

1 State of Arkansas *As Engrossed: S3/6/17 S3/13/17*

2 91st General Assembly

# A Bill

3 Regular Session, 2017

SENATE BILL 435

4

5 By: Senators Bond, L. Chesterfield, Elliott, J. English, J. Hutchinson

6 By: Representatives Tucker, E. Armstrong, F. Allen, Davis, Blake

7

8

## For An Act To Be Entitled

9 AN ACT TO AMEND THE FREEDOM OF INFORMATION ACT OF  
10 1967 CONCERNING WATER SYSTEMS; TO AMEND THE LAW  
11 CONCERNING CONSOLIDATED WATERWORKS SYSTEMS;  
12 CONCERNING THE ISSUANCE OF REVENUE BONDS BY A  
13 CONSOLIDATED WATERWORKS SYSTEM; TO DECLARE AN  
14 EMERGENCY; AND FOR OTHER PURPOSES.

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16

17

## Subtitle

18

TO AMEND THE FREEDOM OF INFORMATION ACT;  
19 TO AMEND THE LAW CONCERNING CONSOLIDATED  
20 WATERWORKS SYSTEMS; CONCERNING THE  
21 ISSUANCE OF REVENUE BONDS BY A  
22 CONSOLIDATED WATERWORKS SYSTEM; AND TO  
23 DECLARE AND EMERGENCY.

24

25

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

27

28 SECTION 1. Arkansas Code § 25-19-105(b)(20), concerning the exemptions  
29 to the Freedom of Information Act of 1967, is amended to read as follows:

30

31

(20)(A) Except as provided in subdivision (b)(20)(B) of this  
section, personal ~~Personal~~ information of current and former public water  
32 system customers and municipally owned utility system customers, including  
33 without limitation:

34

~~(A)(i)~~ Home and mobile telephone numbers;

35

~~(B)(ii)~~ Personal email addresses;

36

~~(C)(iii)~~ Home and business addressees; and



1                   ~~(D)~~(iv) Customer usage data.

2                   (B) Personal information of a current or former water  
3 system customer or municipally owned utility system customer may be disclosed  
4 to:

5                   (i) The current or former water system customer, who  
6 may receive his or her own information;

7                   (ii) A person who serves as the attorney, guardian,  
8 or other representative of the current or former water system customer, who  
9 may receive the information of his or her client, ward, or principal;

10                   (iii) A tenant of the current or former water system  
11 customer or municipally owned utility system customer, who may receive notice  
12 of pending termination of service;

13                   (iv) A federal or state office or agency for the  
14 purpose of participating in research being conducted by such federal or state  
15 office or agency, if the federal or state office or agency agrees to prohibit  
16 disclosure of the personal information;

17                   (v) For the purpose of facilitating a shared billing  
18 arrangement, a county, municipality, improvement district, urban service  
19 district, public utility, public facilities board, or public water authority  
20 that provides or provided a service to the current or former water system  
21 customer or municipally owned utility system customer; or

22                   (vi) An agent or vendor of the water system or  
23 municipally owned utility system that provides a billing or administrative  
24 service to the water system or municipally owned utility system provided that  
25 the agent or vendor and the water system or municipally owned utility system  
26 enter an agreement that prohibits disclosure by the agent or vendor of the  
27 water system or municipally owned utility system of the personal information  
28 of a current or former water system customer or municipally owned utility  
29 system customer to any other person.

30  
31           SECTION 2. Arkansas Code § 25-20-103 is amended to read as follows:

32           25-20-103. Definitions.

