

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

As Engrossed: H3/27/97

A Bill

HOUSE BILL 1924

4
5 By: Representative Broadway

For An Act To Be Entitled

9 "AN ACT RELATIVE TO STORM WATER MANAGEMENT BY
10 MUNICIPALITIES SUBJECT TO THE REGULATIONS FOR STORM WATER
11 DISCHARGES OF THE ENVIRONMENTAL PROTECTION AGENCY AND
12 AUTHORIZING LOCAL GOVERNMENTS TO REGULATE STORM WATER
13 DISCHARGES, TO ESTABLISH A SYSTEM OF DRAINAGE AND FLOOD
14 CONTROL FACILITIES, AND TO FIX AND REQUIRE THE PAYMENT OF
15 FEES FOR THE PRIVILEGE OF DISCHARGING STORM WATER; AND FOR
16 OTHER PURPOSES."

Subtitle

18 "STORM WATER MANAGEMENT ACT"

19
20
21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22
23 SECTION 1. Short Title.

24 This Act shall be known as the "Storm Water Management Act".

25
26 SECTION 2. Construction.

27 This Act, being necessary for the public health, safety, and welfare,
28 shall be liberally construed to effectuate the purpose of it.

29
30 SECTION 3. Legislative purpose.

31 (a) It is legislatively determined that it may be desirable for cities
32 of the first class within this state to regulate storm water discharge to
33 protect water quality.

34 (b) The purpose of this Act is to facilitate compliance with the Water
35 Quality Act of 1977 by municipalities which are affected by environmental
36 protection agency storm water regulations, particularly those arising from ⁸

1 405 of the Water Quality Act of 1987, as amended, and § 402 of the Clean Water
2 Act of 1977, as amended, regulating storm water discharges to protect water
3 quality. This Act shall enable municipalities to regulate such discharges, to
4 establish a system of drainage facilities, and to fix and require payment of
5 fees for the privilege of discharging storm water. This Act shall also enable
6 municipalities to construct and operate a system of drainage facilities for
7 storm water management and flood control.

8

9 SECTION 4. Definitions.

10 As used in this act, unless the context otherwise requires:

11 (1) "Construction" means the erection, building, acquisition,
12 alteration, reconstruction, improvement, or extension of storm water
13 facilities; preliminary planning to determine the economic and engineering
14 feasibility of storm water facilities; the engineering, architectural, legal,
15 fiscal and economic investigations and studies, surveys, designs, plans,
16 working drawings, specifications, procedures, and other action necessary in
17 the construction of storm water facilities; and the inspection and supervision
18 of the construction of storm water facilities;

19 (2) "Contaminant" means any physical, chemical, biological, or
20 radiological substance or matter in water.

21 (3) "Municipality" means any incorporated city empowered to provide
22 storm water facilities;

23 (4) "Person" means any and all persons, natural or artificial, including
24 any individual, firm or association and any municipal or private corporation
25 organized or existing under the laws of this or any other state or country;

26 (5) "Storm water" means storm water runoff, snow melt runoff, surface
27 runoff, and drainage;

28 (6) "Storm water facilities" means the drainage structures, conduits,
29 sewers, and all device appurtenances by means of which storm water is
30 collected, transported, pumped, treated or disposed of; and

31 (7) "Surface water" includes waters upon the surface of the earth in
32 bounds created naturally or artificially including, but not limited to,
33 streams, other water courses, lakes and reservoirs.

34 (8) "Works" shall be construed to mean and include the structures and
35 property as provided in Section 5.

36

1 SECTION 5. Authorization of storm water facilities or flood control
2 improvements by municipality.

3 The governing body of any municipality may authorize the construction,
4 extension, enlargement, or acquisition of necessary storm water facilities or
5 flood control improvements within its corporate boundaries. The improvements
6 may include, but are not limited to, the extension, enlargement, construction,
7 or acquisition of storm water facilities or flood control improvements; the
8 widening, straightening, or relocating of streams, surface waters, or water
9 courses; and the acquisition, extension, enlargement, construction, and
10 maintenance of any works necessary to regulate the quantity or quality of
11 water for the protection of streams, water courses, surface waters, life, and
12 property; provided that the municipality obtains all applicable permits and
13 complies with all applicable state and federal laws.

