

**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 599 of the Regular Session**

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

A Bill

SENATE BILL 852

5 By: Senator Hendren
6
7

For An Act To Be Entitled

9 AN ACT TO CLARIFY THE PROCEDURE FOR ADVERTISING
10 AND HOLDING A PUBLIC HEARING PRIOR TO AN ISSUANCE
11 OF BONDS UNDER THE JOINT COUNTY AND MUNICIPAL
12 SOLID WASTE DISPOSAL ACT; TO CLARIFY PUBLIC
13 HEARING REQUIREMENTS FOR BONDS; TO MAKE TECHNICAL
14 CORRECTIONS TO THE ACT; AND FOR OTHER PURPOSES.
15

Subtitle

16 TO CLARIFY THE PROCEDURE FOR ADVERTISING
17 AND HOLDING A PUBLIC HEARING PRIOR TO AN
18 ISSUANCE OF BONDS UNDER THE JOINT COUNTY
19 AND MUNICIPAL SOLID WASTE DISPOSAL ACT,
20 TO CLARIFY PUBLIC HEARING REQUIREMENTS,
21 AND TO MAKE TECHNICAL CORRECTIONS.
22
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24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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27 SECTION 1. Arkansas Code § 14-233-102 is amended to read as follows:
28 14-233-102. Definitions.

29 As used in this chapter:

30 (1) "Board of directors" or "board" means the board of directors
31 of a sanitation authority created under this chapter;

32 (2) "Bonds" means bonds and any series of bonds authorized by
33 and issued pursuant to the provisions of this chapter;

34 (3) "Clerk" means the county clerk of a county and the city
35 clerk, city recorder, town recorder of a municipality, or other similar



1 office of a county or municipality hereafter created or established;

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

4 (A) All costs of acquisition, construction,
5 reconstruction, improvement, enlargement, betterment, or extension of any
6 project, including the cost of studies, plans, specifications, surveys, and
7 estimates of costs and revenues relating thereto;

8 (B) All costs of land, land rights, rights-of-way and
9 easements, water rights, fees, permits, approvals, licenses, certificates,
10 franchises, and the preparation of applications for and securing them;

11 (C) Administrative, organizational, legal, engineering,
12 and inspection expenses;

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

14 (E) Working capital;

15 (F) All machinery and equipment, including construction
16 equipment;

17 (G) Interest on the bonds during the period of
18 construction and for such a reasonable period thereafter as may be determined
19 by the issuing sanitation authority;

20 (H) Establishment of reserves; and

21 (I) All other expenditures of the issuing sanitation
22 authority incidental, necessary, or convenient to the acquisition,
23 construction, reconstruction, improvement, enlargement, betterment, or
24 extension of any project and the placing of it in operation;

25 (5) "County" means any county in this state;

26 (6) "District" means an entity established pursuant to § 14-114-
27 101 et seq., § 14-115-101 et seq., § 14-116-101 et seq., § 14-117-101 et
28 seq., § 14-118-101 et seq., § 14-119-101 et seq., § 14-120-101 et seq., § 14-
29 121-101 et seq., § 14-122-101 et seq., ~~§ 14-123-101 et seq.,~~ § 14-123-201 et
30 seq., § 14-124-101 et seq., § 14-125-101 et seq., ~~§ 14-183-101 et seq.,~~ § 14-
31 184-101 et seq., § 14-185-101 et seq., § 14-186-101 et seq., § 14-187-101 et
32 seq., § 14-188-101 et seq., § 14-249-101 et seq., § 14-250-101 et seq., and
33 § 14-251-101 et seq.;

34 (7) "Governing body" means the quorum court of a county and the
35 council, board of directors, commission, or other governing body of a
36 municipality or district;

1 (8) "Member" means a municipality, county, or district which
2 participates jointly through a sanitation authority with other municipalities
3 or counties in projects under this chapter;

4 (9) "Municipality" means a city of the first class or a city of
5 the second class or an incorporated town;

6 (10) "Person" means any natural person, firm, corporation,
7 nonprofit corporation, association, or improvement district;

8 (11)(A) "Project" means any real property, personal property, or
9 mixed property of any kind that can be used or will be useful in:

