

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Representative Luker

A Bill

HOUSE BILL 1544

For An Act To Be Entitled

"THE RURAL WATERWORKS FACILITIES BOARDS ACT; AND FOR OTHER
PURPOSES."

Subtitle

"THE RURAL WATERWORKS FACILITIES BOARDS
ACT."

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

SECTION 1. This act may be referred to and cited as the "Rural
Waterworks Facilities Boards Act."

SECTION 2. It is determined by the General Assembly that adequate
rural waterworks and rural water distribution systems are essential to the
health, safety, and economic welfare of the people of this state. In order
to meet these public needs, it is essential that public financing be provided
for the facilities and it is the purpose of this act to provide an
alternative method of financing for those facilities.

SECTION 3. As used in this act, unless the context otherwise requires:

(1) "Acquire" means to obtain by gift, purchase, or other arrangement,
any project or any portion of a project, whether theretofore constructed and
equipped, theretofore partially constructed and equipped, or being
constructed and equipped at the time of acquisition, for such consideration
and pursuant to such terms and conditions as the board shall determine;

(2) "Construct" means to acquire or build, in whole or in part, in
such manner and by such method, including contracting therefor, and if the
latter, by negotiation or bidding upon such terms and pursuant to such

1 advertising as determined by the board, as will most effectively serve the
2 purposes of this act;

3 (3) "Equip" means to install or place in or on any building or
4 structure equipment of any and every kind, whether or not affixed, including,
5 without limitation, building service equipment, fixtures, heating equipment,
6 air conditioning equipment, machinery, furniture, furnishings, and personal
7 property of every kind;

8 (4) "Facilities" means real property, personal property, or mixed
9 property of any and every kind including, without limitation, rights-of-way,
10 utilities, materials, equipment, fixtures, machinery, furniture, furnishings,
11 buildings, and other improvements of every kind;

12 (5) "Lease" means to lease *as lessor or lessee* for such rentals, for
13 such periods, and upon such terms and conditions as the board shall agree
14 *including without limitation* such extension and purchase options for such
15 prices and upon such terms and conditions as the board shall agree;

16 (6) "Lend" means to extend credit, make a loan to, acquire the
17 obligations of, and generally, without limitation, engage in the financing of
18 any facilities which the board has the authority to construct, acquire, or
19 equip pursuant to this act, upon such terms and with such security as the
20 board deems suitable;

21 (7) "Ordinance" means an ordinance of a quorum court;

22 (8) "Rural waterworks facilities board" or "board" means any board
23 organized under this act;

24 (9) "Sell" means to sell for such price, in such manner, and upon such
25 terms as the board shall determine including, without limitation, public or
26 private sale, and if public, pursuant to such advertisement as the board
27 shall determine, for cash or on credit payable in lump sum or in such
28 installments as the board shall determine, and if on credit, with or without
29 interest and *at such rate as the board may determine*;

30 (10) "Wastewater facilities" means facilities for the collection,
31 treatment and disposal of wastewater, but shall not include solid or
32 hazardous waste;

33 (11) "Waterworks facilities" means facilities for the furnishing of
34 water for domestic, commercial, agricultural, and industrial purposes
35 including, without limitation, mains, hydrants, meters, valves, standpipes,

1 storage tanks, pumping tanks, intakes, wells, impounding reservoirs,
2 purification plants, and lakes, watercourses.

3

4 SECTION 4. This act shall be deemed to provide an additional and
5 alternative method for the doing of the things authorized hereby and shall be
6 regarded as supplemental and additional to powers conferred by other laws.

7

8 SECTION 5. This act shall be liberally construed to effect the
9 purposes of it.

10

11 SECTION 6. (a) Any county is authorized to create one (1) or more
12 rural waterworks facilities boards and to empower each board to own, acquire,
13 construct, reconstruct, extend, equip, improve, operate, maintain, sell,
14 lease, contract concerning, or otherwise deal in or dispose of waterworks
15 *facilities and wastewater* facilities or any interest in such facilities
16 including, without limitation, leasehold interests in and mortgages on such
17 facilities.

18 (b) Boards created under this act are not administrative boards
19 under the County Government Code § 14-14-101 et seq.

20

21 SECTION 7. (a) Each board shall be created by ordinance of the quorum
22 court. The ordinance shall give the board a name which:

23

(1) Shall include the name of the creating county;

24

(2) Shall be descriptive of the powers granted to the board; and

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(3) Shall be distinctive from the name given to any other board

26 created by the county;

27

(4) Shall specify the powers granted to the board; and

28

(5) May place specific limitations on the exercise of the powers

29 granted, including limitations on the board's area of operations, the use of
30 waterworks *facilities and wastewater* facilities and the board's authority to
31 issue bonds.