33           As used in this chapter:

34           (1) "Public agency" means any:

35                   (A) School district;

36                   (B) Political subdivision of this state;

1 (C) Agency of the state government or of the United  
2 States;

3 (D) Political subdivision of another state;

4 (E) Water district created under the provisions of The  
5 Regional Water Distribution District Act, § 14-116-101 et seq.;

6 (F) Governing body of a municipal electric utility as  
7 defined in § 25-20-402; and

8 (G) Fire department organized under the laws of this state  
9 if the fire department:

10 (i) Offers fire protection services to  
11 unincorporated areas; and

12 (ii) Has received approval by its quorum court for  
13 participation in an interlocal cooperation agreement; ~~and~~

14 (2) "Retail customer" means a person other than a municipality,  
15 improvement district, or other entity that:

16 (A) Sells and distributes water subject to regulation by  
17 the Department of Health;

18 (B) Maintains a service account with a public body formed  
19 under the Consolidated Waterworks Authorization Act § 25-20-301 et seq. for  
20 the provision of water to a person or the occupants of a single family  
21 dwelling, multitenant dwelling, business premises, or government facility;  
22 and

23 (C) Is not explicitly permitted to resell potable water to  
24 another person;

25 (3) "State" means a state of the United States and the District  
26 of Columbia;

27 (4) "Surplus water" means water available for distribution or  
28 sale aside from water necessarily required of the public body for  
29 distribution to its existing retail customers;

30 (5) "Wastewater system" means a wastewater and collection system  
31 formed under state law that includes without limitation land, mains,  
32 interceptors, collector lines, manholes, force mains, valves, pumping  
33 stations, pumps, treatment and pretreatment plants and units thereof, other  
34 real and personal property, buildings, structures, other improvements, and  
35 facilities as necessary or advisable for the proper and efficient operation  
36 of the wastewater system; and

1           (6) "Water system" means and includes a waterworks and  
2 distribution system in its entirety or any integral parts of thereof which is  
3 formed under state law and includes without limitation land, mains,  
4 pipelines, hydrants, meters, valves, standpipes, storage tanks, storage  
5 basins, pumping tanks, intakes, wells, clear water wells, impounding  
6 reservoirs, lakes, watercourses, pumps, purification plants and units  
7 thereof, filtration plants and units thereof, as well as all other real and  
8 personal property, buildings, structures, and other improvements or  
9 facilities as necessary or advisable for the proper and efficient operation  
10 of the water system.

11  
12           SECTION 3. Arkansas Code § 25-20-306(a), concerning the general powers  
13 of a public body, is amended to add an additional subdivision to read as  
14 follows:

15           (15) Own and operate a wastewater system that the public body  
16 acquires from a municipality, county, corporation, organization, other public  
17 body, or entity from which the public body simultaneously acquires or  
18 previously acquired a water system;

19           (16) Manage or operate a water system under a contract executed  
20 by the public body and a municipality, county, corporation, organization,  
21 other public body, or entity authorized by law to own and operate the water  
22 system;

23           (17) Purchase goods and services under applicable law for the  
24 public body; and

25           (18) Purchase professional services under § 19-11-1801 et seq.  
26 or by any method of competitive bidding including without limitation reverse  
27 auctions.

28  
29           SECTION 4. Arkansas Code § 25-20-307(a), concerning the operation of  
30 consolidated waterworks system, is amended to read as follows:

31           (a) "Consolidated waterworks system" means and includes:

32           (1) A waterworks and distribution system in its entirety, or  
33 any integral part thereof, including land, mains, pipelines, hydrants,  
34 meters, valves, standpipes, storage tanks, storage basins, pumping tanks,  
35 intakes, wells, clear water wells, impounding reservoirs, lakes,  
36 watercourses, pumps, purification plants and units thereof, filtration plants

1 and units thereof, as well as all other real and personal property,  
2 buildings, structures, ~~or~~ and other improvements ~~or~~ and facilities as may be  
3 necessary or advisable for the proper and efficient operation of the public  
4 body's facilities; and

5 (2) One (1) or more wastewater systems, if any, acquired by the  
6 public body.

7  
8 SECTION 5. Arkansas Code § 25-20-307(c)(2), concerning the operation  
9 of consolidated waterworks system, is amended to read as follows:

10 (2) A public body shall have a reasonable time after its  
11 creation or after its expansion by the addition of a new participating public  
12 agency to equalize any differentials in ~~water~~ rates among similarly situated  
13 classes of customers.