10 (i) ~~controlling~~ Controlling, collecting, storing,
11 removing, handling, reducing, disposing of, treating, and otherwise dealing
12 in and concerning solid waste, including, without limitation, property that
13 can be used or that will be useful in extracting, converting to steam,
14 including the acquisition, handling, storage, and utilization of coal,
15 lignite, or other fuel of any kind, or water that can be used or will be
16 useful in converting solid waste to steam, and distributing the steam to
17 users thereof, or otherwise separating and preparing solid waste for reuse,
18 or that can be used or will be useful in generating electric energy by the
19 use of solid waste as a source of generating power and distributing the
20 electric energy to purchasers or users thereof in accordance with the general
21 laws of the state; or

22 (ii) Collecting, pumping, disposing of, treating or
23 otherwise dealing in wastewater, sludge, or treated effluent.

24 (B) For purposes of this chapter not more than twenty-five
25 percent (25%) of the fuel used to produce steam or generate electricity from
26 any project shall consist of materials other than solid waste;

27 (12) "Sanitation authority" or "authority" means a public body
28 and body corporate and politic organized in accordance with the provisions of
29 this chapter;

30 (13) "State" means the State of Arkansas; and

31 (14) "Solid waste" means any garbage, refuse, sludge from a
32 waste treatment plant, water supply treatment plant, or air pollution control
33 facility, and other discarded material including solid, liquid, semisolid, or
34 contained gaseous material resulting from industrial, commercial, mining, and
35 agricultural operations and from community activities.

36

SECTION 2. Arkansas Code § 14-233-109 is amended to read as follows:
 14-233-109. Bonds - Issuance, public hearing, execution, and sale.

(a) Sanitation authorities are authorized to use any available funds and revenues for the accomplishment of projects and may issue bonds, as authorized by this chapter, for the purpose of paying, financing, and refinancing project costs and accomplishing projects, either alone or together with other available funds and revenues.

(b)(1)(A) Prior to a sanitation authority's proposed issuance of bonds, the sanitation authority shall publish one (1) time in a newspaper of general circulation in each county that is a member of the sanitation authority and in each county in which a member of the sanitation authority is located:

(i) Notice of the proposed issuance of bonds;

(ii) The maximum principal amount of bonds contemplated to be sold;

(iii) A general description of the project contemplated to be financed or refinanced with bond proceeds; and

(iv) The date, time, and location of a public hearing at which members of the public may obtain further information regarding the bonds and the development of the project.

(B)(i) The location of the public hearing described in subdivision (b)(1)(A)(iv) of this section shall be in the county in which the project is located.

(ii) If the project is located in more than one (1) county, the location of the public hearing shall be in the county that has the greatest amount of territory of the counties in which the project is located.

(C) Notice under subdivision (b)(1)(A) of this section shall be published at least ten (10) days prior to the date of the hearing described in subdivision (b)(1)(A)(iv) of this section.

(2) A sanitation authority chair or his or her designee shall be responsible for conducting the hearing and shall request all public comments that might pertain to the proposed issuance of bonds by the sanitation authority.

(3)(A) Upon compliance with the provisions of this section, no other notice, hearing, or approval by any other entity or governmental unit

1 shall be required as a condition to the issuance by a sanitation authority of
2 its contemplated bonds.

3 (B) The provisions of the Revenue Bond Act of 1987, § 19-
4 9-601 et seq., do not apply to this section.

5 (4) The requirements of this subsection shall not apply to the
6 issuance of bonds to refund bonds of the sanitation authority for which a
7 public hearing was held.

8 ~~(b)(1)(c)(1)~~ The issuance of bonds shall be by resolution of the board
9 of the sanitation authority.