32

(b) Unless limited by the creating ordinance, each board created shall
33 be authorized to accomplish waterworks *facilities and wastewater* facilities
34 projects within or partly within and partly without the county.

35

1 SECTION 8. (a) Each board shall consist of five (5) members unless
2 there is an expansion of the board to provide services outside the county
3 which created it.

4 (b)(1) The initial members shall be appointed by the county judge of
5 the creating county for terms of one (1), two (2), three (3), four (4), and
6 five (5) years, respectively.

7 (2) Successor members shall be elected by a majority of the board
8 for terms of five (5) years each.

9 (3) Each member shall serve until his successor is elected and
10 qualified.

11 (4) A member shall be eligible to succeed himself.

12 (c) Each member shall qualify by taking and filing with the clerk of
13 the county creating the board his oath of office in which he shall swear to
14 support the Constitution of the United States and the Constitution of the
15 State of Arkansas and to discharge faithfully his duties in the manner
16 provided by law.

17 (d) In the event of a vacancy in the membership of the board, however
18 caused, a majority of the board shall elect a successor member to serve the
19 unexpired term.

20 (e) The members of the board shall receive no compensation for their
21 services, but shall be entitled to reimbursement for reasonable and necessary
22 expenses incurred in the performance of their duties.

23 (f) Any member of the board may be removed for misfeasance,
24 malfeasance, or willful neglect of duty by the county judge of the county
25 which created the board, after reasonable notice of and an opportunity to be
26 heard concerning the alleged grounds for removal.

27 (g)(1)(A) If the jurisdiction of a board, pursuant to interlocal
28 agreements, expands to provide services outside the boundaries of the county
29 from which it obtains power, then not more than two (2) additional members
30 per county may be added pursuant to the terms of any relevant interlocal
31 agreement.

32 (B) These members shall initially be appointed by the county
33 judge of the *non-creating county*, and shall serve for a term agreed upon in
34 the interlocal agreement, provided that the term shall not exceed five (5)
35 years.

1 (2) The other provisions of this section shall apply to these
2 additional members, provided that no additional member shall be eligible to
3 serve as chairman of the board.

4
5 SECTION 9. (a)(1) The members of each board shall meet and organize
6 by electing one of their number as chairman, one as vice-chairman, one as
7 secretary, and one as treasurer, and such officers shall be elected annually
8 thereafter in like manner.

9 (2) The duties of secretary and treasurer may be performed by the
10 same member.

11 (b) The board may also appoint an executive director who shall serve
12 at the pleasure of the board and receive such compensation as shall be fixed
13 by the board.

14
15 SECTION 10. (a)(1) Each board shall meet upon the call of its
16 chairman, or a majority of its members, and at such times as may be specified
17 in its bylaws for regular meetings. A majority of its members shall
18 constitute a quorum for the transaction of business.

19 (2) The affirmative vote of a majority of the members present at a
20 meeting of the board shall be necessary for any action taken by the board.

21 (3) Any action taken by the board shall be by resolution, and such
22 resolution shall take effect immediately unless a later effective date is
23 specified in the resolution.

24 (4) No vacancy in the membership of the board shall impair the
25 right of a quorum to exercise all the rights and perform all the duties of
26 the board.

27 (b)(1) The secretary of the board shall keep a record of the
28 proceedings of the board and shall be custodian of all books, documents, and
29 papers filed with the board and of the minute book or journal of the board
30 and of its official seal.

31 (2) The secretary may cause copies to be made of all minutes and
32 other records and documents of the board. He may give certificates under the
33 official seal of the board to the effect that the copies are true copies, and
34 all persons dealing with the board may rely upon the certificates.

35 (3) Records and documents of the boards shall be preserved and

1 maintained at such locations and in such manner as prescribed by ordinance of
2 the county which created the boards.

