

**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.
Act 236 of the Regular Session**

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

A Bill

SENATE BILL 299

5 By: Senators Baker, Bookout, Broadway, Hendren, Luker, Salmon, Steele, R. Thompson
6 By: Representatives Pickett, Wills, T. Baker, Cornwell, Davenport, Davis, Gaskill, Hawkins, Hardwick,
7 Hyde, J. Johnson, Kidd, Overbey, Powers, S. Prater, Sumpter, Wagner
8
9

For An Act To Be Entitled

11 AN ACT TO AMEND SECTIONS OF THE JOINT MUNICIPAL
12 ELECTRIC POWER GENERATION ACT; AND FOR OTHER
13 PURPOSES.
14

Subtitle

15 TO AMEND SECTIONS OF THE JOINT MUNICIPAL
16 ELECTRIC POWER GENERATION ACT.
17
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19

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

22 SECTION 1. Arkansas Code § 14-202-102 is amended to read as follows:
23 14-202-102. Definitions.

24 As used in this chapter:

25 (1) "Bonds" means bonds and any series of bonds authorized by
26 and issued pursuant to the provisions of this chapter;

27 (2) "Clerk" means city clerk, city recorder, town recorder, or
28 other similar office hereafter created or established;

29 (3) "Costs" or "project costs" means, but shall not be limited
30 to:

31 (A) All costs of acquisition, construction,
32 reconstruction, improvement, enlargement, betterment, or extension of any
33 project, including the costs of studies, plans, specifications, surveys, and
34 estimates of costs and revenues relating thereto;

35 (B) All costs of land, land rights, rights-of-way and



1 easements, water rights, fees, permits, approvals, licenses, certificates,
2 franchises, and the preparation of applications for and securing the same;

3 (C) Administrative, organizational, legal, engineering,
4 and inspection expenses;

5 (D) Financing fees, expenses, and costs;

6 (E) Working capital;

7 (F) Initial and reload fuel costs;

8 (G) All machinery and equipment, including construction
9 equipment;

10 (H) All costs related to upgrades on a transmission system
11 owned by a person or an entity that are required for the delivery of power
12 and energy from the project to the municipality;

13 ~~(H)~~(I) Interest on the bonds during the period of
14 construction and for such reasonable period thereafter as may be determined
15 by the issuing municipality;

16 ~~(I)~~(J) Establishment of reserves; and

17 ~~(J)~~(K) All other expenditures of the issuing municipality
18 incidental, necessary, or convenient to the acquisition, construction,
19 reconstruction, improvement, enlargement, betterment, or extension of any
20 project and the placing of the project in operation;

21 (4) "Electric system" means any system for the generation,
22 transmission, or distribution of electric power or energy;

23 (5) "Energy service provider" means an energy service provider
24 as defined by § 23-19-102(10) [Repealed];

25 (6) "Governing body" means the council, board of directors,
26 commission, or other governing body of a municipality;

27 (7) "Interest" or "interest in a project" means any ownership
28 interest in a project, including, without limitation, an undivided interest
29 as a tenant in common, an undivided leasehold interest, or an interest
30 consisting of rights to receive an agreed-upon portion of the power and
31 energy output of a project;

32 (8) "Major utility facility" means any electric generating plant
33 and related necessary and appurtenant land rights, substation, fuel, fuel
34 handling, processing and storage equipment, water supply facilities, and
35 similar necessary equipment and property, whether real, personal, or mixed;

36 (9) "Municipality" means any city of the first class or city of

1 the second class incorporated under the laws of this state, or any commission
 2 or agency thereof, including any municipally owned or controlled corporation
 3 or any improvement district, consolidated public or municipal utility system
 4 improvement district, or nonprofit corporation lessee of such entity which
 5 owns or operates an electric system, and any authority created under the
 6 Arkansas Municipal Electric Utility Interlocal Cooperation Act of 2003, § 25-
 7 20-401 et seq.;

8 (10) "Person" means any natural person, firm, corporation,
 9 electric cooperative corporation, energy service provider, nonprofit
 10 corporation, association, or improvement district;

11 (11) "Power requirements of the municipality" means the maximum
 12 hourly electric consumption by the municipality's retail customers;

13 (12) "Project" means any major utility facility owned, in whole
 14 or in part, by one (1) or more public utilities, persons, or municipalities,
 15 whether the major utility facility is located entirely or partly within, or
 16 wholly without, ~~a municipality~~ the state;

17 (13) "Public utility" means any person or entity engaged in the
 18 generation and sale of electric power and energy which was subject to
 19 regulation by the Arkansas Public Service Commission as to such generation
 20 and sale prior to the enactment of § 23-19-101 et seq. [Repealed]; and

21 (14) "State" means the State of Arkansas.