10 (2) The bonds may be coupon bonds payable to bearer, subject to
11 registration as to principal or as to principal and interest, or fully
12 registered bonds without coupons, may contain exchange privileges, may be
13 issued in one (1) or more series, may bear such date or dates, may mature at
14 such time or times, not exceeding forty (40) years from their respective
15 dates, may bear interest at such rate or rates, may be in such form, may be
16 executed in such manner, may be payable in such medium of payment, at such
17 place or places, may be subject to such terms of redemption in advance of
18 maturity at such prices, and may contain such terms, covenants, and
19 conditions as the resolution may provide, including, without limitation,
20 those pertaining to the custody and application of the proceeds of the bonds,
21 the collection and disposition of revenues, the maintenance of various funds
22 and reserves, the investing and reinvesting of any moneys during periods not
23 needed for authorized purposes, the nature and extent of the security, the
24 rights, duties, and obligations of the authority and the trustee for the
25 holders or registered owners of the bonds, and the rights of the holders or
26 registered owners of the bonds.

27 ~~(e)(d)~~ There may be successive bond issues for the purpose of
28 financing the same project, and there may be successive bond issues for
29 financing the cost of reconstructing, replacing, constructing additions to,
30 extending, improving, and equipping projects already in existence, whether or
31 not originally financed by bonds issued under this chapter, with each
32 successive issue to be authorized as provided by this chapter. Priority
33 between and among issues and successive issues as to security of the pledge
34 of revenues and lien on the ~~project~~ sanitation authority's properties
35 involved may be controlled by the resolution authorizing the issuance of the
36 bonds.

1 ~~(d)~~(e) Subject to the provisions of this chapter pertaining to
 2 registration, the bonds shall have all the qualities of negotiable
 3 instruments under the laws of the State of Arkansas.

4 ~~(e)~~(f) The bonds may be sold at public or private sale for such price,
 5 including, without limitation, sale at a discount and in such manner the
 6 authority may determine by resolution.

7 ~~(f)~~(g) Bonds issued under this chapter shall be executed by the manual
 8 or facsimile signatures of the chairman and secretary of the board, but one
 9 of such signatures must be manual. The coupons attached to the bonds may be
 10 executed by the facsimile signature of the chairman of the board. In case any
 11 of the officers whose signatures appear on the bonds or coupons shall cease
 12 to be officers before the delivery of the bonds or coupons, their signatures
 13 shall nevertheless be valid and sufficient for all purposes. The seal of the
 14 sanitation authority shall be placed or printed on each bond in such manner
 15 as the board shall determine.

16
 17 SECTION 3. Arkansas Code § 14-233-110 is amended to read as follows:
 18 14-233-110. Bonds - Trust indenture.

19 (a) The resolution authorizing the bonds may provide for the execution
 20 by the authority with a bank or trust company within or without this state of
 21 a trust indenture which defines the rights of the holders and registered
 22 owners of the bonds.

23 (b) The resolution or indenture may control the priority between and
 24 among successive issues and may contain any other terms, covenants, and
 25 conditions that are deemed desirable, including, without limitation, those
 26 pertaining to the custody and application of proceeds of the bonds, the
 27 maintaining of rates and charges, the collection and disposition of revenues,
 28 the maintenance of various funds and reserves, the nature and extent of the
 29 security and pledging of revenues, the rights, duties, and obligations of the
 30 agency and the trustee for the holders or registered owners of the bonds, and
 31 the rights of the holders and registered owners of the bonds.

32 (c) The resolution or trust indenture authorizing or securing any
 33 bonds issued under this chapter may, or may not, impose a foreclosable
 34 mortgage lien upon, or security interest in, the project financed in whole or
 35 in part with the proceeds of the bonds or other properties of the authority,
 36 and the nature and extent of the mortgage lien or security interest may be

1 controlled by the resolution or trust indenture, including without
 2 limitation, provisions pertaining to the release of all or part of the
 3 ~~project~~ authority's properties from the mortgage lien or security interest
 4 and the priority of the mortgage lien or security interest in the event of
 5 the issuance of additional bonds.

6 (d) Subject to the terms, conditions, and restrictions which may be
 7 contained in the resolution or trust indenture, any holder or registered
 8 owner of bonds issued under this chapter, or of any coupon attached thereto,
 9 may, either at law or in equity, enforce the mortgage lien or security
 10 interest and may, by proper suit, compel the performance of the duties of the
 11 members and employees of the sanitation authority as set forth in the
 12 resolution or trust indenture authorizing or securing the bonds.

13
 14 SECTION 4. Arkansas Code § 14-233-112 is amended to read as follows:

15 14-233-112. Bonds - Liability - Payment and security.

