

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 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

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

16 TO AMEND SECTIONS OF THE JOINT MUNICIPAL
17 ELECTRIC POWER GENERATION ACT.
18

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
36 easements, water rights, fees, permits, approvals, licenses, certificates,



1 franchises, and the preparation of applications for and securing the same;

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

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

5 (E) Working capital;

6 (F) Initial and reload fuel costs;

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

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

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

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

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

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

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23 as defined by § 23-19-102(10) [Repealed];

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

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

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

35 (9) "Municipality" means any city of the first class or city of
36 the second class incorporated under the laws of this state, or any commission

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

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

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

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

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

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

21
22 SECTION 2. Arkansas Code § 14-202-104 is amended to read as follows:
23 14-202-104. Contracts to acquire interest in project.

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

31 (b) Any contract entered into by a municipality with respect to an
32 interest in, and operation of, a project shall be authorized by ordinance of
33 the governing body of the municipality and shall contain such terms,
34 conditions, and provisions, as the governing body of the municipality shall
35 determine to be necessary or desirable. Any contract may include, but shall
36 not be limited to, the following:

- 1 (1) The purpose or purposes of the contract;
- 2 (2) The duration of the contract;
- 3 (3) The manner of appointing or employing the personnel
4 necessary in connection with the project;
- 5 (4) The method of financing the project, including the
6 apportionment of costs and revenues;
- 7 (5) Provisions specifying the ownership interests of the parties
8 in real property, or portions thereof, used or useful in connection with the
9 project, and the procedures for the disposition of such property when the
10 contract expires, is terminated, or when the project, for any reason, is
11 abandoned, decommissioned, or dismantled;
- 12 (6) Provisions relating to alienation and partition of a
13 municipality's undivided interest in a project;
- 14 (7) Provisions permitting or requiring the exchange by the
15 municipality with other municipalities, persons, or public utilities of an
16 interest in one (1) or more portions of a project for an interest in one (1)
17 or more other portions of the project and specifying the procedure therefor;
- 18 (8) Appropriate provisions pertaining to the details of
19 accomplishing the acquisition, ~~whereby~~ including provisions that authorize a
20 person, including one (1) of the parties to the contract, ~~including~~ a public
21 utility, ~~may~~ or a third party, to construct the project as agent for all the
22 parties;
- 23 (9) Provisions for the operation and maintenance of a project,
24 ~~which may~~ including provisions that authorize a person, including one (1) of
25 the parties to the contract, ~~including a private person~~ a public utility, or
26 a third party, to operate and maintain the project as agent for all the
27 parties;
- 28 (10) Provisions that, if one (1) or more of the parties shall
29 default in the performance or discharge of its or their obligations with
30 respect to the project, one (1) or more of the other parties ~~may~~ shall
31 assume, pro rata, or otherwise, the obligations of such defaulting party or
32 parties and ~~may~~ succeed to such rights and interests of the defaulting
33 parties in the project as may be agreed upon in the contract;
- 34 (11) Methods of amending the contract;
- 35 (12) Methods for terminating the contract; and
- 36 (13) Any other necessary or proper matter.

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

7
 8 SECTION 3. Arkansas Code § 14-202-105 is amended to read as follows:
 9 14-202-105. Sale of excess capacity.

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

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

22
 23 SECTION 4. Arkansas Code § 14-202-112 is amended to read as follows:
 24 14-202-112. Bonds, coupons - Execution and seal.

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

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

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

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

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