	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 779 of the Regular Session
1	State of Arkansas As Engrossed: H3/18/09
2	87th General Assembly
3	Regular Session, 2009 HOUSE BILL 1647
4	
5	By: Representative Woods
6	By: Senator Madison
7	
8	
9	For An Act To Be Entitled
10	AN ACT TO EXTEND THE ABILITY TO PURCHASE RURAL
11	WATER SERVICE FACILITIES TO A MUNICIPALITY AFTER
12	ANNEXATION; AND FOR OTHER PURPOSES.
13	
14	Subtitle
15	TO EXTEND THE ABILITY TO PURCHASE RURAL
16	WATER SERVICE FACILITIES TO A
17	MUNICIPALITY AFTER ANNEXATION.
18	
19	
20	BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21	
22	SECTION 1. Arkansas Code Title 14, Subtitle 12, is amended to add an
23	additional chapter to read as follows:
24	Chapter 208. Valuation Of Rural Water Service Properties And
25	Facilities Upon Annexation
26	
27	<u>14-208-101. Definitions.</u>
28	As used in this chapter:
29	(1) "Municipality" means both Arkansas municipal corporations
30	and consolidated municipal water improvement districts; and
31	(2) "Rural water service" means any entity under Arkansas law
32	that is not owned by a municipality and is a water association, water
33	improvement district, or water authority.
34	
35	14-208-102. Right to acquire rural water service properties,



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1	facilities, and customers.
2	(a)(1) Unless otherwise agreed between a municipality that owns or
3	operates a water service and a rural water service, the inclusion by
4	annexation of any part of the assigned service area of a rural water service
5	within the boundaries of any Arkansas municipality shall not in any respect
6	impair or affect the rights of the rural water service to continue operations
7	and extend water service throughout any part of its assigned service area
8	unless a municipality that owns or operates a water service elects to
9	purchase from the rural water service all customers, distribution properties,
10	and facilities located within the municipality reasonably utilized or
11	reasonably necessary to serve customers of the rural water service within the
12	annexed areas under this chapter, excluding water sources, treatment plants,
13	and storage serving customers outside the annexed areas.
14	
15	(2)(A) Unless otherwise agreed between a municipality that owns
16	or operates a water service and a rural water service, a municipality may not
17	undertake or begin construction, operation, or extension of any equipment or
18	facilities for the supplying of water service to the annexed areas without
10	ractificited for the bupplying of water bervice to the annexed areas wrenout
19	complying with this chapter.
19	complying with this chapter.
19 20	complying with this <i>chapter</i> . (B) The affected rural water service is entitled to
19 20 21	<u>complying with this <i>chapter</i>.</u> (B) The affected rural water service is entitled to injunctive relief for any <i>violation of this chapter</i> .
19 20 21 22	<u>complying with this chapter.</u> <u>(B) The affected rural water service is entitled to</u> <u>injunctive relief for any violation of this chapter.</u> <u>(b)(1) The municipality shall give written notice to the rural water</u>
19 20 21 22 23	<u>complying with this chapter.</u> <u>(B) The affected rural water service is entitled to</u> <u>injunctive relief for any violation of this chapter.</u> <u>(b)(1) The municipality shall give written notice to the rural water</u> <u>service prior to the municipality acquiring from the rural water service all</u>
19 20 21 22 23 24	<pre>complying with this chapter.</pre>
19 20 21 22 23 24 25	<pre>complying with this chapter.</pre>
19 20 21 22 23 24 25 26	<pre>complying with this chapter.</pre>
19 20 21 22 23 24 25 26 27	<pre>complying with this chapter.</pre>
19 20 21 22 23 24 25 26 27 28	<pre>complying with this chapter.</pre>
19 20 21 22 23 24 25 26 27 28 29	<pre>complying with this chapter.</pre>
19 20 21 22 23 24 25 26 27 28 29 30	complying with this chapter.(B) The affected rural water service is entitled toinjunctive relief for any violation of this chapter.(b)(1) The municipality shall give written notice to the rural waterservice prior to the municipality acquiring from the rural water service allcustomers, distribution properties, and facilities reasonably utilized orreasonably necessary to serve customers of the rural water service within theannexed areas.(2) The municipality and the rural water service shall meet andnegotiate in good faith the terms of the acquisition, including, as analternative, granting the rural water service an agreement to serve theannexed area or portions of the annexed area.
<ol> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>28</li> <li>29</li> <li>30</li> <li>31</li> </ol>	complying with this chapter.(B) The affected rural water service is entitled toinjunctive relief for any violation of this chapter.(b)(1) The municipality shall give written notice to the rural waterservice prior to the municipality acquiring from the rural water service allcustomers, distribution properties, and facilities reasonably utilized orreasonably necessary to serve customers of the rural water service within theannexed areas.(2) The municipality and the rural water service shall meet andnegotiate in good faith the terms of the acquisition, including, as analternative, granting the rural water service an agreement to serve theannexed area or portions of the annexed area.(3)(A) Before an acquisition under this chapter by the
<ol> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>28</li> <li>29</li> <li>30</li> <li>31</li> <li>32</li> </ol>	complying with this chapter.(B) The affected rural water service is entitled toinjunctive relief for any violation of this chapter.(b)(1) The municipality shall give written notice to the rural waterservice prior to the municipality acquiring from the rural water service allcustomers, distribution properties, and facilities reasonably utilized orreasonably necessary to serve customers of the rural water service within theannexed areas.(2) The municipality and the rural water service shall meet andnegotiate in good faith the terms of the acquisition, including, as analternative, granting the rural water service an agreement to serve theannexed area or portions of the annexed area.(3) (A) Before an acquisition under this chapter by themunicipality, the municipality shall receive approval from the Arkansas
<ol> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>28</li> <li>29</li> <li>30</li> <li>31</li> <li>32</li> <li>33</li> </ol>	complying with this chapter.(B) The affected rural water service is entitled toinjunctive relief for any violation of this chapter.(b)(1) The municipality shall give written notice to the rural waterservice prior to the municipality acquiring from the rural water service allcustomers, distribution properties, and facilities reasonably utilized orreasonably necessary to serve customers of the rural water service within theannexed areas.(2) The municipality and the rural water service shall meet andnegotiate in good faith the terms of the acquisition, including, as analternative, granting the rural water service an agreement to serve theannexed area or portions of the annexed area.(3)(A) Before an acquisition under this chapter by themunicipality, the municipality shall receive approval from the ArkansasNatural Resources Commission that the action complies with the Arkansas Water

