

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

A Bill

Act 115 of 2001
HOUSE BILL 1247

5 By: Representative Hausam
6
7

For An Act To Be Entitled

9 AN ACT TO AUTHORIZE THE CREATION OF PUBLIC WATER
10 AUTHORITIES; TO PROVIDE FOR THE MANAGEMENT THEREOF; TO
11 IDENTIFY THE POWERS THEREOF; TO SET FORTH THOSE
12 PROCEDURES BY WHICH PUBLIC WATER AUTHORITIES MAY ISSUE
13 BONDS; AND FOR OTHER PURPOSES.
14

Subtitle

15 TO AUTHORIZE THE CREATION OF PUBLIC
16 WATER AUTHORITIES; TO PROVIDE FOR THE
17 MANAGEMENT THEREOF; TO IDENTIFY THE
18 POWERS THEREOF; TO SET FORTH THOSE
19 PROCEDURES BY WHICH PUBLIC WATER
20 AUTHORITIES MAY ISSUE BONDS.
21

22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

SECTION 1. Legislative Intent.

25 It is the intent of the General Assembly to provide a means by which
26 not-for-profit corporations involved in the sale, transmission and
27 distribution of potable water to members of the public and others may convert
28 their entity status from that of a body corporate to that of a body politic
29 thereby allowing such entities the opportunity to access the tax-exempt
30 capital markets and thereby assuring the State of Arkansas and the customers
31 of such entities of the lowest water rates possible.
32

SECTION 2. Definitions.

33
34 As used in this act, unless the context otherwise requires:
35

36 (1) "Board" means the board of directors of the water authority;

1 (2) "Bond" means any bond, promissory note, lease purchase agreement or
2 other evidence of indebtedness of any nature along with all debt securing
3 instruments of every nature related thereto;

4 (3) "Commission" means the Arkansas Soil and Water Conservation
5 Commission or its successors;

6 (4) "Indenture" means a mortgage, an indenture of mortgage, deed of
7 trust, trust agreement, loan agreement, security agreement, or trust indenture
8 executed by the water authority as security for any bonds;

9 (5) "Project" means any raw or potable water intake, treatment,
10 distribution, transmission, storage, pumping, well site, well field or other
11 facility, or any combination of the foregoing, which has as its purpose the
12 providing of raw or potable water to members of the public and commercial,
13 industrial or other users, along with any and all other appurtenances,
14 equipment, betterments or improvements related thereto. The above projects
15 may include any lands, or interest therein, deemed by the board to be
16 desirable in connection therewith, and necessary equipment for the proper
17 functioning and operation of the buildings or facilities involved;

18 (6) "Qualified corporation" means any not-for-profit corporation which
19 provides, distributes, transmits, treats, pumps or stores raw or potable water
20 to or for the benefit of members of the general public and commercial,
21 industrial and other users;

22 (7) "United States" means the United States of America or any of its
23 agencies or instrumentalities;

24 (8) "State" means the State of Arkansas; and

25 (9) "Water authority" means that body politic and governmental entity
26 organized pursuant to the provisions of this act.

27
28 SECTION 3. Construction.

29 This act shall be liberally construed in conformity with its intent.
30 All acts and activities of the water authority performed pursuant to the
31 authority of this act are legislatively determined and declared to be
32 essential governmental functions.

33
34 SECTION 4. Authority Generally.

35 There is conferred upon a water authority the authority to take such
36 action and to do, or cause to be done, such things as shall be necessary or

1 desirable to accomplish and implement the purposes and intent of this act
2 according to the import of this act. It is specifically understood that,
3 except for the provisions of this act, no other statutes shall govern or
4 pertain to the creation of water authorities hereunder, or the issuance of
5 bonds by water authorities.

6
7 SECTION 5. Authority and Procedure to Incorporate.

