All powers granted a district created  
 17 under this act shall be executed by a Board of Directors.

18 (1) The Board of Directors shall have full and complete authority to  
 19 manage, operate, improve, extend, and maintain the waterworks system and shall  
 20 have full and complete charge of the waterworks system including the authority  
 21 to employ and remove any and all employees, agents, attorneys, engineers and  
 22 other professionals, and fix, regulate and pay their compensation. It is the  
 23 intention of this act to vest in the Board of Directors unlimited authority to  
 24 operate, manage, maintain, improve, and extend the waterworks system and to  
 25 have full and complete charge thereof.

26 (2) The Board of Directors may designate one or more wardens who shall  
 27 have authority to arrest or apprehend any person violating the boating laws of  
 28 this State or the rules and regulations of the district or the rules and  
 29 regulations of the State Board of Health pertaining to protection of public  
 30 water supplies, and may take the offender when apprehended before any court  
 31 having jurisdiction of the offense, however, such wardens shall have no  
 32 authority to make arrest for violation of the game and fish laws, rules and  
 33 regulations of this State.

34 (3) A person may be removed from the Board of Directors for cause by the  
 35 circuit court of the county in which the district's principal office is  
 36 located.

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SECTION 11. Eminent Domain. For the purpose of acquiring any lands or property for the operation of a metropolitan water district and its waterworks system, a metropolitan water district shall be granted right of eminent domain and the power to condemn property for public purposes as provided in Arkansas Code § 14-234-215 for municipal waterworks systems and in §§ 18-15-401 through 18-15-410 for municipal waterworks systems.

SECTION 12. Financing. For the purpose of purchasing, acquiring or constructing a waterworks system, or improvements, extensions, or betterments to a waterworks system, a metropolitan water district, by resolution of its Board of Directors, shall have the power to borrow money and issue promissory notes, revenue bonds, and other evidences of indebtedness, and use the revenues derived from operating its waterworks system to pay the indebtedness represented thereby and the interest thereon, as provided for municipal waterworks systems in Title 14, Chapter 234, Subchapters 1 and 2 of Arkansas Code of 1987, Annotated.

SECTION 13. Rates.

(1) The Board of Directors of a district shall fix, regulate and collect rates, fees, or other charges for water or services furnished by the district.

(2) The district's rates shall be just, reasonable and nondiscriminatory; provided, however, the articles of agreement may provide for rate differentials for a reasonable period based upon the difference in value of the waterworks system, assets, funds, and property contributed to the district by a local government, and may establish different rates during such period for customers that reflect the difference in value of contributions to the district by each local government.

(3) The rates, fees, or other charges for water or services furnished by the district shall be sufficient at all times to pay all operating and maintenance expenses necessary or desirable for the prudent conduct of its affairs and the principal of and interest on the debt obligations issued or assumed by the district in the performance of the purposes for which it was organized, and for the creation of adequate reserves.

(4) The revenues of the district shall be devoted, first, to the payment of operating and maintenance expenses and the principal and interest on

1 outstanding obligations, and thereafter to reserves for improvements, new  
2 construction, depreciation and contingencies as the Board of Directors of the  
3 district may from time to time prescribe.

4 (5) Revenues not required for the purposes set forth in subdivision (4)  
5 of this section shall be resumed from time to time to the customers of the  
6 district on a pro rata basis, but such return may be made by way of a general  
7 rate reduction to customers if the Board of Directors of the district so  
8 elects.

9 (6) If any district sells water to persons outside the district's  
10 primary service area, the Board of Directors shall fix the rates, fees, and  
11 other charges for water and services furnished to persons outside the  
12 district's primary service area which shall include, but should not be limited  
13 to, the cost of providing water to such persons plus a reasonable rate of  
14 return on the value of the district's waterworks system. Moreover, no part of  
15 the costs of distributing water or providing services outside the district's  
16 primary service area shall be borne by the district, nor shall there be an  
17 increase in the costs to the district as a result of furnishing water or  
18 services to persons outside the district's primary service area.

19 (7) The Board of Directors may impose a development charge to its  
20 customers to acquire a future source of water, additional water treatment  
21 facilities, or improvements, extensions or betterments to its waterworks  
22 system. Such a development charge may be in the form of a surcharge, and may  
23 be charged to all customers or to those customers that directly contribute to  
24 the need for or benefit from the acquisition, improvement, extension or  
25 betterment. The revenues derived from a development charge may be deposited  
26 to a reserve fund pursuant to Arkansas Code §§ 14-73-101 through 14-73-104.

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28 SECTION 14. Appeal from District Actions. Any person aggrieved by the  
29 service furnished or rates charged by a district shall have the right to  
30 petition for, or appeal from, the decision, action or inaction of the district  
31 to the circuit court of the county in which the district's principal office is  
32 located. Upon the petition being filed, the circuit court shall hear the  
33 petition de novo and is empowered to make such orders as necessary and proper  
34 in law.

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36 SECTION 15. Payments in Lieu of Taxes.

1           (1) The Board of Directors of the district may make payments from water  
 2 revenues to the general fund of any local government, in lieu of taxes, in  
 3 return for police, fire and health protection, rights-of-way, and  
 4 administrative and other services furnished to the district by the local  
 5 government. The payments shall be discretionary with the Board of Directors  
 6 of the district and shall not be mandatory.

7           (2) The payments, if made, shall be an operation and maintenance expense  
 8 of the waterworks system.

9           (3) In any calendar year, the payments authorized by this section shall  
 10 not exceed the total of the following:

11                   (a) A sum equal to ten percent (10%) of the gross income from  
 12 water sales within the boundaries of the local government during the preceding  
 13 calendar year; plus

14                   (b) A sum equal to the amounts the local government would have  
 15 received from the district for the preceding calendar year if the district's  
 16 property had been privately owned and subject to tax by the local government.  
 17 For the purpose of this computation the district's property shall be deemed  
 18 to have an assessed value equal to twenty percent (20%) of book value as  
 19 reflected by the district's usual accounting procedures.

20           (4) The payments authorized in this section shall not be made unless the  
 21 district maintains water rates sufficient to pay all items specified in  
 22 Section 13 of this act.

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24           SECTION 16. Tax Exemption. Districts formed under this act shall be  
 25 exempt from all excise taxes of whatsoever kind or nature, and further shall  
 26 be exempt from payment of assessments in any general or special taxing  
 27 district levied upon the property of the district, whether real, personal or  
 28 mixed.

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30           SECTION 17. Early Retirement. Notwithstanding any provision to the  
 31 contrary in the Arkansas Public Employees Retirement Act, Arkansas Code  
 32 §§ 24-4-101, et seq., the Board of Director's of the district may provide for  
 33 early retirement benefits, to be paid by the district, to carry out the  
 34 purposes of this act.

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36           SECTION 18. Supplemental. It is the specific intent of this act that



1 the provisions of this act are supplemental to other constitutional and  
2 statutory provisions now existing or hereafter adopted which may authorize  
3 local governments to construct, acquire, improve, equip, maintain, operate,  
4 repair, and finance waterworks systems. Nothing contained in this act shall  
5 be deemed to be a restriction or limitation upon alternative means of  
6 constructing, acquiring, improving, equipping, maintaining, operating,  
7 repairing, and financing waterworks systems available or hereafter made  
8 available to local governments for the purposes set forth in this act.

9

10 SECTION 19. All provisions of this act of general and permanent nature  
11 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
12 Revision Commission shall incorporate the same in the Code.

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

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20 SECTION 21. All laws and parts of laws in conflict with this act are  
21 hereby repealed.

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