16 (a) It shall be plainly stated on the face of each bond that it has
 17 been issued under the provisions of this chapter, that the bonds are
 18 obligations only of the sanitation authority, and that in no event shall they
 19 constitute an indebtedness for which the faith and credit of the member
 20 municipalities, counties, or districts or any of their revenues are pledged.

21 (b) No member of the board of directors shall be personally liable on
 22 the bonds or for any damages sustained by anyone in connection with any
 23 contracts entered into in carrying out the purpose and intent of this chapter
 24 unless he or she shall have acted with corrupt intent.

25 (c) The principal of and interest on the bonds shall be payable from
 26 and may be secured by a pledge of revenues ~~derived from the project acquired,~~
 27 ~~constructed, reconstructed, equipped, extended, or improved, in whole or in~~
 28 ~~part, with the proceeds of the bonds~~ received by the sanitation authority or
 29 obligations of the owners of projects.

30
 31 SECTION 5. Arkansas Code § 14-233-113 is amended to read as follows:

32 14-233-113. Refunding bonds - Issuance.

33 (a) Bonds may be issued for the purpose of refunding any bonds issued
 34 under this chapter or any other interest-bearing indebtedness of the
 35 sanitation authority. Refunding bonds may be combined with bonds issued under
 36 the provisions of § 14-233-109 into a single issue.

1 (b) When refunding bonds are issued, they may either be sold or
 2 delivered in exchange for the bonds being refunded. If sold, the proceeds may
 3 either be applied to the payment of the bonds or indebtedness being refunded
 4 or deposited in escrow for the retirement thereof.

5 ~~(c) All refunding bonds shall in all respects be issued and secured in~~
 6 ~~the manner provided for other bonds issued under this chapter and shall have~~
 7 ~~all the attributes of those bonds.~~

8 ~~(d)~~(c) The resolution under which refunding bonds are issued may
 9 provide that any of the refunding bonds shall have the same priority of lien
 10 on and security interest in ~~project~~ sanitation authority revenues and the
 11 ~~project~~ sanitation authority's properties as was enjoyed by the bonds
 12 refunded by them.

13
 14 SECTION 6. Arkansas Code § 14-233-114 is amended to read as follows:

15 14-233-114. Contracts with municipalities or counties - Rates, fees,
 16 and charges - Pledges.

17 (a) Any municipality or county which is a member of a sanitation
 18 authority may contract with the authority to utilize any project upon any
 19 terms and conditions as are deemed necessary, convenient, or desirable by the
 20 municipality or county and the authority including, without limitation,
 21 agreements on the part of the municipality or county for any period of time:

22 (1) To deliver all solid waste collected by or on behalf of the
 23 municipality or county to a particular project for disposal, treatment, or
 24 other handling; ~~and~~

25 (2) To prohibit, by ordinance or other legal means, the
 26 disposal, treatment, or other handling of solid waste within the corporate
 27 boundaries of the municipality or county, by persons other than the
 28 sanitation authority or any person designated by the sanitation authority;
 29 and

30 (3) To deliver all or a certain amount of wastewater, sludge, or
 31 treated effluent from its sewer system to the project.

32 (b) Any municipality or county which is a member of a sanitation
 33 authority may:

34 (1) Require, by ordinance or other legal means, that solid waste
 35 generated or collected within the corporate boundaries of the municipality or
 36 county be delivered to a particular project for disposal, treatment, or other

1 handling;

2 (2) Prohibit, by ordinance or other legal means, the collection,
 3 disposal, treatment, or other handling of solid waste within the corporate
 4 boundaries of the municipality or county, by persons other than the
 5 municipality or county, the sanitation authority, or any persons designated
 6 by the municipality or county or the sanitation authority;

7 (3) Provide, by ordinance or other legal means, that no person,
 8 other than as may be designated by the municipality or county or the
 9 sanitation authority, shall engage in the collection or utilization of solid
 10 waste within the corporate boundaries of the municipality or county which
 11 would be competitive with the purposes or activities of the sanitation
 12 authority as provided in this chapter; and

13 (4) Covenant in connection with the issuance of bonds, notes, or
 14 other evidence of indebtedness to adopt any ordinance described in
 15 subdivisions (b)(1)-(3) of this section and that any ordinance so adopted
 16 shall remain in full force and effect and shall be enforced so long as any
 17 bonds, notes, or other evidences of indebtedness remain outstanding.