3

4 SECTION 11. Each board is authorized and empowered:

5 (1) To have perpetual succession as a body politic and corporate and
6 to adopt bylaws for the regulation of its affairs and the conduct of its
7 business;

8 (2) To adopt an official seal and alter it at pleasure;

9 (3) To maintain an office at such place in the county creating the
10 board as it may designate;

11 (4) To sue and be sued in its own name;

12 (5) To fix, charge, and collect rents, fees, and charges for the use
13 of any waterworks facilities;

14 (6) To employ and pay compensation to such employees and agents,
15 including attorneys, consulting engineers, architects, surveyors,
16 accountants, financial experts, and such other employees and agents as may be
17 necessary in its judgment, and to fix their compensation;

18 (7) To accomplish waterworks *facilities and wastewater* facilities
19 projects as authorized by this act and the ordinance creating the board;

20 (8) To do any and all other acts and things in this act authorized or
21 required to be done, whether or not included in the powers mentioned in this
22 section;

23 (9) To lend money, directly or indirectly, for the financing of the
24 construction, acquisition, and equipment of all or a portion of a waterworks
25 *facility and/or wastewater facility* project;

26 (10) To invest money, including a major portion of the proceeds of any
27 issue of bonds for the term of the bonds or a shorter period, in
28 consideration of a contract to make payment or payments to provide for the
29 payment of the principal, premium, if any, and interest on the bonds when
30 due;

31 (11) To do any and all other things necessary or convenient to
32 accomplish the purposes of this act.

33

34 SECTION 12. (a) Any county may acquire facilities for a waterworks
35 *facility and/or wastewater facility* project, or any portion thereof,

1 including a project site, by gift, purchase, lease, or condemnation, and may
2 transfer any such facilities to a board created by the county by sale, lease,
3 or gift.

4 (b) Transfer may be authorized by ordinance of the quorum court
5 without regard to the requirements, restrictions, limitations, or other
6 provisions contained in any other law.

7 (c) Boards may exercise the power of eminent domain in accordance with
8 the procedures prescribed by § 18-15-201 et seq.

9

10 SECTION 13. It is declared that each board created pursuant to this
11 act will be performing public functions and will be a public instrumentality
12 of the county creating the board. Accordingly, all properties at any time
13 owned by the board and the income therefrom shall be exempt from all taxation
14 in the State of Arkansas.

15

16 SECTION 14. (a) Boards are authorized to use any available funds and
17 revenues for the accomplishment of all or a portion of waterworks *facilities*
18 *and/or wastewater* facilities projects and may issue bonds, as authorized by
19 this act, for the accomplishment of all or a portion of waterworks *facilities*
20 *and/or wastewater* facilities projects, either alone or together with other
21 available funds and revenues.

22 (b) Bonds may be issued in principal amounts as shall be sufficient to
23 pay the costs of issuing bonds, the amount necessary for a reserve, if deemed
24 desirable, the amount necessary to provide for debt service until revenues
25 for the payment thereof are available, the amount necessary to acquire a
26 contract providing for payments to the board at a rate or rates at least
27 sufficient to provide for, alone or with any other revenues that may be
28 pledged, debt service on the bonds, if deemed desirable, and to pay any other
29 costs and expenditures of whatever nature incidental to the accomplishment of
30 all or a portion of the waterworks *facilities or wastewater* facilities
31 project involved and the placing of it in operation.

32 (c) Each board shall annually contract with a certified public
33 accountant to perform an audit of the board's revenues which are not pledged
34 to outstanding bonded indebtedness. The board shall furnish a copy of the
35 audit report to the quorum court of the county which created the board and

1 the board shall make the audit report available to the public for inspection
2 under the Freedom of Information Act, § 25-19-101 et seq.

3

4 SECTION 15. (a)(1) The issuance of bonds shall be by resolution of
5 the board.

6 (2) As the resolution authorizing their issuance may provide, the
7 bonds may:

8 (A) Be coupon bonds payable to bearer, but subject to
9 registration as to principal or as to principal and interest;

10 (B) Be exchangeable for bonds of another denomination;

11 (C) Be in such form and denominations;

12 (D) Be made payable at such places within or without the state;

13 (E) Be issued in one (1) or more series;

14 (F) Bear such date or dates, and mature at such time or times,
15 not exceeding forty (40) years from the respective dates;

16 (G) Bear interest at such rate or rates;

17 (H) Be payable in such medium of payment;

18 (I) Be subject to such terms of redemption; and

19 (J) Contain such terms, covenants, and conditions including,
20 without limitation, those pertaining to:

21 (i) The custody and application of the proceeds of the bonds;

22 (ii) The collection and disposition of revenues;

23 (iii) The maintenance of various funds and reserves;

24 (iv) The nature and extent of the security and pledging of
25 revenues;

26 (v) The rights, duties, and obligations of the board and the
27 trustee for the holders and registered owners of the bonds; and

28 (vi) The rights of the holders and registered owners of the
29 bonds.

