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2 92nd General Assembly
3 Regular Session, 2019

A Bill

SENATE BILL 481

4
5 By: Senator A. Clark

For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING WATER AND
9 WASTEWATER PROVIDERS AND RELATED SERVICE; AND FOR
10 OTHER PURPOSES.

Subtitle

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14 TO AMEND THE LAW CONCERNING WATER AND
15 WASTEWATER PROVIDERS AND RELATED SERVICE.

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

19
20 SECTION 1. Arkansas Code § 14-43-303(a), concerning officials in
21 mayor-council cities of the first class of 50,000 or more, is amended to read
22 as follows:

23 (a)(1)(A) ~~In~~ Except as provided under § 14-229-204(c), in the general
24 election in the year 1960, and every four (4) years thereafter, cities of the
25 first class that have a population of fifty thousand (50,000) persons or
26 more, according to the latest decennial federal census or special federal
27 census, and that also have the mayor-council form of government shall elect
28 the following officials:

- 29 (i) One (1) mayor;
30 (ii) One (1) city clerk; and
31 (iii) One (1) council member from each ward of the

32 city.

33 (B) All of these officials shall hold office for a term of
34 four (4) years and until their successors are elected and qualified.

35 (2)(A) ~~At~~ Except as provided under § 14-229-204(c), at the
36 general election in the year 1962 and every four (4) years thereafter, the



1 city shall elect:

- 2 (i) One (1) city attorney;
- 3 (ii) One (1) city treasurer; and
- 4 (iii) One (1) council member from each ward of the
- 5 city.

6 (B) All of these officials shall hold office for a term of
7 four (4) years and until their successors are elected and qualified.

8

9 SECTION 2. Arkansas Code § 14-43-312(a)(1), concerning council members
10 in mayor-council cities of the first class of fewer than 50,000, is amended
11 to read as follows:

12 (a)(1) ~~On~~ Except as provided under § 14-229-204(c), on the Tuesday
13 following the first Monday in November 1966 and every two (2) years
14 thereafter, the qualified voters of all cities of the first class having the
15 mayor-council form of government with fewer than fifty thousand (50,000)
16 inhabitants shall elect two (2) council members from each ward for a term of
17 two (2) years, except that by ordinance any city of the first class may refer
18 the question to voters to elect two (2) council members from each ward to
19 four-year terms as more particularly set out in subdivision (a)(2)(A) of this
20 section.

21

22 SECTION 3. Arkansas Code § 14-44-103(a)(1), concerning the election of
23 council members in a city of the second class, is amended to read as follows:

24 (a)(1) Except as provided under subdivision (a)(3) of this section and
25 § 14-229-204(c), on the Tuesday following the first Monday in November 1982,
26 and every two (2) years thereafter, the qualified voters in cities of the
27 second class shall elect for each of the wards of these cities two (2)
28 council members, who shall compose the city council.

29

30 SECTION 4. Arkansas Code § 14-45-102(a)(1), concerning the election of
31 council members in an incorporated town, is amended to read as follows:

32 (a)(1) Except as provided in subdivision (a)(2) of this section and §
33 14-229-204(c), on the Tuesday following the first Monday in November 1982 and
34 every two (2) years thereafter, the qualified voters of incorporated towns
35 shall elect five (5) council members.

36

1 SECTION 5. Arkansas Code § 14-47-109(a)(1), concerning the board of
2 directors in a city manager form of government, is amended to read as
3 follows:

4 (a)(1) ~~The~~ Except as provided under § 14-229-204(c), the seven (7)
5 directors elected by a city reorganized under this chapter shall be known and
6 designated as the board of directors of that city.

7
8 SECTION 6. Arkansas Code § 14-48-110(a)(1), concerning the board of
9 directors in a city administrator form of government, is amended to read as
10 follows:

11 (a)(1) ~~The~~ Except as provided under § 14-229-204(c), the seven (7)
12 directors elected by a city reorganized under this chapter shall be known and
13 designated as the board of directors of the city.