8 Whenever a qualified corporation desires to convert into and become
9 reconstituted and reincorporated as a water authority under and pursuant to
10 this act, the qualified corporation shall present to and file with the
11 commission:

12 (1) Its resolution duly adopted by the board of directors of the
13 qualified corporation which evidences the desire of the qualified corporation
14 to convert into and become reconstituted and re-incorporated as a water
15 authority and which shall additionally certify that the qualified corporation:

16 (A) Was initially formed as a not-for-profit corporation;

17 (B) Does not have the ability to directly access the tax-exempt
18 capital markets other than through a conduit issuer; and

19 (C) Desires to realize interest rate savings as a result of its
20 conversion and reconstitution as a water authority pursuant to this act;

21 (2) Its application for reconstitution and certificate of incorporation
22 which shall state and include the following information:

23 (A) The name of the water authority, which shall be "The
24 _____ Public Water Authority of the State of Arkansas," or some other
25 name of similar import, it being understood that the water authority may adopt
26 a fictitious operational name upon written request to and approval by the
27 commission;

28 (B) The location of the water authority's principal office, and
29 the number of directors of the water authority, which shall be subject to
30 change and modification as provided in the water authority's bylaws;

31 (C) The names and addresses of the initial board of directors of
32 the qualified corporation;

33 (D) The name and address of the agent for service of process of
34 the qualified corporation;

35 (E) Any other matters that the initial board of directors of the
36 qualified corporation may deem necessary and appropriate;

1 (F) Any other matters that the commission may designate and
2 require;

3 (3) A copy of the qualified corporation's bylaws along with any other
4 information which the initial board of directors of the qualified corporation
5 may deem necessary and appropriate;

6 (4) A statement and certification from the Secretary of State that the
7 proposed name of the water authority is not identical with that of any other
8 water authority in the state, or so nearly similar thereto as to lead to
9 confusion and uncertainty;

10 (5) That filing and review fee that the commission may designate and
11 determine from time to time; and

12 (6) Any other information and documents which the commission may
13 designate and require.

14
15 SECTION 6. Execution and Recording.

16 The application for reconstitution and certificate of incorporation
17 shall be signed and acknowledged by a majority of the board of directors of
18 the qualified corporation. When the application for reconstitution and
19 certificate of incorporation and other required documents have been so filed
20 with and accepted by the commission as evidenced by the issuance by the
21 commission of its certificate of existence in that form that the commission
22 may deem appropriate, the water authority referred to therein shall come into
23 existence and shall constitute a body corporate and politic and a political
24 subdivision of the state under the name set forth in the certificate of
25 incorporation, whereupon the water authority shall be vested with the rights
26 and powers granted in this act, and, contemporaneously therewith, the
27 qualified corporation shall cease to exist and all assets and liabilities of
28 every nature, including, without limitation, all real property, personal
29 property, contractual obligations, lending obligations outstanding, rights
30 afforded borrowers of federal and state funds and other tangible and
31 intangible assets and liabilities of every nature shall, without need for
32 further action or approval by any third party, be vested in and shall accrue
33 to the benefit of the water authority. All meetings and records of the water
34 authority shall be subject to the Arkansas Freedom of Information Act. A copy
35 of the water authority's application for reconstitution and certificate of
36 incorporation shall additionally be filed in the office of the Secretary of

1 State after its receipt, acceptance and approval by the commission. The
2 Secretary of State may require the payment of that reasonable filing and
3 receipt fee not in excess of the filing fee charged by the Secretary of State
4 in connection with the receipt and filing of a corporation's articles of
5 incorporation. Filing with the Secretary of State of a copy of the
6 application for reconstitution and certificate of incorporation as accepted
7 and approved by the commission shall serve to terminate and dissolve the
8 previous corporate existence of the qualified corporation.

9
10 SECTION 7. Board of Directors.

11 (a) The water authority shall have a board of directors composed of the
12 number of directors provided in the certificate of incorporation. All powers
13 of the water authority shall be exercised by the board or pursuant to its
14 authorization.

15 (b) The directors shall be elected and determined, and shall serve, in
16 accordance with those procedures that the water authority may specify in its
17 bylaws. The water authority's bylaws shall contain provisions and procedures
18 for the election and appointment of its directors that are identical in nature
19 to those same provisions and procedures as contained in the qualified
20 corporation's bylaws unless approval to modify and amend such procedures is
21 expressly granted in writing by the commission.

22 (c) A majority of the members of the board shall constitute a quorum
23 for the transaction of business. No vacancy in the membership of the board
24 shall impair the right of a quorum to exercise all the powers and duties of
25 the water authority. A director shall continue in office until the director's
26 successor is properly elected and accepts office.

