

State of Arkansas
76th General Assembly
Regular Session, 1987
By: Representative D. Wood

HOUSE BILL 1057

"AN ACT TO AMEND SECTION 8 OF ACT 131 OF 1933, AS AMENDED [ARK. STAT. 19-4208]; TO AMEND SECTIONS 2 AND 7 OF ACT 321 OF 1955, AS AMENDED [ARK. STAT. 19-4202.1 AND 19-4257]; TO AMEND SECTION 3 OF ACT 288 OF 1959, AS AMENDED [ARK. STAT. 19-4265]; TO AMEND SECTION 1 OF ACT 184 OF 1959, AS AMENDED [ARK. STAT. 19-4269]; TO AMEND SECTION 5 OF ACT 49 OF 1949, AS AMENDED [ARK. STAT. 19-4269.2] TO LIMIT THE RATES THAT MUNICIPAL WATERWORKS SYSTEMS MAY CHARGE NONRESIDENT CONSUMERS AND OTHER MUNICIPAL WATERWORKS SYSTEMS AND IMPROVEMENT DISTRICT WATER SYSTEMS TO AN AMOUNT THAT DOES NOT EXCEED THE COST OF SERVICE OF THE SELLING MUNICIPALITY'S WATERWORKS SYSTEM BY AN AMOUNT IN EXCESS OF TEN PERCENT; TO DEFINE THE TERM 'COST OF SERVICE' AS USED IN SETTING WATER RATES; AND FOR OTHER PURPOSES."

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

SECTION 1. Section 8 of Act 131 of 1933, as amended, the same being Arkansas Statute 19-4208, is hereby amended to read as follows:

"Section 8. Rates for resident and nonresident consumers of a municipal waterworks system shall be fixed by the Legislative Body of the municipality. The rates to be charged by the municipality must be adequate to pay the principal of and interest on all revenue bonds and/or revenue promissory notes as they severally mature, to make such payments into a revenue bond sinking fund as may be required by ordinance or trust indentures, to provide an adequate depreciation fund and to provide the operating authority's estimated cost of operating and maintaining the waterworks system. Rates fixed prior to the issuance of revenue bonds or notes may be reduced if authorized by the trust indenture or ordinance pertaining to said issuance, provided, however, the

rates shall not be reduced below the standards herein prescribed. If a municipality subject to the provisions of this Act proposes to make additions to its system, which additions are to be financed by the issuance of revenue bonds or revenue promissory notes, within eighteen (18) months of the effective date of the rate, then the Legislative Body of the municipality shall fix a rate to be effective immediately, which will be sufficient, in addition to the above requirements, to amortize said revenue bonds or revenue promissory notes with interest as they severally mature. Provided, however, the Legislative Body of the municipality shall not fix rates for water supplies to nonresident consumers so that the rates exceed their pro rata share of the system's cost of service by an amount in excess of ten percent. Any municipality supplying water to nonresident consumers shall not terminate service to those consumers until an adequate substitute source of supply is available to those consumers.

If any surplus be accumulated in the operation and maintenance fund of the waterworks system which shall be in excess of the (operating authority's) estimated cost of maintaining and operating the plant during the remainder of the fiscal year then current, and the cost of maintaining and operating said plant during the fiscal year next ensuing, any such excess may be by the operating authority transferred to either the depreciation account or to the bond and interest redemption account, as the operating authority may designate; if any surplus be accumulated in the depreciation account over and above that which the operating authority shall find may be necessary for probable replacements needed during the then fiscal year, and the next ensuing fiscal year, such excess may be transferred to the bond and interest redemption account; if a surplus shall exist in the bond and interest redemption account, the same may be applied by the operating authority, in its discretion, subject to any limitations in the ordinance authorizing the issuance of the bonds, or in the trust indenture, (a) to the payment of bonds that may later be issued for additional betterments and improvements; (b) to the purchase or retirement, insofar as possible, of outstanding unmatured bonds payable from the bond and interest redemption account, at no more than the fair market value thereof; (c) to the payment of any outstanding unmatured bonds payable from the bond and interest redemption account that may be subject to call for redemption before maturity; or (d) to any other municipal purpose."

SECTION 2. Section 2 of Act 321 of 1955, as amended, the same being Arkansas Statute 19-4202.1, is hereby amended to read as follows:

"Section 2. Definitions of terms used in this Act are as follows:

A. The term 'operating authority' as used herein is defined to mean either the City Council, Legislative Body or Board of Commissioners, whichever, in a given instance, shall be charged with the responsibility of operating the municipal waterworks system.

B. The term 'nonresident consumer' as used herein is defined to mean any consumer who purchases water within the municipal boundaries, which water is then transported to a point outside the municipal boundaries for use or resale; said term also applies to any consumer receiving service outside the municipality.

C. The term 'operation and maintenance' as used herein, and in all other Acts relating to municipally owned waterworks systems, is defined as including, among other items of operation and maintenance, taxes, improvements, extensions and additions to the waterworks system.