14
15 SECTION 7. Arkansas Code § 14-201-105(a)(1), concerning the members of
16 a municipal utility commission in a city of the first class, is amended to
17 read as follows:

18 (a)(1) ~~Any~~ Except as provided under § 14-229-204(c), any city of the
19 first class in which it is desired to establish such a utility commission, by
20 a majority vote of the city council, shall enact an ordinance creating a
21 commission to be composed of five (5) citizens who are qualified electors of
22 the county and not less than thirty-five (35) years of age.

23
24 SECTION 8. Arkansas Code § 14-201-204(a), concerning the members of a
25 municipal utility board or commission in certain cities of the first class,
26 is amended to read as follows:

27 (a) Any city of the first class subject to the provisions of this
28 subchapter owning, operating, or controlling a municipal light and power
29 plant, ~~or~~ sewer plant, or water plant is authorized by a proper ordinance
30 passed by the city council of the city and approved by its mayor to create a
31 board consisting of five (5) members for the purpose of directing, managing,
32 controlling, and operating the plant within the city or in any area in which
33 the city may be lawfully authorized to operate outside the city limits
34 thereof, except as provided in § 14-201-202 and § 14-229-204(c).

35
36 SECTION 9. Arkansas Code § 14-201-312(a), concerning the members of a

1 municipal board of public utilities in a city of the second class or an
2 incorporated town, is amended to read as follows:

3 (a) ~~Boards~~ Except as provided under § 14-229-204(c), boards of public
4 utilities, when created in the manner set out in this subchapter, shall be
5 composed of five (5) members, each of whom, at the time of his election shall
6 not be less than twenty-five (25) years ~~old~~ of age and a resident and owner
7 of real estate in one (1) or more of the improvement districts owning the
8 light or water plants or sewerage systems coming under the control of the
9 board of public utilities as provided.

10
11 SECTION 10. Arkansas Code Title 14, Chapter 229, is amended to add an
12 additional subchapter to read as follows:

13 Subchapter 2 – Oversight of Water and Wastewater Service Providers

14
15 14-229-201. Definition – Findings.

16 (a) As used in this subchapter, "provider" means any provider of water
17 or wastewater service.

18 (b) The General Assembly finds that:

19 (1) Oversight of providers in the state is primarily handled by
20 the Arkansas Natural Resources Commission, the Department of Health, and the
21 Arkansas Department of Environmental Quality;

22 (2) The oversight of these providers is spread out and results
23 in the inability of a single entity to monitor and help initiate necessary
24 changes in public access of water, rate structures, the sustainability of the
25 providers, and the protection of consumer rights;

26 (3) While local control is important, the current landscape of
27 providers has the potential to create inefficiencies in service and
28 instability in fiscal management;

29 (4) Combining smaller providers may be necessary in some areas
30 in order to guarantee dependable and plentiful provision of water and to
31 avoid unsustainable rate increases;

32 (5) Many providers have an aging workforce, and there is a need
33 for education of the governing bodies of these providers concerning the
34 importance of recruiting and retaining an expert workforce;

35 (6) Training of local, state, and federal leaders on issues
36 surrounding water provider personnel, finances, compliance, and environmental

1 factors is needed; and

2 (7) Education of public school students regarding the importance
3 of water is necessary.

4
5 14-229-202. Fiscal distress – Improvement plans – Rates and rate
6 studies.

7 (a)(1) For the purposes of this section, a provider is in fiscal
8 distress if the provider:

9 (A) Fails to obtain a rate study as required by this
10 section;

11 (B) Fails to implement a completed rate study required
12 under this section; or

13 (C) Has been found by the Arkansas Department of
14 Environmental Quality or the Department of Health to be in significant
15 noncompliance with rules of the Arkansas Department of Environmental Quality
16 or the Department of Health because of inadequate funds for operation,
17 maintenance, and compliance.

18 (2) A provider may be found by the Arkansas Natural Resources
19 Commission to be subject to this section if a member of a provider's
20 governing body does not receive the training required under § 14-229-205.

21 (b)(1) Upon the identification of a provider in fiscal distress, the
22 commission may:

23 (A) Evaluate, determine, and mandate the implementation of
24 rates necessary to adequately address current and future costs under this
25 section;

26 (B) Mandate and assist in the consolidation of the
27 provider or certain functions of the provider with another provider; and

28 (C) Mandate and assist the provider in developing an
29 improvement plan to address fiscal, operational, refurbishment, and
30 replacement concerns.

