

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Representatives Northcutt, Fletcher, Choate, G. Hendrix, Jordan, Angel,
5 Wilkins and McGinnis

A Bill

HOUSE BILL 1701

For An Act To Be Entitled

9 "TO AMEND VARIOUS PROVISIONS OF TITLE 14 CHAPTER 116 OF
10 THE ARKANSAS CODE RELATING TO THE REGIONAL WATER
11 DISTRIBUTION ACT TO ALLOW THE BOARD OF DIRECTORS OF A
12 REGIONAL WATER *DISTRIBUTION* DISTRICT TO ADOPT A PROPOSED
13 IMPROVEMENT PLAN FOR A PROJECT AREA, INCLUDING THE ABILITY
14 TO ASSESS BENEFITS, TO CLARIFY THE DISTRICT'S AUTHORITY TO
15 ENTER INTO CONTRACTS WITH THE UNITED STATES; TO GIVE A
16 DISTRICT AUTHORITY TO ACCEPT APPROPRIATIONS FROM THE
17 STATE; TO ALLOW A DISTRICT TO ENTER LAND WITHIN THE
18 DISTRICT TO MAKE SURVEYS; TO CLARIFY THE DISTRICT'S
19 AUTHORITY RELATING TO EXISTING RIPARIAN USERS; AND FOR
20 OTHER PURPOSES."

Subtitle

21
22
23 "TO AMEND VARIOUS PROVISIONS OF TITLE
24 14, CHAPTER 116 OF THE ARKANSAS CODE
25 RELATING TO THE REGIONAL WATER
26 DISTRIBUTION *DISTRICT* ACT."

27
28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

29
30 *SECTION 1. Arkansas Code 14-116-103 is amended to read as follows:*

31 *"§14-116-103. Definitions. As used in this chapter, unless the*
32 *context otherwise requires:*

33 *(1) 'Acquire' means and includes construct, acquire by purchase,*
34 *lease, devise, gift, or other mode of acquisition;*

35 *(2) 'Board' means a board of directors of a regional water*

1 *distribution district organized under this chapter;*

2 (3) *'Commission' means Arkansas Soil and Water Conservation*
3 *Commission;*

4 (4) *'Court' means the circuit court creating the water district*
5 *pursuant to subchapter 2 of this chapter;*

6 (5) *'Improvement project area' means an area established by the court*
7 *within the district for which an approved improvement plan has been developed*
8 *and for which assessment of benefits may be made to pay the cost of*
9 *development, construction, operation and maintenance of the improvement plan*
10 *and its works of improvement.*

11 (6) *'Improvement plan' means a plan developed by a water district to*
12 *carry out any of the purposes contained in §14-116-102 or the ancillary*
13 *benefits derived therefrom within an improvement project area.*

14 (7) *'Obligation' includes bonds, notes, debentures, interim*
15 *certificates or receipts, and all other evidences of indebtedness issued by a*
16 *regional water distribution district formed under this chapter;*

17 (8) *'Person' includes any natural person, firm, association,*
18 *corporation, business trust, partnership, federal agency, state agency, state*
19 *or political subdivision thereof, municipality, or any body politic;*

20 (9) *'Reservoir' means any impoundment of water through the*
21 *construction of a dam by or under the direction and supervision of the United*
22 *States Army Corps of Engineers, or by the water district, with federal*
23 *financial or other assistance furnished by the United States Secretary of*
24 *Agriculture under the provisions of the Watershed Protection and Flood*
25 *Prevention Act or any other federal law;*

26 (10) *'Water district' or 'district' means a nonprofit regional water*
27 *distribution district organized pursuant to the provisions of this chapter;*

28 (11) *'Works of improvement' means any facilities developed by the*
29 *water district as district as part of an improvement plan which need not be*
30 *located exclusively within a proposed improvement project area or within the*
31 *water district."*

32

33 *SECTION 2. Arkansas Code 14-116-201 is amended to read as follows:*

34 *"14-116-201. Authority to petition for district establishment.*

35 *When there is water available for industrial, municipal, or*

1 agricultural irrigation water supply purposes from wells, lakes, rivers,
2 tributaries, or streams of this state or bordering on this state or from
3 reservoirs heretofore created by the construction of multipurpose dams by or
4 under the direction and supervision of the United States Army Corps of
5 Engineers, on any of the rivers, tributaries, or streams of or bordering on
6 this state, or when the Congress of the United States of America has enacted
7 a law authorizing the construction of a reservoir by or under the supervision
8 and direction of the United States Army Corps of Engineers, on any of the
9 rivers, tributaries, or streams of or bordering on this state, or when a
10 proposed reservoir on any stream of this state is to be constructed by a
11 water district established under this chapter with federal or other
12 assistance furnished by the United States Secretary of Agriculture under the
13 provisions of the Watershed Protection and Flood Prevention Act or any other
14 federal law, then one hundred (100) or more qualified voters residing and
15 owning lands situated within the boundaries of the water district proposed to
16 be established under the provisions of this chapter may petition the circuit
17 court in the county to establish a water district for the purposes set out in
18 this section."