18 (c) A sanitation authority is authorized to fix, charge, and collect
 19 rates, fees, and charges for disposal, treatment, or other handling of solid
 20 waste, wastewater, sludge, or treated effluent at a project. If duly
 21 authorized by the municipal or county members of a sanitation authority, the
 22 ~~sanitation~~ sanitation authority may implement the collection procedures
 23 through the personal property tax system provided for by § 8-6-211 or § 8-6-
 24 212. For as long as any bonds are outstanding and unpaid, the rates, fees,
 25 and charges shall be so fixed by the authority as to provide revenues
 26 sufficient:

27 (1) To pay all costs of and charges and expenses in connection
 28 with the proper operation and maintenance of its projects, and all necessary
 29 repairs, replacements, or renewals thereof;

30 (2) To pay, when due, the principal of, premium, if any, and
 31 interest on all bonds, including bonds subsequently issued for additional
 32 projects, payable from the revenues;

33 (3) To create and maintain reserves as may be required by any
 34 resolution or trust indenture authorizing or securing bonds; and

35 (4) To pay any and all amounts which the sanitation authority
 36 may be obligated to pay from project revenues by law or contract.

1 (d) Any pledge made by a sanitation authority pursuant to this chapter
 2 shall be valid and binding from the date the pledge is made. The revenues so
 3 pledged and then held or thereafter received by the sanitation authority or
 4 any ~~fiduciary~~ fiduciary on its behalf shall immediately be subject to the
 5 lien of the pledge without any physical delivery thereof or further act. The
 6 lien of the pledge shall be valid and binding as against all parties having
 7 claims of any kind in tort, contract, or otherwise against the sanitation
 8 authority without regard to whether such parties have notice thereof.

9 (e) The resolution, trust indenture, or other instrument by which a
 10 pledge is created need not be filed or recorded in any manner.

11
 12 SECTION 7. Arkansas Code § 14-233-119 is amended to read as follows:
 13 14-233-119. Transfer of facilities to authority by county or
 14 municipality.

15 (a)(1) Any municipality or county may acquire facilities for a
 16 project, or any portion thereof, including a project site, by gift, purchase,
 17 lease, or condemnation, and may transfer the facilities to a sanitation
 18 authority by sale, lease, or gift.

19 (2) The transfer may be authorized by ordinance of the governing
 20 body without regard to the requirements, restrictions, limitations, or other
 21 provisions contained in any other law.

22 (b) Any municipality may also contribute funds from its sewer system,
 23 grant funds, or proceeds of revenue bonds issued by it to pay, in whole or in
 24 part, the cost of a project which will be utilized by the municipality.

25
 26 SECTION 8. Arkansas Code § 14-233-122 is amended to read as follows:
 27 14-233-122. Purchasing procedures.

28 The board of each sanitation authority shall adopt county purchasing
 29 procedures, as provided in § 14-22-101 et seq., as the approved purchasing
 30 procedures for the ~~district~~ sanitation authority.

31
 32 SECTION 9. EMERGENCY CLAUSE. It is found and determined by the
 33 General Assembly of the State of Arkansas that that there is an urgent need
 34 to provide additional safe and sanitary solid waste and wastewater
 35 collection, treatment, and disposal facilities; that the best method of
 36 financing such facilities is by the issuance of revenue bonds; and that this

1 act is immediately necessary to facilitate the prompt and efficient provision
2 of safe and sanitary solid waste and wastewater collection, treatment, and
3 disposal facilities. Therefore, an emergency is declared to exist and this
4 act being immediately necessary for the preservation of the public peace,
5 health, and safety shall become effective on:

6 (1) The date of its approval by the Governor;

7 (2) If the bill is neither approved nor vetoed by the Governor,
8 the expiration of the period of time during which the Governor may veto the
9 bill; or

10 (3) If the bill is vetoed by the Governor and the veto is
11 overridden, the date the last house overrides the veto.

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13 APPROVED: 3/28/2007
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