31 (2) The commission shall maintain and publish on the
32 commission's website a list of providers in fiscal distress.

33 (c)(1) A provider shall obtain a rate study on the following schedule:

34 (A) By July 1, 2022, and every five (5) years thereafter
35 for a provider that serves five hundred (500) or fewer customers;

36 (B) By July 1, 2023, and every five (5) years thereafter

1 for a provider that serves five hundred one (501) to one thousand (1,000)
2 customers; and

3 (C) By July 1, 2024, and every five (5) years thereafter
4 for a provider that serves more than one thousand (1,000) customers.

5 (2)(A) Rates shall adequately address costs for:

6 (i) Operation and maintenance;

7 (ii) Debt service;

8 (iii) Required reserves;

9 (iv) Depreciation;

10 (v) Future capital expenses;

11 (vi) An annual audit or agreed-upon procedures and
12 compilation report; and

13 (vii) Other expenses as necessary.

14 (B)(i) The rates recommended in the rate study that is
15 obtained and chosen by the provider shall be implemented by the provider.

16 (ii) Except as provided in subdivision
17 (c)(2)(B)(iii) of this section, an increase in rates recommended in the rate
18 study shall be implemented within one (1) year of the receipt of the rate
19 study.

20 (iii) If recommended rates increase the provider's
21 rates by fifty percent (50%) or more from the fiscal year before the rate
22 study was completed, the provider may phase in the rate increase over a two-
23 year period.

24 (d)(1) The commission shall determine by rule the requirements of the
25 rate study, including without limitation a review of the provider's
26 refurbishment and replacement account and asset management plan.

27 (2) The rate study shall use as its basis the guidelines of the
28 American Water Works Association and the Water Environment Federation.

29 (e) A provider shall deposit a minimum of five percent (5%) per annum
30 of gross revenues in a dedicated replacement and refurbishment account within
31 twelve (12) months of implementation of the rate, unless a different amount
32 is determined by a rate study.

33 (f)(1) The commission shall maintain an approved list of entities to
34 conduct rate studies required by this section, including without limitation
35 professional engineers, certified public accountants, economists, and
36 actuaries.

1 (2) If a provider chooses an entity to conduct the rate study
2 that is not on the approved list of entities, the entity is required to have
3 conducted at least one (1) rate study in the state in the previous five-year
4 period.

5 (g)(1) To ensure fiscal soundness, the commission shall consider and
6 approve a new provider with fewer than three hundred (300) customers within
7 the proposed service area only if:

8 (A) The Department of Health or the Arkansas Department of
9 Environmental Quality determines that public health or the environment is
10 threatened without the approval of the new provider; or

11 (B) There is no other viable alternative.

12 (2) A new provider with fewer than three hundred (300) customers
13 seeking approval shall:

14 (A) Be organized through a political subdivision,
15 including without limitation an improvement district, a county, or a
16 municipality;

17 (B) Demonstrate the ability to remain fiscally
18 sustainable; and

19 (C) Complete a technical, financial, and managerial
20 capacity review conducted by the Department of Health or the Arkansas
21 Department of Environmental Quality.

22 (h)(1) A provider that plans to undertake a major development project
23 shall obtain a rate study or amend the provider's existing rate study to
24 include consideration of the financial impact of the major development
25 project on the fiscal sustainability of the provider before the major
26 development project.

27 (2) As used in this section, "major development project" means a
28 project that exceeds twenty percent (20%) or more of gross revenues of the
29 immediately preceding fiscal year.

30 (i) A provider shall file its most recent rate study annually with
31 Arkansas Legislative Audit at the same time the provider files its audit
32 report or agreed-upon procedures and compilation report as required under §
33 14-234-120.

34 (j)(1) The commission shall annually identify and notify a provider if
35 the provider is in fiscal distress.

36 (2) The provider may appeal the finding to the Pulaski County

1 Circuit Court.

2 (k)(1) A provider found to be in fiscal distress shall file an
3 improvement plan with the commission, including without limitation specific
4 action to be taken to correct financial, technical, and managerial
5 deficiencies within ninety (90) days of the finding of fiscal distress.