19

20 SECTION 3. Arkansas Code 14-116-202(3) is amended to read as follows:

21 "(3) A brief and concise statement showing the necessity for forming
22 and operating the proposed water district, describing the benefits to be
23 received therefrom by the residents and property owners in the territory
24 proposed to be embraced in the water district and if the water district
25 proposes to use project improvement plan and assessments, a statement that
26 such petitioners are aware of the power of the district under this act to
27 levy taxes;"

28

29 SECTION 4. Arkansas Code §14-116-207 is amended to read as follows:

30 "§14-116-207. Exclusion of land for irrigation purposes.

31 (a) Any owner of real property within the territory of the proposed
32 water district may, at any time before the entry of the order establishing
33 the district and before the entry of the order establishing an improvement
34 project area including such real property, petition the court to exclude his
35 property for agricultural irrigation water uses.

1 (b) To exclude the property from the district the court must make the
2 following determination:

3 (1) the property is supplied by adequate agricultural irrigation
4 water from surface sources or other sources; and

5 (2) the property is not and will not in the future be benefited
6 by the improvements of the proposed water district."

7

8 SECTION 5. Arkansas Code §14-116-402 is amended to read as follows:

9 "§14-116-402. District Powers. Each water district shall have power
10 to:

11 (1) Sue and be sued, complain and defend, in the district's name;

12 (2) Adopt a seal which may be altered at pleasure, and to use it, or a
13 facsimile thereof, as required by law;

14 (3) (A) Acquire absolute title to and use for any purpose and at any
15 place water stored in any reservoir or other water source created by the
16 construction of a multipurpose dam by or under the direction and supervision
17 of the United States Army Corps of Engineers or by the water district with
18 federal financial or other assistance furnished by the United States
19 Secretary of Agriculture under the provisions of the Watershed Protection and
20 Flood Prevention Act as amended with financing provided by any federal, state
21 or other source;

22 (B) Acquire water storage and withdrawal rights in any reservoir or
23 other water source created by the construction of a multipurpose dam by or
24 under the direction and supervision of the United States Army Corps of
25 Engineers or by the water district with federal financial or other assistance
26 furnished by the United States Secretary of Agriculture under the provisions
27 of the Watershed Protection and Flood Prevention Act, as amended, or with
28 financing provided by any federal, state or other source;

29 (C) Transport, distribute, sell, furnish, and dispose of the water
30 from whatever source derived to any person at any place;

31 (D) Construct, erect, purchase, lease as lessee and in any manner
32 acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor,
33 exchange, and mortgage real property, personal property, easements, interests
34 in real property, plants, buildings, works, machinery, supplies, equipment,
35 apparatus, facilities, property rights, and transportation and distribution

1 lines, facilities, equipment, or systems necessary, convenient, or useful;

2 (E) Regulate, define, and control the rate and location of any
3 withdrawal or transfer of water which is owned, acquired, or developed by the
4 water district in natural or manmade channels; provided that riparian owners
5 of natural water courses are not obligated to pay for their historical
6 riparian use from such natural water courses;

7 (F) Authorize persons to enter for any purpose water which has been or
8 is being transported or is held by the water district, but only if the water
9 district has acquired absolute title to land under the water or has obtained
10 permission of the owner of the land under the water; provided this provision
11 shall not limit a district's authority to enter on lands for inspection or
12 other purposes consistent with purposes of this chapter;

13 (4) Assist its customers in the preparation of their premises for the
14 use of water furnished by the water district and install upon the premises
15 fixtures, machinery, supplies, apparatus, and equipment of any and all kinds
16 and character, and in connection therewith, and for that purpose, to
17 purchase, acquire, lease, sell, distribute, install, and repair fixtures,
18 machinery, supplies, apparatus, and equipment of any and all kinds and
19 character and to receive, acquire, endorse, pledge, hypothecate, and dispose
20 of notes, bonds, and other evidences of indebtedness;

21 (5) Acquire, own, hold, use, exercise, and to the extent permitted by
22 law, to sell, mortgage, pledge, hypothecate, and in any manner dispose of
23 franchises, rights, privileges, licenses, rights-of-way, and easements
24 necessary, useful, or appropriate;

25 (6) Purchase, receive, lease as lessee, or in any other manner acquire,
26 own, hold, maintain, sell, exchange, and use any and all real and personal
27 property, or any interest therein;

28 (7)(A) Borrow money and otherwise contract indebtedness, to issue its
29 obligations therefor, and to secure the payment thereof by mortgage, pledge,
30 or deed of trust of all or any part of its property, assets, franchises,
31 rights, privileges, licenses, rights-of-way, easements, revenues, or income.

