

1 INTERIM STUDY PROPOSAL 2019-133

2 State of Arkansas As Engrossed: S3/20/19 H4/8/19 H4/9/19

3 92nd General Assembly

A Bill

4 Regular Session, 2019

SENATE BILL 481

5
6 By: Senator A. Clark

7 By: Representative Love

8 Filed with: Senate Committee on City, County, and Local Affairs
9 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

10 AN ACT TO AMEND THE LAW CONCERNING RETAIL WATER
11 PROVIDERS AND RELATED SERVICE; AND FOR OTHER
12 PURPOSES.
13
14
15

Subtitle

16 TO AMEND THE LAW CONCERNING RETAIL WATER
17 PROVIDERS AND RELATED SERVICE.
18
19
20

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

22
23 SECTION 1. Arkansas Code Title 14, Chapter 229, is amended to add an
24 additional subchapter to read as follows:

25 Subchapter 2 – Oversight of Retail Water Providers

26
27 14-229-201. Definition – Findings.

28 (a) As used in this subchapter, "provider" means any provider of
29 retail water service.

30 (b) The General Assembly finds that:

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

34 (2) The oversight of these providers is spread out and results
35 in the inability of a single entity to monitor and help initiate necessary

1 changes in public access of water, rate structures, the sustainability of the
2 providers, and the protection of consumer rights;

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

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

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

12 (6) Training of local, state, and federal leaders on issues
13 surrounding water provider personnel, finances, compliance, and environmental
14 factors is needed; and

15 (7) Education of public school students regarding the importance
16 of water is necessary.

17
18 14-229-202. Fiscal distress – Improvement plans – Rates and rate
19 studies.

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

22 (A) Fails to obtain a rate study as required by this
23 section;

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

26 (C) Has been found by the Department of Health to be in
27 significant noncompliance with rules of the Department of Health because of
28 inadequate funds for operation, maintenance, and compliance.

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

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

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

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

1 (B) By July 1, 2023, and every five (5) years thereafter
2 for a provider that serves five hundred one (501) to one thousand (1,000)
3 customers; and

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

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

7 (i) Operation and maintenance;

8 (ii) Debt service;

9 (iii) Required reserves;

10 (iv) Depreciation;

11 (v) Future capital expenses;

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

14 (vii) Other expenses as necessary.

15 (B)(i) The rates recommended in the rate study that is
16 obtained and chosen by the provider shall be implemented by the provider in
17 the manner provided under the applicable law for modifying rates.

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

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

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

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

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

35 (f)(1) The commission shall maintain an approved list of entities to
36 conduct rate studies required by this section, including without limitation

1 the Arkansas Rural Water Association, professional engineers, certified
2 public accountants, economists, and actuaries.

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

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

10 (A) The Department of Health determines that public health
11 or the environment is threatened without the approval of the new provider; or

12 (B) There is no other viable alternative.

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

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

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

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

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.

1 (2) The provider may appeal the finding to the Pulaski County
2 Circuit Court.

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

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

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

11 (ii) Modify the improvement plan; or

12 (iii) Deny the improvement plan.

13 (B) At the time the commission determines that the provider
14 is no longer in fiscal distress, the commission shall remove the fiscal
15 distress designation and notify the provider.

16 (1) If a provider is found to be in fiscal distress, the provider
17 shall not receive state financial assistance for water operations until an
18 approved improvement plan is in place as approved by the commission, unless
19 the financial assistance is immediately necessary to ensure preservation of
20 the public peace, health, and safety, as determined by the commission.

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

23 (1) Incur additional debt;

24 (2) Accept assistance for the refurbishment or replacement of
25 facilities or construction of facilities not within the provider's
26 improvement plan; or

27 (3) Transfer assets to another entity.

28
29 14-229-203. Workforce recruitment and retention – Education.

30 A provider shall:

31 (1) Work with the Arkansas Municipal League and the Association
32 of Arkansas Counties to develop training for leaders of the political
33 subdivision;

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

1 (3) Promote the recruitment, education, and licensing of
2 provider employees.

3
4 14-229-204. Training.

5 (a)(1)(A) Within one (1) year of election or appointment, a majority
6 of the members of a provider board shall receive a minimum of eight (8) hours
7 of provider training as promulgated by rule of the Arkansas Natural Resources
8 Commission.

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

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

14 (3) This section does not apply to a member of a provider board
15 who has served ten (10) years or more.

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

19 (1) The Director of the Department of Health or his or her
20 designee;

21 (2) The Executive Director of the Arkansas Natural Resources
22 Commission or his or her designee;

23 (3) The State Director of the United States Department of
24 Agriculture Rural Development in Arkansas or his or her designee;

25 (4) The Chief Executive Officer of the Arkansas Rural Water
26 Association or his or her designee;

27 (5) The Executive Director of the Arkansas Municipal League or
28 his or her designee;

29 (6) The Executive Director of the Association of Arkansas
30 Counties or his or her designee;

31 (7) The Chair of the Board of Directors of Communities
32 Unlimited, Inc. or his or her designee;

33 (8) The Chair of the Arkansas Water Works and Water Environment
34 Association, Inc. or his or her designee;

35 (9) The Director of the Arkansas Environmental Training Academy
36 or his or her designee;

1 (10) The Chair of the House Committee on City, County, and Local
2 Affairs;

3 (11) The Vice Chair of the House Committee on City, County, and
4 Local Affairs;

5 (12) The Chair of the Senate Committee on City, County, and
6 Local Affairs; and

7 (13) The Vice Chair of the Senate Committee on City, County, and
8 Local Affairs.

9
10 14-229-205. Rules.

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

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

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

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

19 (2) The commission shall file the proposed rule with the
20 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
21 2020, so that the Legislative Council may consider the rule for approval
22 before January 1, 2020.

23
24 14-229-206. Applicability.

25 This subchapter does not apply to:

26 (1) A water system regulated by the Arkansas Public Service
27 Commission as a public utility under § 23-1-101(9);

28 (2) A municipal utility system owned or operated by a
29 municipality that provides electric service to retail customers in addition
30 to water service, including an electric utility system:

31 (A) Managed or operated by a nonprofit corporation under §
32 14-199-701 et seq.; or

33 (B) Owned or operated by a municipality or by a
34 consolidated utility district under the General Consolidated Public Utility
35 System Improvement District Law, § 14-217-101 et seq.;