27 (d) The members of the board and the officers of the water authority
28 shall serve without compensation, except that they may be reimbursed for
29 actual expenses incurred in and about the performance of their duties.

30 (e) All proceedings of the board shall be reduced to writing by the
31 secretary of the water authority and appropriately recorded and maintained in
32 a well-bound book.

33
34 SECTION 8. Officers.

35 The officers of the water authority shall consist of a chairman, vice
36 chairman, a secretary, a treasurer, and such other officers as the board shall

1 deem necessary to accomplish the purposes for which the water authority was
 2 organized. All officers of the water authority shall be persons who receive
 3 water service from the water authority. The offices of secretary and
 4 treasurer may, but need not, be held by the same person. All officers of the
 5 water authority shall be elected by the board and shall serve for those terms
 6 of office as specified in the bylaws.

7

8 SECTION 9. Powers Generally.

9 The water authority shall have the following powers, together with all
 10 powers incidental thereto or necessary to the discharge thereof:

11 (1) To have succession in its designated name;

12 (2) To sue and be sued and to prosecute and defend suits in any court
 13 having jurisdiction of the subject matter and of the parties;

14 (3) To make use of a seal and to alter it at pleasure;

15 (4) To adopt and alter bylaws for the regulation and conduct of its
 16 affairs and business;

17 (5) To acquire, whether by purchase, gift, lease, devise, or otherwise,
 18 property of every description which the board may deem necessary to the
 19 acquisition, construction, equipment, improvement, enlargement, operation,
 20 administration, or maintenance of a project, and to hold title thereto;

21 (6) To construct, enlarge, equip, improve, maintain, administer and
 22 operate one (1) or more projects;

23 (7) To borrow money for any of its purposes;

24 (8) To sell and issue its interest-bearing bonds;

25 (9) To sell and issue refunding bonds;

26 (10) To secure any of its bonds by pledge and indenture as provided in
 27 this act;

28 (11) To appoint, employ, and compensate such general managers,
 29 executive directors, agents, architects, engineers, attorneys, accountants and
 30 other persons and employees as the business of the water authority may
 31 require;

32 (12) To provide for such insurance as the board may deem advisable;

33 (13) To invest in obligations that are direct or guaranteed obligations
 34 of the United States of America, or other securities in which public funds may
 35 be invested under the laws of this state, any of its funds that the board may
 36 determine are not presently needed for its operational purposes;

1 (14) To contract, lease, and make lease agreements respecting its
2 properties, or any part thereof;

3 (15) To exercise the power of eminent domain in accordance with the
4 procedures prescribed by Title 18, Chapter 15, Subchapter 3 of the Arkansas
5 Code; and

6 (16) To sell, convey, or otherwise dispose of any of its properties
7 that may have become obsolete or worn out, or that may no longer be needed or
8 useful in connection with, or in the operation of, any project.

9
10 SECTION 10. Tax Exemption of Projects.

11 Each project, and all income therefrom, is determined and declared by
12 the General Assembly to be public property used exclusively for a public
13 purpose and shall be exempt from ad valorem taxation by all taxing
14 authorities.

15
16 SECTION 11. Issuance of Bonds.

17 (a) The water authority is authorized at any time and from time to time
18 to issue its interest-bearing bonds for the purpose of acquiring,
19 constructing, improving, enlarging, completing, and equipping one (1) or more
20 projects.

21 (b) Prior to the water authority's proposed issuance of bonds, the
22 water authority shall publish one (1) time in a newspaper of general
23 circulation in the affected county or counties, notice of the proposed
24 issuance of bonds, the approximate principal amount of bonds contemplated to
25 be sold, a general description of the project contemplated to be constructed
26 with bond proceeds and the date of a public meeting at which members of the
27 public may obtain further information regarding the sale of the bonds and the
28 development of the project. Notice hereunder shall be published at least ten
29 (10) days prior to the date of the hearing hereunder. The water authority
30 chairman or his or her designee shall be responsible for conducting the
31 hearing and shall require all public comments which might pertain to the
32 proposed issuance of bonds by the water authority. Upon compliance with the
33 provisions hereof, no other notice, hearing or approval by any other entity or
34 governmental unit shall be required as a condition to the issuance by the
35 water authority of its contemplated bonds.