32

33 (B) The obligations may be in the form of negotiable bonds, but may be
34 registered as public obligations under the Registered Public Obligations Act
35 of Arkansas, may be issued in one (1) or more series, may bear such date or

1 dates, may mature at such times, not exceeding forty (40) years from their
2 respective dates, may bear interest at rate or rates, may be in such form,
3 may be executed in such manner, may be payable in such medium of payment, may
4 be payable at such place or places, within or without the State of Arkansas,
5 may be subject to such terms of redemption, and may contain such terms,
6 covenants, and conditions as the resolution of the board authorizing the
7 bonds may provide.

8 (C) The resolution of the board authorizing the bonds may provide for
9 the execution by the water district of a trust indenture with a bank or trust
10 company, within or without the State of Arkansas, which defines the rights of
11 the holders and registered owners of the bonds and provides for the
12 appointment of a trustee for the holders and registered owners of the bonds.

13 (D) The trust indenture may control the priority between successive
14 issues and may contain such other terms, covenants, and conditions that are
15 deemed desirable including, without limitation, those pertaining to the
16 custody and application of the proceeds of the bonds, the collection and
17 disposition of revenues, the maintenance and investment of various funds and
18 reserves, the nature and extent of the security, the rights and duties of the
19 water district and the trustee for the holders or registered owners of the
20 bonds, and the rights of the holders or registered owners of the bonds.

21 (E) The bonds may be sold at such price, including sale at a discount,
22 and in such manner as the board may determine.

23 (F) All bonds, whether previously or subsequently issued pursuant to
24 the provisions of this act, shall be exempt from all state, county, and
25 municipal taxes;

26 (8) Sell and convey, mortgage, pledge, lease as lessor, and otherwise
27 dispose of all or any part of its property, assets, franchises, rights,
28 privileges, licenses, rights-of-way, and easements;

29 (9) In connection with the acquisition, construction, improvement,
30 operation, or maintenance of its transportation and distribution lines,
31 systems, equipment, facilities, or apparatus, use the bed of any stream
32 without adversely affecting existing riparian rights, any highway or any
33 right-of-way, easement, or other similar property rights, or any
34 tax-forfeited land owned or held by the State of Arkansas or any political
35 subdivision; however, this provision does not entitle riparian users to

1 receive water owned, acquired or developed by the water district without
2 paying the district_s water user charges;

3 (10) Have and exercise the right of eminent domain for the purpose of
4 acquiring rights-of-way and other properties necessary in the construction or
5 operation of its property and business in the manner now provided by the
6 condemnation laws of this state for acquiring private property for public
7 use; however, this power shall not be used by an irrigation water district
8 for the acquisition or construction of farm irrigation reservoirs or natural
9 water courses and any surplus property obtained by an irrigation water
10 district under this power shall be first offered to the person or persons
11 owning the remaining property from which it was taken at the price paid as
12 eminent domain damages before it may be sold to others;

13 (11) Accept gifts or grants of money, services, franchises, rights,
14 privileges, licenses, rights-of-way, easements, or other property, real or
15 personal;

16 (12) Make any and all contracts necessary or convenient for the exercise
17 of the powers granted in this chapter;

18 (13)(A) Fix, regulate, and collect rates, fees, rents, or other charges
19 for water and any other facilities, supplies, equipment, or services
20 furnished by the water district.

21 (B) Rates shall be just, reasonable, and nondiscriminatory.

22 (C) If any district distributes water to consumers outside the
23 district, the rates, fees, rents, and other charges for water and other
24 facilities, supplies, equipment, or services furnished to consumers outside
25 the district shall be calculated to pay the cost of such distribution outside
26 the district. No part of the cost of distributing water or providing other
27 services outside the district shall be borne by the members of the district,
28 and there shall be no increase in the cost to members in the district as a
29 result of furnishing water to consumers outside the district;

30 (14) Conduct its affairs within and without this state;

31 (15) Elect, appoint, or employ officers, agents, and employees of the
32 water district and define their duties and fix their compensation;

33 (16) Do and perform all acts and things and have and exercise any and
34 all powers as may be necessary, convenient, or appropriate to effectuate the
35 purposes for which the water district is organized;

1 (17) Accept appropriations from the state upon such terms and conditions
2 as may be imposed by law or regulation to be used in the furtherance of the
3 purposes for which the water district was created;

4 (18) With notice enter upon any land within or outside the water
5 district for inspection purposes or other purposes as are necessary,
6 convenient and not inconsistent with the purposes of this chapter;

7 (19) Notwithstanding the powers conferred by this section, a water
8 district shall comply with all laws of the State of Arkansas regarding the
9 acquisition, storage, transportation, distribution, treatment or disposal of
10 water, including without limitation laws related to minimum stream flow,
11 nonriparian water use, ground water use, Arkansas Water Plan compliance and
12 public water supply.

13 (20) Notwithstanding any other provisions of this chapter, no
14 irrigation district shall have the power to acquire title to or use any water
15 stored in any reservoir created by a dam constructed before July 1, 1995, or
16 to acquire water storage or withdrawal rights in any such reservoir. The
17 last sentence shall not apply to United States Army Corps of Engineers
18 projects whose main purpose is navigation. Irrigation districts may obtain
19 water from wells, from excess surface water as defined in § 15-22-304, and
20 from reservoirs constructed after July 1, 1995._

21

22 SECTION 6. Subchapter 4 of Chapter 16 of Title 14 is amended by adding
23 a new section to read as follows:

24 "§14-116-407. Contracts - Water District and United States.