30 (3) There may be successive bond issues for the purpose of
31 financing the same waterworks *facilities and/or wastewater* facilities
32 project, and there may be successive bond issues for financing the cost of
33 reconstructing, replacing, constructing additions to, extending, improving,
34 and equipping waterworks *facilities and/or wastewater* facilities projects
35 already in existence, whether or not originally financed by bonds issued

1 under this act, with each successive issue to be authorized as provided by
2 this act.

3 (4) Priority between and among issues and successive issues as to
4 security of the pledge of revenues and lien on the waterworks *facilities*
5 *and/or wastewater* facilities project involved may be controlled by the
6 resolution authorizing the issuance of the bonds.

7 (5) Subject to the provisions of this section pertaining to
8 registration, the bonds shall have all the qualities of negotiable
9 instruments under the laws of the State of Arkansas.

10 (6) Without limiting the generality of the foregoing, the
11 resolution may provide for the investment of a major portion of the proceeds
12 of the bonds in consideration of a contract to make payment or payments at
13 least sufficient, alone or with other revenues pledged, to provide for
14 principal, premium, if any, and interest on the bonds, as due.

15 (b)(1) The resolution authorizing the bonds may provide for the
16 execution by the board of an indenture which defines the rights of the
17 holders and registered owners of the bonds and provides for the appointment
18 of a trustee for the holders and registered owners of the bonds.

19 (2) The indenture may control the priority between and among
20 successive issues and may contain any other terms, covenants, and conditions
21 that are deemed desirable including, without limitation, those pertaining to:

22 (A) The custody and application of proceeds of the bonds;

23 (B) The maintaining of rates and charges;

24 (C) The collection and disposition of revenues;

25 (D) The maintenance of various funds and reserves;

26 (E) The nature and extent of the security and pledging of
27 revenues;

28 (F) The rights, duties, and obligations of the board and the
29 trustee; and

30 (G) The rights of the holders and registered owners of the

31 bonds. (c) The bonds may be sold at public or private sale for such
32 price including, without limitation, sale at a discount, and in such manner
33 as the board may determine by resolution.

34 (d)(1) The bonds shall be executed by the manual or facsimile
35 signature of the chairman and by the manual or facsimile signature of the

1 secretary of the board.

2 (2) The coupons attached to the bonds may be executed by the
3 facsimile signature of the chairman of the board.

4 (3) In case any of the officers whose signatures appear on the
5 bonds or coupons shall cease to be such officers before the delivery of the
6 bonds or coupons, their signatures shall nevertheless be valid and sufficient
7 for all purposes.

8

9 SECTION 16. (a) Bonds may be issued for the purpose of refunding any
10 obligations issued under this act. Such refunding bonds may be combined with
11 bonds issued under the provisions of Section 15 into a single issue.

12 (b) When bonds are issued under this section for refunding purposes,
13 the bonds may either be sold or delivered in exchange for the outstanding
14 obligations. If sold, the proceeds may be either applied to the payment of
15 the obligations refunded or deposited in escrow for the retirement thereof
16 either at maturity or upon any authorized redemption date.

17 (c)(1) All bonds issued under this section shall in all respects be
18 authorized, issued, and secured in the manner provided for other bonds issued
19 under this act and shall have all the attributes of such bonds.

20 (2) The resolution under which the refunding bonds are issued may
21 provide that any of the refunding bonds shall have the same priority of lien
22 on the revenues pledged for their payment as was enjoyed by the obligations
23 refunded thereby.

24

25 SECTION 17. Any board established under this act may, in its
26 discretion, invest any of its funds not immediately needed for its purposes
27 in bonds issued under the provisions of this act. Bonds issued under the
28 provisions of this act shall be eligible to secure the deposit of public
29 funds.

30

31 SECTION 18. Bonds issued under this act and the income therefrom shall
32 be exempt from all state, county, and municipal taxes. This exemption
33 includes income and estate taxes.

34

35 SECTION 19. (a) It shall be plainly stated on the face of each bond

1 that it has been issued under the provisions of this act, that the bonds are
2 obligations only of the board, and that in no event shall they constitute an
3 indebtedness for which the faith and credit of the creating county or any of
4 its revenues are pledged.

5 (b) No member of the board shall be personally liable on the bonds or
6 for any damages sustained by anyone in connection with any contracts entered
7 into in carrying out the purpose and intent of this act unless he shall have
8 acted with a corrupt intent.