22
 23 SECTION 2. Arkansas Code § 14-202-104 is amended to read as follows:
 24 14-202-104. Contracts to acquire interest in project.

25 (a) The acquisition of an interest in a project may include the
 26 purchase or lease by mutual voluntary agreement with another person or
 27 municipality of an existing project or an interest therein or the
 28 participation in the planning, engineering, and legal aspects of preparing
 29 for the construction of and securing necessary state, local, or federal
 30 permits for the construction of a proposed project or a project on which
 31 construction has been begun but not completed.

32 (b) Any contract entered into by a municipality with respect to an
 33 interest in, and operation of, a project shall be authorized by ordinance of
 34 the governing body of the municipality and shall contain such terms,
 35 conditions, and provisions, as the governing body of the municipality shall
 36 determine to be necessary or desirable. Any contract may include, but shall

1 not be limited to, the following:

2 (1) The purpose or purposes of the contract;

3 (2) The duration of the contract;

4 (3) The manner of appointing or employing the personnel
5 necessary in connection with the project;

6 (4) The method of financing the project, including the
7 apportionment of costs and revenues;

8 (5) Provisions specifying the ownership interests of the parties
9 in real property, or portions thereof, used or useful in connection with the
10 project, and the procedures for the disposition of such property when the
11 contract expires, is terminated, or when the project, for any reason, is
12 abandoned, decommissioned, or dismantled;

13 (6) Provisions relating to alienation and partition of a
14 municipality's undivided interest in a project;

15 (7) Provisions permitting or requiring the exchange by the
16 municipality with other municipalities, persons, or public utilities of an
17 interest in one (1) or more portions of a project for an interest in one (1)
18 or more other portions of the project and specifying the procedure therefor;

19 (8) Appropriate provisions pertaining to the details of
20 accomplishing the acquisition, ~~whereby~~ including provisions that authorize a
21 person, including one (1) of the parties to the contract, ~~including~~ a public
22 utility, ~~may~~ or a third party, to construct the project as agent for all the
23 parties;

24 (9) Provisions for the operation and maintenance of a project,
25 ~~which may~~ including provisions that authorize a person, including one (1) of
26 the parties to the contract, ~~including a private person~~ a public utility, or
27 a third party, to operate and maintain the project as agent for all the
28 parties;

29 (10) Provisions that, if one (1) or more of the parties shall
30 default in the performance or discharge of its or their obligations with
31 respect to the project, one (1) or more of the other parties ~~may~~ shall
32 assume, pro rata, or otherwise, the obligations of such defaulting party or
33 parties and ~~may~~ succeed to such rights and interests of the defaulting
34 parties in the project as may be agreed upon in the contract;

35 (11) Methods of amending the contract;

36 (12) Methods for terminating the contract; and

1 (13) Any other necessary or proper matter.

2 (c) It shall not be necessary for the municipality to publish any such
3 contract if the ordinance authorizing the contract is published as required
4 by law governing the publication of ordinances of a municipality, the
5 ordinance advises that a copy of the contract is on file in the office of the
6 clerk of the municipality for inspection by any interested person, and the
7 copy of the contract is filed with the clerk of the municipality.

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9 SECTION 3. Arkansas Code § 14-202-105 is amended to read as follows:
10 14-202-105. Sale of excess capacity.

11 ~~(a)~~ Capacity or output derived by a municipality from a project not
12 then required by the municipality may be sold or exchanged by the
13 municipality, for such consideration, for such period, and upon such other
14 terms and conditions as may be determined by the parties to any other
15 municipality, improvement district, federal or state political subdivision or
16 agency, or other person, which other municipality, improvement district,
17 federal or state political subdivision or agency, or other person owns an
18 electric system or electric system facilities whether operated by it, or by a
19 person under a franchise, lease, or other agreement.

20 ~~(b) Such sales of excess capacity of a project shall not be made if~~
21 ~~such sales would cause the interest on bonds issued under this chapter to~~
22 ~~finance a project to cease to be exempt from federal income taxes.~~

23

24 SECTION 4. Arkansas Code § 14-202-112 is amended to read as follows:
25 14-202-112. Bonds, coupons - Execution and seal.

26 (a)(1)(A) Bonds issued hereunder shall be executed by the manual or
27 facsimile signatures of the mayor and clerk of the municipality.

28 (B) ~~The~~ Any coupons attached to the bonds may be executed
29 by the facsimile signature of the mayor of the municipality.

30 (2) In case any of the officers whose signatures appear on the
31 bonds or coupons shall cease to be officers before the delivery of the bonds
32 or coupons, their signatures shall, nevertheless, be valid and sufficient for
33 all purposes.

34 (b) The seal of the municipality shall be placed or printed on each bond in
35 such manner as the governing body of the municipality shall determine.

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APPROVED: 3/9/2007