25 The board is authorized to:

26 (a) Cooperate with the United States or any agency or instrumentality
27 thereof, hereinafter referred to as the United States, in the development of
28 plans for the construction, operation, and maintenance of any facilities
29 which the water district is authorized to construct, operate and maintain;

30 (b) Negotiate a contract with the United States or give such assurance
31 as may be required by the United States for the construction, operation and
32 maintenance of such facilities or any part thereof by the United States.

33 (1) The contract or assurance may provide for the payment by the
34 water district to the United States of the agreed costs thereof in the form
35 of construction charges, operation and maintenance charges, water storage

1 rental, or service charges.

2 (2) Construction charges may include the cost of works of
3 improvement for any project addressing the purposes contained in §14-116-102
4 and ancillary benefits derived therefrom including but not limited to fish
5 and wildlife, prevention of seepage on irrigated lands, prevention of
6 erosion, and sediment damages and the conservation, development, utilization
7 and disposal of water.

8 (3) The contract or assurance may provide for the repayment of
9 the various charges by the water district primarily or exclusively from
10 revenue to be derived by the district from the sale under contract between
11 the district and its water users from the district works, with payment to be
12 made either in the form of agricultural products, cash or, if an improvement
13 project area has been created under subchapters 5, 6 or 7 of this chapter,
14 with revenues derived from assessments levied pursuant thereto.

15 (4) The contract or assurance may provide that the water
16 district shall furnish lands, easements, and rights-of-way and that property
17 so acquired by the district may be conveyed to the United States insofar as
18 the property may be required for the construction, operation, and maintenance
19 of works thereon by the United States for the benefit of the district.

20 (5) The contract or assurance may provide that the water
21 district shall save and hold harmless the United States from any liability or
22 damages due to or arising out of the construction, operation, and maintenance
23 of any of the works."

24

25 SECTION 7. Chapter 116 of Title 14 is amended by adding Chapters 5, 6,
26 and 7 to read as follow:

27 "§14-116-501. Proposed improvement plan for assessment based water
28 district projects.

29 (a) Upon the securing of a petition described in subsection (b), a
30 water district may, if the order establishing the district expressly so
31 permits, develop an improvement project plan for any purpose contained in
32 §14-116-102 that would benefit the lands within the district. All such
33 improvement plans for improvement project areas shall be appropriately
34 identified by a number or a name selected by the district. The district may
35 employ an independent engineer or seek the assistance of federal or state

1 agencies in developing the plan. The plan must include a preliminary survey
2 and a report and should include the following as a minimum:

3 (1) the territory which will be benefited by the proposed
4 improvement (the territory need not consist of contiguous parcels of land);
5 (2) the general character of the improvements;
6 (3) an estimate, in reasonable detail, of the expenses involved;
7 (4) the proposed works of improvement and their proposed
8 locations as can be estimated;

9 (5) the general nature, purposes, utility, and need of the
10 proposed improvements and their feasibility;

11 (6) an estimate, to the extent it is known, of the method of
12 financing for works of improvement;

13 (7) the amount, if any, proposed to be assessed generally
14 against the benefitted lands;

15 (8) whether, and if so, to what extent any lands, lakes or
16 natural water courses, rivers, tributaries or streams within the project
17 improvement area are likely to be damaged by or as a result of the
18 acquisition or construction of improvements constituting part of the plan of
19 improvement;

20 (9) the plan for compensating landowners for damages, if any;

21 (b) Upon the securing of a petition by a majority of the owners of the
22 benefitted lands and the owners of a majority in value of the benefitted lands,
23 as shown by the last assessment of real property within a proposed
24 improvement project area within the water district, the district shall update
25 and complete a final improvement plan which shall contain a final survey and
26 report.

27 (c) The petition shall describe generally the proposed improvement
28 plan as contained in the preliminary survey and the report.

29 (d) Upon completion of the final improvement plan for an improvement
30 project area, a copy of the final survey and report shall be submitted to the
31 Commission for its approval and to other appropriate federal and state
32 agencies for comment. The Commission shall solicit written comment from
33 appropriate federal and state agencies on the items described in the final
34 survey and report, including but not limited to the United States Army Corps
35 of Engineers, the United States Fish and Wildlife Service, the Arkansas Game

1 and Fish Commission, the Arkansas Department of Natural Heritage and the
2 Arkansas Department of Pollution Control and Ecology. Upon receipt of
3 comments from such agencies, the Commission shall make such comments
4 available to the public and shall solicit comments from the public, giving
5 notice by publication in a newspaper published and having a general
6 circulation in the water district, once a week for two weeks, of the
7 commission's intent to hold a hearing, to be held not less than twenty (20)
8 days after first publication of such notice, at which hearing comments from
9 the public will be heard. The commission shall duly consider all comments
10 received from such agencies and the general public, if any, and shall
11 thereafter approve, modify or disapprove such final report and survey, and
12 notify the district's board of directors of its action in the matter.