14  
15 SECTION 6. Arkansas Code § 25-20-307(c)(3)(B), concerning the  
16 operation of consolidated waterworks system, is amended to read as follows:

17 (B) Within one (1) year of the creation or expansion of  
18 the public body, an independent expert completes an engineering study of the  
19 ~~water system~~ related infrastructure located within the jurisdiction of each  
20 participating public agency that identifies improvements needed to create a  
21 uniform infrastructure quality throughout the jurisdictions, rate  
22 differentials among otherwise similarly situated classes of customers are  
23 reasonably calculated to recover from customers located in the respective  
24 jurisdictions in which the improvements are made the costs incurred in making  
25 the improvements in such jurisdictions, and the public body equalizes rates  
26 among similarly situated classes of customers within ten (10) years after the  
27 date of the engineering study.

28  
29 SECTION 7. Arkansas Code § 25-20-307(d), concerning the operation of  
30 consolidated waterworks system, is amended to read as follows:

31 (d) The inability of a public body to rely upon either safe harbor  
32 defense set out in subdivisions (c)(3)(A) and (B) of this section shall not  
33 create any implication that the public body has failed to equalize any  
34 differentials in ~~water~~ rates among similarly situated classes of customers  
35 within a reasonable period of time after its creation or expansion.

36

1 SECTION 8. Arkansas Code § 25-20-308(a)(2), concerning out-of-area  
2 sales and services, is amended to read as follows:

3 (2) Sell surplus water to any municipality, improvement  
4 district, or other ~~person engaged in the business of selling and distributing~~  
5 ~~water to consumers, whether the municipality, improvement district, or other~~  
6 person entity that sells and distributes water subject to regulation of the  
7 Department of Health, whether the municipality, improvement district, or  
8 other entity is located within or outside the jurisdictions of the public  
9 body's participating agencies.

10  
11 SECTION 9. Arkansas Code § 25-20-310(a), concerning improvements and  
12 financing of improvements with bonds, is amended to read as follows:

13 (a) Whenever any public body created under this subchapter shall own  
14 or operate a consolidated waterworks system and shall desire to acquire,  
15 construct, or equip improvements, betterments, and extensions thereto, it may  
16 issue revenue bonds under the provisions of this section to pay for them. The  
17 procedure for issuance of bonds shall be as provided in this section.

18  
19 SECTION 10. Arkansas Code § 25-20-310(e), concerning improvements and  
20 financing of improvements with bonds, is amended to read as follows:

21 (e)(1) The resolution shall fix the minimum rate or rates for water or  
22 other services provided by the consolidated water system to be collected  
23 prior to the payment of all of the bonds, with exceptions as may be provided  
24 in the resolution, and shall pledge the revenues derived from the  
25 consolidated waterworks system or any specified portion of the consolidated  
26 waterworks system for the purpose of paying the bonds and interest thereon.

27 (2) The rates to be charged for the water or other services of  
28 the consolidated waterworks system or the specified portion of the  
29 consolidated waterworks system with revenues pledged to the payment of the  
30 bonds shall be sufficient to provide:

31 (A) For the payment of all principal of and interest on  
32 all bonds as and when due;

33 (B) For the operation and maintenance of the consolidated  
34 waterworks system or the specified portion of the consolidated waterworks  
35 system with revenues pledged to the payment of the bonds; and

36 (C) An adequate depreciation account for the consolidated

1 waterworks system or the specified portion of the consolidated waterworks  
2 system with revenues pledged to the payment of the bonds.

3  
4 SECTION 11. Arkansas Code § 25-20-310, concerning improvements and  
5 financing of improvements with bonds, is amended to add an additional  
6 subsection to read as follows:

7 (j)(1)(A) Prior to a proposed issuance of revenue bonds by a public  
8 body, the public body shall publish one (1) time in a newspaper of general  
9 circulation in the participating public agencies:

10 (i) Notice of the proposed issuance of bonds;

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

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

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

18 (B) Notice under subdivision (j)(1)(A) of this section  
19 shall be published at least ten (10) days prior to the date of the hearing  
20 described in subdivision (j)(1)(A)(iv) of this section.