D. The term 'cost of service' as used herein, and in all other Acts relating to municipally owned waterworks systems, is defined as including the total system costs of a municipal waterworks system that are reasonably related to the delivery of services to all of the waterworks system's consumers, both resident and nonresident, during a specific annual period. The term includes, among other reasonable items of cost, the annual amortized cost to adequately pay the principal of and interest on all revenue bonds and/or revenue promissory notes as they severally mature; the annual amortized payments into a revenue bond sinking fund as may be required by ordinance or trust indenture; annual amortized payments to provide for an adequate depreciation fund; and the payments to provide for the operating authority's annual estimated cost of operating and maintaining the waterworks system. For the purpose of setting rates for nonresident consumers, the term 'cost of service' shall not include in any calculation of operation and maintenance costs any payments in lieu of taxes made under authority of Act 50 of 1965, as amended."

SECTION 3. Section 7 of Act 321 of 1955, as amended, the same being Arkansas Statute 19-4257, is hereby amended to read as follows:

"Section 7. A municipality owning a waterworks system shall operate its entire system in a governmental and not proprietary capacity. The municipal-

ity shall have the option of extending its services to any consumer outside the municipal boundaries, but it shall not be obligated to do so. No municipality shall be obligated to supply any fixed amount of water or water pressure to nonresident consumers, nor shall a municipality be obligated to increase the number or size of, or change the location of any mains or pipes outside its boundaries. Water may be supplied to nonresident consumers at such rates as the Legislative Body of the municipality may deem just and reasonable, and said rates need not be the same as the rates charged residents of the municipality. All laws in conflict with this section are hereby repealed. Provided, however, that at no time shall any municipality owning a waterworks system supply water to nonresident consumers at rates that exceed their pro rata share of the the cost of service of the selling municipality's waterworks system by an amount in excess of ten percent (10%). Any municipality owning a waterworks system and supplying water to nonresident consumers shall not terminate service to those consumers until an adequate substitute source of supply is available to those consumers."

SECTION 4. Section 3 of Act 288 of 1959, as amended, the same being Arkansas Statute 19-4265, is hereby amended to read as follows:

"Section 3. Any municipality extending a service to an adjacent or nearby area shall have the power to fix the schedule of rates for services so extended. Provided, however, that those rates shall not exceed the adjacent or nearby area's pro rata share of the cost of service of any municipality extending service to those areas by an amount in excess of ten percent (10%). Any municipality extending service to an adjacent or nearby area shall not terminate service to those areas until an adequate substitute source of supply is available to those areas."

SECTION 5. Section 1 of Act 184 of 1959, as amended, the same being Arkansas Statute 19-4269, is hereby amended to read as follows:

"Section 1. Cities of the second class now owning a waterworks system are hereby authorized and empowered to purchase, construct, own and maintain water supply lines to the city limits of any adjacent city or town where the latter city or town agrees to purchase water under contract from the supplying city. Provided, however, that no city of the second class owning a waterworks system may contract to supply water to any adjacent city or town for an amount

that exceeds that adjacent city or town's pro rata share of the system's cost of service by an amount in excess of ten percent (10%). Any city of the second class owning a waterworks system and supplying water to an adjacent city or town shall not terminate service to those cities or towns until an adequate substitute source of supply is available to those cities or towns."

SECTION 6. Section 5 of Act 49 of 1949, as amended, the same being Arkansas Statute 19-4269.2, is hereby amended to read as follows:

"Section 5. A city of the first class owning or operating a waterworks system may, in its governmental capacity, sell water at contractual rates to another municipality of this State, or to an improvement district created under the laws of this State, and a municipality of this State, or an improvement district created under the laws of this State, may in its governmental capacity, purchase water at contractual rates from a city of the first class of this State, and may expend the necessary funds to connect its distribution system with the supply or other mains of the selling municipality. The contract between two (2) municipalities of this State for the sale and purchase of water, or between a municipality of this State and an improvement district created under the laws of this State for the sale and purchase of water, shall be in writing, shall be authorized by ordinances adopted by the respective governing bodies of the contracting municipalities, or by ordinance adopted by the governing body of the contracting municipality and by resolution adopted by the Board of Commissioners of the contracting improvement district, and shall be signed by the mayor of each contracting municipality and by the chairman of the board of each contracting improvement district. Such contract may be for a term of not exceeding twenty (20) years, and may by its terms fix the rate or rates to be paid for such water for the entire term of the contract, or may fix such rate, or rates, for the first year, two (2) years, or five (5) years, with appropriate provisions for arriving at the rate, or rates, for each succeeding year, two (2) years, or five (5) year period. Such contract may also contain other appropriate provisions which will protect the respective interest of the contracting parties. Provided, however, that no city of the first class owning or operating a waterworks system may sell or contract to supply water to another municipality of this State or to an improvement district created under the laws of this State at rates that exceed their pro rata share of the system's cost of service by an

amount in excess of ten percent (10%). Any city of the first class owning or operating a waterworks system and supplying or contracting to supply water to another municipality of this State or to an improvement district created under the laws of this State shall not terminate service to those cities or districts until an adequate substitute source of supply is available to those cities or districts."

SECTION 7. All laws and parts of laws in conflict with this Act are hereby repealed.