13 (e) If the Commission approves the report, or approves the report with
14 modifications, and after the board reviews comments, the board may adopt the
15 final improvement plan, with any necessary amendments and/or revisions to the
16 final survey and report.

17 §14-116-502. Court Approval of Project Improvement Plan -- Appointment
18 of Assessor.

19 (a) The board shall by petition request court approval of the
20 improvement plan. As part of its petition, the board shall submit a copy of
21 the final survey and report along with such additional information or maps
22 necessary so that the court may understand therefrom the purpose, utility,
23 feasibility, and need for the improvement plan.

24 (b) Upon the filing of the petition by the board, the court clerk
25 shall give notice thereof by certified registered letter to each landowner,
26 at the address contained in the records of the county tax collector, owning
27 property within the proposed improvement project area and by publication for
28 two (2) weeks in a newspaper published and having a general circulation in
29 the water district calling upon all persons owning property within the
30 proposed improvement project area, which shall be described in the notice, to
31 appear at a hearing before the court on some day to be fixed by the court, to
32 show cause in favor of or against the property improvement plan for the
33 proposed improvement project area.

34 (c) Based upon a review of the petition and attachments, the court, if
35 it determines that the improvement plan is in the best interest of the owners

1 of land within the proposed improvement project area, shall authorize the
2 district to employ an assessor. If the court determines that the improvement
3 plan is not in the best interest of the owners of land within the proposed
4 project area, it shall deny the petition.

5 (d) The assessor retained by the district shall take the oath of
6 office as required by the Arkansas Constitution, Article 19, Section 20, and
7 shall also swear that he will well and truly complete his duties of assessor.
8 The district may from time to time change assessors, but the assessor
9 selected must be approved by the court.

10 (e) The assessor shall review the petitions of the land-owners to
11 determine if at least a majority of the owners of the benefited lands and the
12 owners of a majority in value of the benefited lands, as shown by the last
13 assessment of real property within a proposed improvement project area have
14 signed said petitions.

15 (f) Upon certification by the assessor that the requirements of
16 subsection (e) have been met, the court shall enter an order approving the
17 improvement plan and establishing the project improvement area.

18 (g) The courts findings shall have the force and effect of a judgment,
19 from which an appeal may be taken within thirty (30) days, either by any such
20 owner of land or by the board, but if no appeal is taken within that time,
21 the order shall be deemed to be conclusive and binding upon all the land
22 within the boundaries of the improvement project area, and upon the
23 landowners.

24 §14-116-503. Expenses - plan preparation, adoption, and approval.

25 All costs and expenses incurred in the preparation, adoption, and
26 approval of an improvement plan shall be paid by the water district out of
27 its general funds, but all such costs and expenses paid or otherwise incurred
28 by the district, upon the approval of the improvement plan, shall be repaid
29 to the general funds of the district out of the proceeds of the first taxes
30 or other revenues collected by the district for carrying out the improvement
31 plan; provided, that nothing in this chapter shall authorize punitive
32 assessments to be made against any landowner.

33 §14-116-504. Alteration of Plans.

34 (a) The board may at any time after the court has approved the
35 improvement plan, make alterations in the plan and its works of improvement

1 provided such changes do not change the benefits of the improvement plan.
2 Any such change in the improvement plan shall be filed with the court clerk.

3 (b) If alterations in the improvement plan would change the court
4 approved assessment of benefits and damages, the changed assessment must be
5 submitted to the court for consideration according to the procedures
6 established in this chapter; except that only owners of lands whose
7 assessments are changed may object.

8 §14-116-505. Additional works of improvement.
9 After the work contemplated by the original improvement plan has been
10 completed, the board may adopt and file with the court clerk a plan for
11 additional works of improvement for the improvement project area, and the
12 proceedings with respect to such additional plan, including the right of
13 appeal, shall be the same insofar as may be practicable as those required in
14 connection with the original plan; except that the petitions of the
15 landowners shall not be required.

16 §14-116-601. Assessment of benefits and damages.

17 (a) After the court issues an order approving the improvement plan,
18 the assessor shall proceed to assess the land within the project area on the
19 basis of benefits accruing to the land from the improvement plan.

20 (b) Taking into account available funding sources and in the
21 discretion of the district the total tax levied against all individual and
22 separate parcels of land within the project area shall be sufficient to pay
23 up to the estimated cost of the improvement, all related costs including but
24 not limited to the interest, bond issuance, legal, accounting, appraisals,
25 the debt issuance and related costs and up to an additional twenty percent
26 (20%) for unforeseen contingencies.