21 (2) The chief executive officer of the public body or his or her  
22 designee shall be responsible for conducting the hearing and shall request  
23 all public comments that might pertain to the proposed issuance of bonds by  
24 the public body.

25 (3)(A) Upon compliance with the provisions of this section,  
26 other notice, hearing, or approval by the public body, any participating  
27 public agency or any governmental unit shall not be required as a condition  
28 to the issuance by a public body of its contemplated bonds or any interim  
29 financing with respect thereto.

30 (B) The provisions of the Revenue Bond Act of 1987, § 19-  
31 9-601 et seq., do not apply to this section and revenue bonds or interim  
32 financing issued hereunder.

33 (C) Notwithstanding the provisions of subdivision  
34 (i)(3)(A) of this section, the participating public agencies that have  
35 entered into the interlocal agreement forming the public body may, in the  
36 interlocal agreement, impose additional procedural requirements as a

1 precedent for the issuance of revenue bonds by a public body, and if that is  
2 the case, the public body shall comply with those requirements prior to the  
3 issuance of the bonds and any interim financing.  
4

5 SECTION 12. Arkansas Code § 25-20-321(a), concerning the annual report  
6 and audit relating to consolidated waterworks systems, is amended to read as  
7 follows:

8 (a) Within the first ~~ninety (90)~~ one hundred eighty (180) days of each  
9 calendar year, each public body created under this subchapter shall make a  
10 written report to the governing bodies of the participating public agencies  
11 concerning its activities for the preceding calendar year.  
12

13 SECTION 13. Arkansas Code Title 25, Chapter 20, Subchapter 3, is  
14 amended to add an additional section to read as follows:

15 25-20-324. Interim financing.

16 (a) If the issuance of revenue bonds is authorized by resolution of  
17 the board of commissioners, any public body created under this subchapter is  
18 authorized to obtain interim financing pending the delivery of all or any  
19 part of the bonds from such sources and upon such terms as the board of  
20 commissioners of the public body shall determine.

21 (b)(1) As evidence of any indebtedness so incurred, the public body  
22 may execute and deliver its promissory note or notes and pledge to the  
23 payment thereof any revenues authorized by this subchapter to be pledged to  
24 revenue bonds and the proceeds of the revenue bonds when issued.

25 (2) The public body may secure the notes in the same manner as  
26 revenue bonds issued under this subchapter.

27 (c) The notes shall not in any event constitute an indebtedness of,  
28 nor pledge the faith and credit of, the State of Arkansas or the  
29 participating public agencies of the public body within the meaning of any  
30 constitutional or statutory limitation.

31 (d) The public body may use, as distinguished from pledge, any  
32 available revenues to pay or to apply to the payment of the principal of and  
33 interest on the notes and may use the proceeds of revenue bonds, either alone  
34 or with other available revenues, to pay the principal and interest on the  
35 notes.

36 (e) The notes may bear such date or dates, may mature at such time or



1 times, not exceeding thirty-six (36) months from their respective dates, may  
2 bear interest at such rate or rates, may be in such form, may be executed in  
3 such manner, may be payable at such place or places, may contain such  
4 provisions for prepayment prior to maturity and may contain such other terms,  
5 covenants, and conditions as the resolution may provide, not inconsistent  
6 with the provisions of this subchapter pertaining to revenue bonds.

7  
8 SECTION 14. EMERGENCY CLAUSE. It is found and determined by the  
9 General Assembly of the State of Arkansas that the Freedom of Information Act  
10 of 1967, § 25-19-101 et seq., places undue restrictions on water systems;  
11 that, in order to satisfy such restrictions, a water system must forego  
12 certain undertakings to the detriment of the water system and its customers;  
13 and that this act is immediately necessary so that a water system may provide  
14 information to its utility partners, other government offices, and certain  
15 members of the public in order for the water system to serve its community as  
16 efficiently and effectively as possible. Therefore, an emergency is declared  
17 to exist, and this act being immediately necessary for the preservation of  
18 the public peace, health, and safety shall become effective on:

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

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

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

25  
26 */s/Bond*

27  
28  
29 **APPROVED: 03/27/2017**