36 (c) The principal of and the interest on any bonds may be payable out

1 of the revenues derived from the projects with respect to which the bonds are
2 issued, or from any other source available to the water authority.

3 (d) None of the bonds of the water authority shall ever constitute an
4 obligation or debt of the state, the city or county in which the water
5 authority operates, the commission, or any officer or director of the water
6 authority, or a charge against the credit or taxing powers of the state.

7 (e) As the water authority shall determine, bonds of the water
8 authority may:

9 (1) Be issued at any time and from time to time;

10 (2) Be in such form and denominations;

11 (3) Have such date or dates;

12 (4) Mature at such time or times and in such amount or amounts,
13 provided that no bonds may mature more than forty (40) years after the date of
14 issuance;

15 (5) Bear interest payable at such times and at such rate or rates
16 as may be established by the board;

17 (6) Be payable at such place or places within or without the
18 State of Arkansas;

19 (7) Be subject to such terms of redemption in advance of maturity
20 at such prices, including such premiums; and

21 (8) Contain such other terms and provisions as may be appropriate
22 or necessary.

23 (f) Bonds of the water authority may be sold at either public or
24 private sale in such manner and from time to time as may be determined by the
25 board to be most advantageous. The water authority may pay all expenses,
26 premiums, and commissions that the board may deem necessary or advantageous in
27 connection with the authorization, sale, and issuance of its bonds.

28 (g) All bonds shall contain a recital that they are issued pursuant to
29 the provisions of this act, which recital shall be conclusive that they have
30 been duly authorized pursuant to the provisions of this act.

31 (h) All bonds issued under the provisions of this act shall be and are
32 declared to be negotiable instruments within the meaning of the negotiable
33 instruments law of the state and shall be in registered form.

34
35 SECTION 12. Execution of Bonds.

36 Bonds shall be executed by the manual or facsimile signature of the

1 chairman of the water authority and by the manual or facsimile signature of
 2 the secretary of the water authority. In case any of the officers whose
 3 signatures appear on the bonds shall cease to be such officer before the
 4 delivery of the bonds, their signatures shall nevertheless be valid and
 5 sufficient for all purposes. The bonds shall be sealed with the seal of the
 6 water authority.

7

8 SECTION 13. Security for Bonds.

9 (a) The principal of, and interest on, the bonds may be secured by a
 10 pledge of the revenues of the water authority, of that project financed by the
 11 water authority through its issuance of bonds, or from any other source that
 12 the water authority may deem necessary and appropriate, and may be secured by
 13 the creation of a mortgage and security interest encumbering the real property
 14 of the water authority, or security interest in all personal property and
 15 revenues of the water authority as set forth in the indenture.

16 (b) The trustee under any indenture may be a trust company or bank
 17 having trust powers, whether located within or without the state.

18 (c) The indenture may contain any agreements and provisions customarily
 19 contained in instruments securing evidences of indebtedness including, without
 20 limiting the generality of the foregoing, provisions respecting the nature and
 21 extent of the security; the collection, segregation, and application of the
 22 revenues generated from the operation of any project covered by the indenture;
 23 covenants to always operate the project as a revenue-producing undertaking and
 24 to charge and collect, including the obligation to increase from time to time,
 25 sufficient revenue to maintain income at required levels; the maintenance and
 26 insurance of the project; the creation and maintenance of reserve and other
 27 special funds; and the rights and remedies available in the event of default
 28 to the holders of the bonds or the trustees under the indenture, all as the
 29 board shall deem advisable and as shall not be in conflict with the provisions
 30 of this act.

31 (d) If there is any default by the water authority in payment of the
 32 principal of or the interest on the bonds or in any of the agreements on the
 33 part of the water authority that may properly be included in any indenture
 34 securing the bonds, the bondholders or the trustee under any indenture, as
 35 authorized in such indenture, may either in law or in equity, by suit, action,
 36 mandamus, or other proceeding, enforce payment of the principal or interest

1 and compel performance of all duties of the board and officers of the water
2 authority, and shall be entitled as a matter of right and regardless of the
3 sufficiency of any such security to the appointment of a receiver in equity
4 with all the powers of such receiver for the operation and maintenance of the
5 project covered by such indenture and the collection, segregation, and
6 applications of income and revenues therefrom.