6 (2)(A) Upon receipt of the improvement plan under this
7 subsection, the commission shall review the improvement plan and:

8 (i) Approve the improvement plan in whole or in
9 part;

10 (ii) Modify the improvement plan; or

11 (iii) Deny the improvement plan.

12 (B) If a provider is found to be in fiscal distress, the
13 commission may:

14 (i) Order that the provider adopt and maintain a
15 rate structure necessary to transition the provider out of fiscal distress;

16 (ii) Order that the provider employ personnel for
17 the financial, technical, and managerial operation of the provider necessary
18 to transition the provider out of fiscal distress;

19 (iii) Petition the Pulaski County Circuit Court to
20 appoint a receiver to liquidate the operations of the provider; or

21 (iv) Take steps to reorganize, restructure, or
22 consolidate the provider.

23 (C) At the time the commission determines that the
24 provider is no longer in fiscal distress, the commission shall remove the
25 fiscal distress designation and notify the provider.

26 (l) If a provider is found to be in fiscal distress, the provider
27 shall not receive state financial assistance for water or wastewater
28 operations until an approved improvement plan is in place as approved by the
29 commission, unless the financial assistance is for the purposes under
30 subdivision (b)(1) of this section or is immediately necessary to ensure
31 preservation of the public peace, health, and safety, as determined by the
32 commission.

33 (m) If the provider is found to be in fiscal distress, the provider
34 shall obtain written authorization of the commission to:

35 (1) Incur additional debt;

36 (2) Accept assistance for the refurbishment or replacement of

1 facilities or construction of facilities not within the provider's
2 improvement plan; or

3 (3) Transfer assets to another entity.

4
5 14-229-203. Workforce recruitment and retention – Education.

6 A provider shall:

7 (1) Work with the Arkansas Municipal League and the Association
8 of Arkansas Counties to develop training for leaders of the political
9 subdivision;

10 (2) Provide suitable compensation and incentives for individuals
11 to consider a career with the provider; and

12 (3) Promote the recruitment, education, and licensing of
13 provider employees.

14
15 14-229-204. Municipal providers – Provision of water to nonresident
16 customers.

17 (a)(1) If a municipal provider is unable or unwilling to provide
18 service to a nonresident property owner residing in the provider's service
19 area, the Arkansas Natural Resources Commission may require the municipal
20 provider to release the nonresident property owner to a willing provider.

21 (2) If required by the willing provider, a nonresident property
22 owner may be required to pay the costs of necessary extensions to connect to
23 the willing provider.

24 (3) A municipal provider shall not release a service area of the
25 municipal provider if the release would invalidate or encumber the issuance
26 or retirement of a bond, promissory note, or certificate of indebtedness
27 related to the service area.

28 (b)(1) Municipal providers that are willing to provide service to
29 areas outside the municipal boundaries shall do so through agreements
30 executed by the municipal provider and the affected property owners.

31 (2) The agreements shall clearly define any prerequisite the
32 municipal provider has for service to those areas.

33 (3) Failure to clearly define any annexation requirement within
34 the executed agreement prohibits the municipal provider from requiring
35 annexation in exchange for service for those areas without agreement from the
36 affected property owners.

1 (c) If a municipal provider services customers outside the municipal
2 boundaries of the municipal provider:

3 (1)(A) One (1) additional member from the area served shall be
4 added to the municipal provider board for every twenty percent (20%) of
5 customers outside the municipal provider's municipal boundaries, up to two
6 (2) additional members.

7 (B) A member added to a municipal provider board under
8 subdivision (c)(1)(A) of this section shall be named by and serve at the
9 pleasure of the county judge, subject to approval by the municipal provider
10 board; and

11 (2)(A) A separate governing board shall be created under
12 applicable law for the municipal provider if a separate governing board does
13 not exist for the municipal provider apart from the governing body of the
14 political subdivision.

15 (B) A person serving on the governing body of the
16 political subdivision may also serve on a separate governing board for the
17 municipal provider.

