

State of Arkansas

76th General Assembly

First Extraordinary Session, 1987

HOUSE BILL

1047

By: Representative Mike Wilson

"AN ACT TO AMEND SUBPARTS (2) AND (7) OF PARAGRAPH (d) OF SECTION 1 OF ACT 324 OF 1935, AS AMENDED, TO EXCLUDE CERTAIN SMALL WATER AND SEWER UTILITIES FROM THE DEFINITION OF 'PUBLIC UTILITY'; AND TO AMEND SECTION 4 OF ACT 41 OF 1941, AS AMENDED, AND SECTION 6 OF ACT 613 OF 1983, AS AMENDED, TO GRANT TO SUBURBAN IMPROVEMENT DISTRICTS AND PROPERTY OWNERS' IMPROVEMENT DISTRICTS THE POWER TO CONDEMN CERTAIN SMALL WATER AND SEWER UTILITIES WHICH HAVE BEEN EXCLUDED FROM THE DEFINITION OF 'PUBLIC UTILITY'; AND FOR OTHER PURPOSES."

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

SECTION 1. Subpart (2) of paragraph (d) of Section 1 of Act 324 of 1935, as amended, the same being Ark. Stat. Ann. Section 73-201(d)(2), is hereby amended to read as follows:

"(2) Diverting, developing, pumping, impounding, distributing, or furnishing water to, or for, the public for compensation. Provided, however, that nothing in this paragraph shall be construed to include water facilities and equipment of cities and towns in the definition of public utility. Provided further, that the term 'public utility' shall not include any entity described by subpart (d)(2) of this Section which meets any of the following criteria:

(A) all property owners associations whose facilities are enjoyed only by members of said association or residents of the community governed by said association; or

(B) all entities whose annual operating revenues would cause them to be classified as Class C or lower water companies pursuant to the uniform system of accounts adopted by the Arkansas Public Service Commission; or

(C) all improvement districts."

SECTION 2. Subpart (7) of paragraph (d) of Section 1 of Act 324 of 1935, as amended, the same being Ark. Stat. Ann. Section 73-201(d)(7), is hereby amended to read as follows:

"(7) Maintaining a sewage collection system and/or a sewage treatment plant, intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations and other appurtenances necessary or useful for the collection and/or treatment, purification and disposal of the liquid and solid waste, sewage, night soil and industrial waste. Provided, however, that nothing in this paragraph shall be construed to include sewerage facilities and equipment of cities and towns in the definition of public utility. Provided further, that the term 'public utility' shall not include any entity described by subpart (d)(7) of this Section which meets any of the following criteria:

(A) all property owners associations whose facilities are enjoyed only by members of said association or residents of the community governed by said association; or

(B) all entities whose annual operating revenues would cause them to be classified as Class C or lower sewer companies pursuant to the uniform system of accounts adopted by the Arkansas Public Services Commission; or

(C) all improvement districts."

SECTION 3. Section 4 of Act 41 of 1941, as amended, the same being Ark. Stat. Ann. Section 20-704 (Supp. 1985), is hereby amended to add a new subparagraph n. which shall read as follows:

"n. Any said district shall have the power of eminent domain for the purposes of:

(1) condemning any water or sewer utility found within the boundaries of said district, which is exempt from the definition of 'public utility' as found in paragraph (d) of Section 1 of Act 324 of 1935.

(2) securing any lands or rights of way needed in making improvements to water or sewer systems owned and operated by any such district.

The board of said district shall have the power to enter upon any private property for the purposes stated in sentences (1) and (2) of this subpart. If the person damaged and the board cannot agree on the sum to be paid for such damages, the person aggrieved may file his petition in the circuit court of

the county, setting forth his grievance, and asking compensation therefor, making the board a party defendant. The issues in such suit shall be made up as in other cases at law, and the cause shall be tried by a jury, unless dispensed with by the parties; and the case shall be advanced on the docket so as to have precedence of all other causes. The judge of the circuit court may hold a special term at any time for the trial of any such cause, giving ten (10) days' notice to the parties of the time of holding such special term, which notice may be in writing, and shall be served on the parties as a writ of summons is directed to be served, unless such notice be waived by the parties, or one of them. The judge of said court may, in vacation, in case an agreement cannot be arrived at between the board of improvement and the owner of such property in relation to the damages claimed, fix an amount to be deposited with some person to be designated by the court, before the entering upon and taking possession of the property to be used and taken as aforesaid and upon the amount required being deposited and certificate thereof filed in said cause, the work may proceed."

SECTION 4. Section 6 of Act 613 of 1983, as amended, the same being Ark. Stat. Ann. §20-2406 (Supp. 1985), is hereby amended to add a new subparagraph 1. which shall read as follows:

"1. Any said district shall have the power of eminent domain for the purposes of:

(1) condemning any water or sewer utility found within the boundaries of said district, which is exempt from the definition of 'public utility' as found in paragraph (d) of Section 1 of Act 324 of 1935.

(2) securing any lands or rights of way needed in making improvements to water or sewer systems owned and operated by any such district.

The board of said district shall have the power to enter upon any private property for the purposes stated in sentences (1) and (2) of this subpart. If the person damaged and the board cannot agree on the sum to be paid for such damages, the person aggrieved may file his petition in the circuit court of the county, setting forth his grievance, and asking compensation therefor, making the board a party defendant. The issues in such suit shall be made up as in other cases at law, and the cause shall be tried by a jury, unless dispensed with by the parties; and the case shall be advanced on the docket so as to have precedence of all other causes. The judge of the circuit court may

hold a special term at any time for the trial of any such cause, giving ten (10) days' notice to the parties of the time of holding such special term, which notice may be in writing, and shall be served on the parties as a writ of summons is directed to be served, unless such notice be waived by the parties, or one of them. The judge of said court may, in vacation, in case an agreement cannot be arrived at between the board of improvement and the owner of such property in relation to the damages claimed, fix an amount to be deposited with some person to be designated by the court, before the entering upon and taking possession of the property to be used and taken as aforesaid and upon the amount required being deposited and certificate thereof filed in said cause, the work may proceed."

SECTION 5. GENERAL REPEALER. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 6. SEVERABILITY. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 7. EMERGENCY. It is hereby found and determined by the General Assembly that regulation of small water and sewer utilities as "public utilities" under the jurisdiction of the Public Service Commission generally imposes heavy regulatory costs upon the consumers, so that the cost of preparing a rate case alone may equal or exceed the other total revenue requirements of those utilities; that the effect of regulation is often to increase costs that are proportionately far in excess of the benefits of regulation; that customers of small water and sewer utilities may be better off in the long run if they could simply buy their water or sewer utility outright and run it themselves; and that this Act is immediately necessary to remedy the present situation. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