7 (e) The indenture may contain provisions regarding the rights and
8 remedies of any trustee thereunder and the holders of the bonds and the
9 coupons and restricting the individual rights of action of the holders of the
10 bonds and coupons.

11

12 SECTION 14. Bonds - Tax Exemption.

13 The principal of and interest on bonds issued under the authority of
14 this act shall be exempt from all state, county, and municipal taxes. This
15 exemption shall include income, inheritance, and estate taxes.

16

17 SECTION 15. Proceeds From Issuance of Bonds.

18 (a) The proceeds derived from all of the bonds other than refunding
19 bonds may be used only to pay the costs of acquiring, constructing, improving,
20 enlarging, and equipping the project with respect to which they were issued,
21 as may be specified in the proceedings in which the bonds are authorized to be
22 issued and all costs incidental thereto including, without limitation:

23 (1) The costs of any land forming a part of the project and all
24 easements which may pertain to or be associated with any project;

25 (2) The costs of the labor, materials, and supplies used in any
26 construction, improvement, and enlargement, including architect's and
27 engineer's fees and the cost of preparing contract documents and advertising
28 for bids along with all other reasonable and necessary project costs;

29 (3) The purchase price of and the cost of installing equipment
30 for the project;

31 (4) Legal, fiscal, accounting, and recording fees and expenses
32 incurred in connection with the authorization, sale, and issuance of the bonds
33 issued in connection with the project;

34 (5) Interest on bonds for a reasonable period prior to, during,
35 and after the time required for such construction and equipment;

36 (6) The amount necessary to fund a debt service reserve in an

1 amount deemed appropriate by the water authority;

2 (7) Costs associated with the obtaining of default insurance,
3 ratings and other credit enhancements of every nature; and

4 (8) Other operational expenses, reserves and other accounts of
5 every nature.

6 (b) If any of the proceeds derived from the issuance of bonds remains
7 undisbursed after completion of the project and the making of all such
8 expenditures, the balance shall be used for the redemption of bonds of the
9 same issue.

10
11 SECTION 16. Refunding Bonds.

12 (a) The water authority may at any time and from time to time issue
13 refunding bonds for the purpose of refunding the principal of and interest on
14 any bonds of the water authority theretofore issued under this act and then
15 outstanding, whether or not the principal and interest shall have matured at
16 the time of the refunding under this act, and for the payment of any expenses
17 incurred in connection with the refunding and any premium necessary to be paid
18 in order to redeem or retire the bonds to be refunded.

19 (b) The proceeds derived from the sale of any refunding bonds shall be
20 used only for the purposes for which the refunding bonds were authorized to be
21 issued.

22 (c) Any such refunding may be effected either by sale of the refunding
23 bonds and the application of the proceeds thereof by immediate application or
24 by escrow deposit, with the right to invest moneys in the escrow deposit until
25 needed for the redemption, or by exchange of the refunding bonds for the bonds
26 or interest coupons to be refunded thereby. However, the holders of any bonds
27 so to be refunded shall not be compelled without their consent to surrender
28 their bonds for payment or exchange prior to the date on which they may be
29 paid or redeemed by the water authority under their respective provisions.

30 (d) Any refunding bonds of the water authority shall be payable solely
31 from the revenues out of which the bonds to be refunded were payable or from
32 those other sources or other revenues which might be identified in the
33 indenture.

34 (e) All provisions of this act pertaining to bonds of the water
35 authority that are not inconsistent with the provisions of this section shall,
36 to the extent applicable, also apply to refunding bonds issued by the water

1 authori ty.

3 SECTION 17. Di ssol uti on.

4 A water authori ty shall be di ssol ved upon the expi ration of i ts term of
5 exi stence as set forth in the water authori ty's appl i cation for reconsti tuti on
6 and certi fi cate of i ncorporati on, i f the term of exi stence i s l ess than
7 perpetual i n nature. A water authori ty may addi ti onal ly be di ssol ved upon
8 appl i cation to, and the approval i n wri ting by, the commi ssi on.

11 APPROVED: 2/7/2001

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