27 (c) The amount of interest which will accrue on notes, bonds, or other
28 evidences of indebtedness issued by a water district shall be included in and
29 added to the taxes levied against the land in the project area, but the
30 interest to accrue on the notes, bonds, or other evidences of indebtedness
31 shall not be construed as a part of the costs of construction in determining
32 whether the expenses and the costs of making the improvements exceed the
33 assessment of benefits.

34 (d) The tax so levied shall be a lien upon the land within the
35 improvement project area from the time that the tax is levied by the court

1 and shall be entitled to preference over all demands, executions,
2 encumbrances, or liens whensoever created. It shall continue until the tax
3 and all related costs and expenses with penalties shall have been paid.

4 (e) A separate book for each improvement project area shall be
5 maintained with respect to assessments of benefits on the basis of benefits
6 accruing to the land from the improvement plan.

7 (f) The assessor shall cause to be inscribed in the book the
8 description of each tract of land. The assessor shall assess the value of
9 the benefits to accrue to each tract by reason of the improvement plan,
10 including without limitation the works of improvement, and shall enter the
11 assessment of benefits opposite the description, together with an estimate of
12 what the landowner will be required to pay on the assessment.

13 (g) There shall be placed opposite the description of each tract of
14 land the name of the owner, as shown by the last county assessment, but a
15 mistake in the name shall not vitiate the assessment. Evident errors which
16 occur in the county assessment list may be corrected.

17 (h) The assessor shall also assess all damages that will accrue to any
18 landowner by reason of the proposed improvements, including all injury to
19 lands taken or damaged.

20 §14-116-602. Assessments - Filing and Recording; Appointment of Board
21 of Adjustment.

22 (a) When an assessment is completed, the assessor shall subscribe an
23 original and one (1) copy of the assessment and deposit the original with the
24 court clerk, where it shall be kept and preserved as a public record.

25 (b) The copy shall be certified by the court clerk after court
26 confirmation and returned to the assessor to be preserved with the records of
27 the water district.

28 (c) Upon the filing of assessment with the court clerk, the court
29 shall appoint a three (3) member board of adjustment to hear complaints as
30 provided for in § 14-116-605. Members of the board of adjustment shall be
31 owners of land within the improvement project area and shall serve without
32 compensation, except that the water district shall pay the board of
33 adjustment and its members necessary and reasonable expenses associated with
34 hearing complaints and reporting its recommendations to the court.

35 §14-116-603. Appeal - Notice; Hearing of assessment complaints.

1 (a) Upon the filing of assessment, the court clerk shall give notice
2 thereof by publication for two (2) weeks in a newspaper published and having
3 a general circulation in the water district.

4 (b) The notice of hearing shall give a description of the land
5 assessed and state that the owners of the land may appear before the board of
6 adjustment on a day named therein and present complaints, if they have any,
7 against the assessment of any land in the improvement project area.

8 (c) The day so named shall be not less than ten (10) days nor more
9 than thirty (30) days after the last publication of the notice.

10 (d) If no complaint is made on the assessments levied, the assessments
11 as deposited with the court clerk shall be conclusive and the court shall
12 enter an order confirming the assessment.

13 (e) Findings of the court shall have the force and effect of a
14 judgment, from which an appeal may be taken within thirty (30) days, either
15 by any such owner of land or by the board.

16 §14-116-604. Acquiescence in damage assessment; Condemnation.
17 If such owner has been given notice by certified mail posted at least thirty
18 (30) days prior to the date of the hearing provided for in § 14-116-603, he
19 shall be construed to have accepted the assessment of damages in his favor
20 made by the assessor or the have acquiesced in the failure to assess damages
21 in his favor unless he gives to the court clerk, not later than the date of
22 the hearing provided for in §14-116-603, notice in writing that he demands an
23 reassessment of his damages. In this event, the board shall institute an
24 action to condemn the land that will be taken or damaged in carrying out the
25 works of improvement included in the improvement plan.

26 §14-116-605. Assessments - Complaints.

27 (a) Any owner of land within the improvement project area who
28 conceives himself to be aggrieved by the assessment of benefits or that the
29 assessment of any land within the project area is inadequate shall present
30 his complaint to the board of adjustment on the day named in the notice of
31 hearing. At that time the board of adjustment shall consider the complaint
32 and make recommendations to the court thereon, either confirming the
33 assessment or increasing or diminishing it.

34 (b) After review of the evidence presented to the board of adjustment
35 and the recommendation of the board of adjustment, the court shall enter its

1 findings thereon, either confirming the assessment or increasing or
2 diminishing it.

3 §14-116-606. Reassessments.

4 (a) In no event shall a reduction of assessments be made after the
5 assessment of benefits has been confirmed by the court as provided in §14-
6 116-603 and obligations based on the assessments have been incurred, but any
7 reduction in benefits shall be paid for by the water district as damages.
8 The claim for those damages shall be secondary and subordinate to the rights
9 of the holders of bonds or other obligations or evidences of indebtedness
10 which have theretofore been issued.