18 (d) The commission shall intervene if a municipal provider:

19 (1) Is prohibited from providing water to potential customers by
20 the political subdivision under which the municipal provider is organized;

21 (2) Practices business irresponsibly in relation to consumer
22 rights; or

23 (3) Is not following best management practices in providing
24 water or wastewater service.

25 (e) Except as otherwise provided in this section, a consumer shall not
26 be denied access to service if suitable distribution and collection
27 infrastructure already exists or if the consumer is willing to pay for
28 suitable distribution and collection infrastructure, unless:

29 (1) A municipal provider has made the decision not to extend
30 service outside the municipal boundaries of the municipal provider; or

31 (2) An engineering, capacity, physical feasibility, or fiscal
32 feasibility issue exists as determined by a professional engineer or
33 certified public accountant.

34
35 14-229-205. Training.

36 (a)(1)(A) Within one (1) year of election or appointment, a majority

1 of the members of a provider board shall receive a minimum of eight (8) hours
2 of provider training as promulgated by rule of the Arkansas Natural Resources
3 Commission.

4 (B) A current member of a provider board shall receive the
5 training required under this section by December 31, 2020.

6 (2) If a majority of the members of a provider board do not
7 receive the training required under this section, the commission may find the
8 provider is subject to § 14-229-202.

9 (b) The commission shall consult with an advisory training board of
10 members for the development of the training required under this section,
11 including without limitation:

12 (1) The Director of the Department of Health or his or her
13 designee;

14 (2) The Director of the Arkansas Department of Environmental
15 Quality or his or her designee;

16 (3) The Executive Director of the Arkansas Natural Resources
17 Commission or his or her designee;

18 (4) The State Director of the United States Department of
19 Agriculture Rural Development in Arkansas or his or her designee;

20 (5) The Chief Executive Officer of the Arkansas Rural Water
21 Association or his or her designee;

22 (6) The Executive Director of the Arkansas Municipal League or
23 his or her designee;

24 (7) The Executive Director of the Association of Arkansas
25 Counties or his or her designee;

26 (8) The Chair of the Board of Directors of Communities
27 Unlimited, Inc. or his or her designee;

28 (9) The Chair of the Arkansas Water Works and Water Environment
29 Association, Inc. or his or her designee;

30 (10) The Director of the Arkansas Environmental Training Academy
31 or his or her designee;

32 (11) The Chair of the House Committee on City, County, and Local
33 Affairs;

34 (12) The Vice Chair of the House Committee on City, County, and
35 Local Affairs;

36 (13) The Chair of the Senate Committee on City, County, and

1 Local Affairs; and

2 (14) The Vice Chair of the Senate Committee on City, County, and
3 Local Affairs.

4
5 14-229-206. Rules.

6 (a) The Arkansas Natural Resources Commission shall promulgate rules
7 necessary to implement this subchapter.

8 (b)(1) When adopting the initial rules to implement this subchapter,
9 the final rule shall be filed with the Secretary of State for adoption under
10 § 25-15-204(f):

11 (A) On or before January 1, 2020; or

12 (B) If approval under § 10-3-309 has not occurred by
13 January 1, 2020, as soon as practicable after approval under § 10-3-309.

14 (2) The commission shall file the proposed rule with the
15 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
16 2020, so that the Legislative Council may consider the rule for approval
17 before January 1, 2020.

18
19 SECTION 11. Arkansas Code § 14-234-303(a), concerning the
20 commissioners of a waterworks commission in a city of the first or second
21 class, is amended to read as follows:

22 (a) ~~Any~~ Except as provided under § 14-229-204(c), any city of the
23 first class or city of the second class may enact an ordinance by a majority
24 vote of the elected and qualified members of its city council creating a
25 waterworks commission to be composed of no less than three (3) nor more than
26 seven (7) citizens who are qualified electors of the municipality or who are
27 qualified electors of the area served by the municipality.

28
29 SECTION 12. Arkansas Code § 14-235-208(a)(2)(A)(i), concerning the
30 members of a sanitary board, is amended to read as follows:

31 (2)(A)(i) A Except as provided under § 14-229-204(c), a sanitary
32 board shall be composed of the mayor of the municipality and two (2) persons
33 appointed by the council.