9 (c) The principal of and interest on the bonds shall be payable from:

10 (1) Revenues derived from the waterworks facilities *and/or*
11 *wastewater facilities projects* acquired, constructed, reconstructed,
12 equipped, extended, or improved, in whole or in part, with the proceeds of
13 the bonds;

14 (2) Obligations of:

15 (A) The owners of waterworks *facilities and/or wastewater*
16 *facilities projects*; or

17 (B) Any person with whom the proceeds of the bonds, or a portion
18 thereof, are invested by contract or otherwise;

19 (3) Any other funds or sources of funds of the board specifically
20 pledged and which are set aside as a special fund or source, other than taxes
21 or assessments for local improvements, for the purpose of paying the
22 principal of and interest on the bonds; or

23 (4) Any combination of subdivisions (1), (2), and (3) of this
24 subsection.

25 (d) The board is authorized to pledge those revenues, obligations,
26 other special funds or sources to pay the principal of and interest on the
27 bonds.

28

29 SECTION 20. (a) The resolution or indenture referred to in Section 15
30 may, or may not, impose a foreclosable mortgage lien upon or security
31 interest in all or any portion of the lands, buildings, or facilities
32 acquired, constructed, reconstructed, extended, equipped, or improved, in
33 whole or in part, with the proceeds of bonds issued under this act, and the
34 nature and extent of the mortgage lien or security interest may be controlled
35 by the resolution or indenture including, without limitation, provisions

1 pertaining to the release of all or part of the lands, buildings, or
2 facilities from the mortgage lien or security interest and the priority of
3 the mortgage lien or security interest in the event of successive bond issues
4 as authorized by Section 15.

5 (b) Subject to such terms, conditions, and restrictions as may be
6 contained in the resolution or indenture authorizing or securing the bonds,
7 any holder or registered owner of bonds issued under the provisions of this
8 act, or a trustee, on behalf of all holders and registered owners, may,
9 either at law or in equity, enforce the mortgage lien or security interest
10 and may, by proper suit, compel the performance of the duties of the members
11 and employees of the issuing board as set forth in this act, the ordinance
12 creating the board, and the resolution or indenture authorizing or securing
13 the bonds.

14

15 SECTION 21. (a)(1) In the event of a default in the payment of the
16 principal of or interest on any bonds issued under the provisions of this
17 act, any court having jurisdiction may appoint a receiver to take charge of
18 the waterworks facilities *and/or wastewater facilities projects* upon or in
19 which there is a mortgage lien or security interest securing the bonds in
20 default.

21 (2) The receiver shall have the power and authority to operate and
22 maintain the waterworks facilities project in receivership and to charge and
23 collect payments, fees, rents, and charges sufficient to provide for the
24 payment of any costs of receivership and operating expenses of the project in
25 receivership and to apply the revenues derived from the project in
26 receivership in conformity with this act and the resolution or trust
27 indenture securing the bonds in default.

28 (3) When the default has been cured, the receivership shall be
29 ended and the project returned to the board.

30 (b) The relief provided for in this section shall be construed to be
31 in addition and supplemental to the other remedies provided for in this act
32 and the remedies that may be provided for in the resolution or trust
33 indenture authorizing or securing the bonds, and shall be so granted and
34 administered as to accord full recognition to priority rights of bondholders
35 as to the pledge of revenues from and mortgage lien on or security interest

1 in projects as specified in and fixed by the resolution or trust indenture
2 authorizing or securing successive issues of bonds.

3

4 SECTION 22. (a) Within the first ninety (90) days of each calendar
5 year, each board shall make a written report to the quorum court of the
6 county which created the board concerning its activities for the preceding
7 calendar year.

8 (b) Each report shall set forth a complete operating and financial
9 statement covering its operation during the year.

10

11 SECTION 23. Any public facility board created under the Public
12 Facilities Boards Act (Arkansas Code 14-137-101 et seq. or its predecessor)
13 for the purpose of operating a waterworks *facility and/or a wastewater*
14 *facility* and which *is* in existence on the effective date of this act may
15 petition the quorum court which created the board to grant the board all the
16 powers conveyed by this act and if the quorum court adopts an ordinance to
17 that effect, the powers and authority granted under this act shall be
18 applicable to that public facilities board and it shall thereafter be
19 governed exclusively by the provisions of this act and none other.

20

21 SECTION 24. All provisions of this act of a general and permanent
22 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
23 Code Revision Commission shall incorporate the same in the Code.

24

25 SECTION 25. If any provision of this act or the application thereof to
26 any person or circumstance is held invalid, such invalidity shall not affect
27 other provisions or applications of the act which can be given effect without
28 the invalid provision or application, and to this end the provisions of this
29 act are declared to be severable.

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31 SECTION 26. All laws and parts of laws in conflict with this act are
32 hereby repealed.

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/s/Rep. Luker

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