11 (b) If by reason of a change of the improvement plan pursuant to §14-
12 116-504, or change in land use or any other reason the board determines that
13 current assessment on any land within the improvement project area has become
14 inequitable, the board may direct the assessor to reassess the property. The
15 assessor shall reassess the land in question, increasing the assessment if
16 greater benefits will be received and reducing the assessment if benefits
17 have decreased or if damages will be sustained.

18 (c) All reassessments shall be made, advertised, and confirmed as is
19 provided for the original assessment of benefits under this subchapter.

20 (d) If any obligation of the water district arising from the
21 improvement plan shall be outstanding at the time of a reassessment, the
22 total liability thereon of land against which assessments of benefits have
23 been confirmed shall be no less than the liability of the property by reason
24 of the original assessment.

25 §14-116-607. Payment of taxes.

26 (a) When the tax levies are made, the landowners shall have the
27 privilege of paying the taxes in full, without interest, within thirty (30)
28 days after the levy becomes final.

29 (b) All taxes levied may be paid in installments, so that not more
30 than ten percent (10%) of the allocated tax shall be collectible in any one
31 year against the wishes of the landowner. The deferred installments of the
32 taxes shall bear interest at a rate established by the board and shall be
33 payable only in installments as levied.

34 (c) If any landowner shall pay in full the levy of taxes against his
35 land as herein provided, that land shall not be further liable by reason of

1 the assessment of benefits or any reassessment thereof except a reassessment
2 because of changed plans as provided in §14-116-606(b), and then only to the
3 extent of the increase in assessment, if any, because of the greater benefit
4 thereby received. However, in case of any additional assessment for greater
5 benefit, any landowner who shall have paid his previous tax levy in full
6 shall have the privilege of paying in full the increase in tax levied in the
7 manner herein provided.

8 §14-116-608. Levy of tax - Lien - Appeal from tax assessment.

9 (a) The court shall at the same time that the assessment of benefits
10 is filed or at any subsequent time when called upon by the board enter an
11 order, which shall have the force and effect of a judgment, providing that
12 there shall be levied against the land within the project area a tax
13 sufficient to pay the estimated cost of the improvement, with up to twenty
14 percent (20%) added for unforeseen contingencies. This tax shall be a charge
15 against the land in the proportion to the amount of the assessment of
16 benefits thereon and may be paid in full or in annual installments as
17 provided in §14-116-607.

18 (b) The tax so levied shall be a lien upon the land within the
19 improvement project area from the time that the tax is levied by the court
20 and shall be entitled to preference over all demands, executions,
21 encumbrances, or liens whensoever created. It shall continue until the tax,
22 with such penalties and costs as may accrue thereon, shall have been paid.

23 (c) The remedy against such levy of taxes shall be by appeal, and this
24 appeal shall be taken within twenty (20) days from the date of the order by
25 the court. On this appeal, the presumption shall be in favor of the legality
26 of the tax.

27 §14-116-609. Levy of tax for preliminary expenses.

28 (a) If the board does not deem it to the advantage of the project area
29 to proceed immediately with the construction of the works of improvement upon
30 the filing and confirmation of the assessment of benefits, it may cause to be
31 levied and collected a tax based upon the assessment of benefits and
32 collectible from the benefited land in the improvement project area in the
33 proportion to the amount of the assessment of benefits thereon for the
34 purpose of paying preliminary expenses for development of the improvement
35 plan for the improvement project area.

1 (b) The board shall report to the court the rate of taxation necessary
2 to be levied to pay the preliminary expenses, and thereupon it shall be the
3 duty of the court to make levy of taxes upon the benefited land in the
4 project area sufficient to pay the preliminary expenses, with ten percent
5 (10%) added for unforeseen contingencies. This tax shall be extended upon
6 the tax books of the county and collected along with other taxes in the same
7 manner as taxes levied for construction purposes, as provided in this
8 chapter.

9 (c) If any project area is abandoned before the making of the
10 assessment of benefits, the tax for preliminary expenses shall be levied at
11 the rate fixed by the board upon the real property therein upon the basis of
12 the assessment for county and state purposes.

13 §14-116-610. Levy of tax for operation and maintenance.

14 (a) On or before the first Monday in October of each year, the board
15 shall estimate the amount necessary for the ensuing calendar year for
16 operation and maintenance of the works of improvement provided for in the
17 improvement plan, taking into account all available funding, and shall submit
18 the estimate to the court, with a request that a tax levy be made for the
19 amount needed.

20 (b) If the court finds the amount to be fair and reasonable, it shall
21 enter an order, which shall have the force and effect of a judgment,
22 providing that there shall be levied against the benefited land within the
23 improvement project area a tax sufficient to pay the estimated cost of
24 operation and maintenance.

25 (c) This tax may be a flat charge per acre or a charge against the
26 benefited land in the proportion to the amount of the assessment of benefits
27 on the land.

28 §14-116-611. Extension of taxes on county tax books; collection of
29 taxes.

30 (a) Copies of the assessment necessary for the assessment and
31 collection of taxes by the county shall be provided by the district to the
32 appropriate county officials of each county within the improvement project
33 area.