2

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1	Plan if it determines the requirements of § 15-22-223(b)(2)(B) are satisfied,
2	including costs derived from negotiation or appraisal;
3	(ii) Issue a letter to the municipality that the
4	proposed action is exempt from review under the Arkansas Water Plan; or
5	(iii) Deny the application under the Arkansas Water
6	Plan if it determines the requirements of § 15-22-223(b)(2)(B) are not
7	satisfied.
8	(c) An agreement reached under this chapter shall comply with § 15-22-
9	223.
10	(d) This chapter shall not limit applicable federal <i>law, including</i>
11	without limitation 7 U.S.C. § 1926(b).
12	
13	14-208-103. Procedures and valuation formula.
14	(a)(1)(A) If an agreement under § 14-208-102 can not be reached, the
15	municipality and the rural water service shall each select one (1) qualified
16	appraiser, and the two (2) appraisers selected shall then select a third
17	appraiser for the purpose of conducting appraisals to determine the value of
18	customers, distribution properties, and <i>facilities of the rural water service</i>
19	annexed by the municipality.
20	(B) The value of customers, distribution properties, and
21	facilities of the rural water service annexed by the municipality shall be
22	determined by using the factors set out in § 15-22-223(b)(2)(B).
23	(2) The agreement or decision of at least two (2) of the three
24	(3) appraisers is the value.
25	(3) If either the municipality or the rural water service is
26	dissatisfied with the decision of the appraisers, either may institute an
27	action in circuit court to challenge the reasonableness of the value
28	determined by the appraisers.
29	(b) The compensation required by this section shall be paid:
30	(1) To the rural water service at a time not later than one
31	hundred twenty (120) days following the date upon which the value is
32	<u>certified;</u>
33	(2) At a later date as mutually agreed upon by the parties; or
34	(3) As determined by the circuit court.
35	
36	14-208-104. Valuation data.

3

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1	(a) The rural water service shall provide to the municipality all data
2	and information required to establish valuations under this chapter.
3	(b) Upon execution of an agreement reached under this chapter, the
4	municipality shall reimburse the rural water service for reasonable costs of
5	appraisal and incidental expenses associated with establishing valuation.
6	
7	SECTION 2. Arkansas Code § 15-22-223(b)(2)(B), concerning the
8	Arkansas Natural Resources Commission's determination of approval of the
9	purchase of water services, is amended to read as follows:
10	(B) To determine the amount of payment, the commission
11	shall base its approval on the following factors:
12	(i) The impact of the transfer of the area on the
13	current provider's existing indebtedness and its ability to repay the debt;
14	(ii) The value, including depreciation, of the
15	current provider's facilities in the area to be transferred;
16	(iii) The amount of any expenditures by the current
17	provider for planning, design, or construction of service facilities outside
18	the area, including without limitation treatment, transmission, and storage
19	facilities, that are directly and reasonably allocable to the area to be
20	transferred;
21	(iv) Any demonstrated impairment of service or
22	increase in cost, including without limitation operation and maintenance, to
23	consumers of the current provider remaining after the transfer of the area;
24	(v) The impact of future lost revenues from the
25	current provider's existing consumers in the area to be transferred, but only
26	until the indebtedness is retired;
27	(vi) Necessary and reasonable legal expenses and
28	professional fees; and
29	(vii) Other relevant factors as determined by the
30	commission.
31	
32	/s/ Woods
33	
34	APPROVED: 4/3/2009
35	
36	

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