34 (b) The amount of the taxes herein provided for shall be annually
35 extended upon the tax books of the county, or counties if the improvement

1 project area is situated in more than one (1) county, and collected by the
2 collector of the county along with the other taxes. For his services in
3 making this collection, the collector shall receive a commission as is
4 provided by law.

5 (c) The collections shall be paid over to the board by the collector
6 at or before the time that he is now required to make settlement with the
7 county treasurer for general taxes.

8 (d) The collection of taxes levied hereunder, the proceedings for the
9 collection of delinquent taxes, and the periods of redemption from sales for
10 foreclosure of tax liens shall be in accordance with §§14-117-423 through 14-
11 117-427.

12 §14-116-701. Authority to borrow money or issue bonds, etc.
13 The board may borrow money at a rate of interest from any agency of the
14 United States, the state or any other public or private lending source; may
15 issue promissory notes, negotiable bonds, or other evidences of indebtedness
16 as required by the lender thereof and may pledge and assign all assessments
17 and revenues relating to the improvement project area for the repayment
18 thereof.

19 §14-116-702. Terms and form of bonds, etc.

20 (a) Bonds or other evidences of indebtedness issued under the terms of
21 this subchapter shall bear such date or dates, mature at such time or times
22 not in excess of forty (40) years, and any such bonds shall be sold at public
23 sale through competitive bidding, and any such bonds and other evidences of
24 indebtedness and be in such form and denomination as the board may determine.

25 (b) The board may sell, exchange, or hypothecate these obligations
26 from time to time at such interest rates and such prices as specified by the
27 board.

28 §14-116-703. Refunding bonds. Refunding bonds may be issued and may
29 be sold, exchanged, or hypothecated by the board.

30 §14-116-704. Security for bonds - Delinquencies.

31 (a) All bonds issued under the terms of this chapter that are made
32 payable from the proceeds of assessments shall be secured by a lien on all
33 benefited lands in each individual improvement project area unless the board
34 shall be able to sell bonds payable out of revenue only; provided, however,
35 that land in any district which is not part of a project improvement area

1 shall not be assessed with respect to any costs relating to such project
2 improvement, and shall not be encumbered with any lien relating to bonds
3 issued with respect thereto. The board shall see to it that a tax is levied
4 annually and collected under the provisions of this chapter so long as it may
5 be necessary to pay any bond issued under its authority.

6 (b) (1) If any bond or interest on any bond issued by the board is not
7 paid within thirty (30) days after its maturity, it shall be the duty of the
8 court, on the application of any holder of the bond or interest so overdue,
9 to order the collection of the taxes aforesaid. At its discretion, the court
10 may appoint a receiver therefor.

11 (2) The proceeds of the taxes and collections of each
12 improvement project area shall be applied, after payment of costs, first to
13 overdue interest and then to payment pro rata of all bonds issued for that
14 project area which are then due and payable.

15 (3) The board or receiver may be directed by suit to foreclose
16 the lien of the taxes on delinquent parcels of land.

17 (4) The suits so brought by the receiver shall be conducted in
18 all matters as suits by the board, as herein provided, and with like effect.

19 (5) The decrees and deeds herein shall have the same
20 presumptions in their favor.

21 (6) However, when all such sums have been paid, the receiver
22 shall be discharged, and the affairs of the district with respect to the
23 improvement project area shall be conducted by the board as provided in this
24 chapter."

25

26 SECTION 8. Arkansas Code 15-22-304(b)(4) is amended to read as
27 follows:

28 "(4) Maintenance of instream flows for fish and wildlife, water
29 quality, aquifer recharge requirements and navigation; and"

30

31 SECTION 9. Arkansas Code 15-22-304 is amended by adding a new
32 subdivision at the end thereof to read as follows:

33 "(e) For purposes of transfer of the excess surface water as defined
34 above in the White River Basin, the transfer amount shall not exceed on a
35 monthly basis an amount which is fifty percent (50%) of the monthly average

1 of each individual month of excess surface water."
2

3 SECTION 10. Chapter 116 of Title 14 of the Arkansas Code is amended by
4 adding at the end thereof a new section to read as follows:

5 "The provisions of Arkansas Code Title 14, Chapter 116, the Regional
6 Water District Act, as now or hereafter amended shall not be applicable to
7 agencies of the State of Arkansas or of political subdivisions of the State,
8 nor to lands owned by such agencies."
9

10 SECTION 11. If any provision of this act or the application thereof to
11 any person or circumstance is held invalid, such invalidity shall not affect
12 other provisions or applications of the act which can be given effect without
13 the invalid provision or application, and to this end the provisions of this
14 act are declared to be severable.
15

16 SECTION 12. All laws and parts of laws in conflict with this act are
17 hereby repealed.
18

19 SECTION 13. All provisions of this act of a general and permanent
20 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
21 Code Revision Commission shall incorporate the same in the Code.
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/s/Rep. Northcutt, et al