14

15 SECTION 6. Extent of Authority.

16 (a) This Act shall, without reference to any other statute, be deemed
17 full authority for the construction, acquisition, improvement, equipment,
18 maintenance, operation, and repair of the works provided for in this Act and
19 for the issuance and sale of the bonds authorized by this Act and shall be
20 construed as an additional and alternative method for them and for the
21 financing of them.

22 (b) No petition or election or other or further proceeding in respect to
23 the construction or election or other or further proceeding in respect to the
24 construction or acquisition of the works or to the issuance or sale of bonds
25 under this Act, and no publication or any resolution, ordinance, notice, or
26 proceeding relating to such construction or acquisition or to the issuance or
27 sale of such bonds shall be required except such as are prescribed by this
28 Act, any provisions of other statutes of the state to the contrary
29 notwithstanding.

30

31 SECTION 7. Authority to own.

32 (a) A municipality shall have authority to:

33 (1) Acquire, by gift, grant, purchase, condemnation, or otherwise,
34 all necessary lands, rights of way, and property within the corporate limits
35 of the city; and

36 (2) Issue revenue bonds to pay the cost of these works and

1 property.

2 (b) No obligation shall be incurred by the municipality in the
3 construction or acquisition except such as is payable solely from the funds
4 provided under the authority of this Act.

5

6 SECTION 8. Municipal authority.

7 (a) In order to protect the public health, municipalities authorized to
8 provide storm water and flood control facilities by this Act are authorized by
9 appropriate ordinance or resolution to:

10 (1) Exercise general regulation over the planning, location,
11 construction, and operation and maintenance over storm water facilities in the
12 municipality, whether owned and operated by the municipality or not;

13 (2) Adopt any rules and regulations deemed necessary to accomplish
14 the purposes of this act including the adoption of a system of fees for
15 services;

16 (3) Establish standards to regulate the quality and quantity of
17 storm water discharged and to assist ADPC&E in regulating storm water
18 contaminants.

19 (b) Municipalities may only exercise the authority granted by the
20 provisions of subsection (a) in a manner consistent with all requirements of
21 state and federal laws that apply to such activities.

22

23 SECTION 9. Enforcement of ordinance.

24 The Arkansas Department of Pollution Control and Ecology with assistance
25 by the municipality will regulate and enforce the release of contaminants.

26

27 SECTION 10. Facilities user's fee.

28 (a) All municipalities constructing, operating, or maintaining storm
29 water or flood control facilities are authorized to establish, by ordinance,
30 a graduated storm water user's fee which may be assessed and collected from
31 each user of the storm water facilities provided by the municipality. These
32 fees shall be reasonable in amount and used exclusively by the municipality
33 for purposes set forth in this Act. Such a graduated storm water user's fee
34 shall be based on actual or estimated use of the storm water or flood control
35 facilities of the municipality or both storm water and flood control
36 facilities, and each user or user class shall only be required to pay its

1 proportionate share of the construction, administration, operation and
2 maintenance including replacement costs of such facilities based on the user's
3 actual or estimated proportionate contribution to the total storm water runoff
4 from all users or user classes. To insure a proportionate distribution of all
5 costs to each user or user class, the user's contribution shall be based on
6 factors such as the amount of impervious area utilized by the user, the water
7 quality of user's storm water runoff or the volume or rate of storm water
8 runoff. The fee structure shall provide adjustments for users who construct
9 facilities to retain and control the quantity of storm water runoff. Prior to
10 establishing or amending such user's fees, the municipality shall advertise
11 its intent to do so by notice published in a newspaper of general circulation
12 in such municipality at least thirty (30) days in advance of the meeting of
13 the governing body which shall consider such adoption or amendment.

14 (b) The municipality providing such service is authorized to collect
15 such storm water facilities fees either by ordinance or by contract with any
16 public or private corporation, or municipal utilities board, or commission
17 operating a water, gas, or electric system in the area of the storm water
18 facilities, or to make contracts with any other city, town, or utility
19 district to bill and collect storm water fees as a designated item on its
20 utility. The ordinance or contract may provide for the discontinuance of
21 utility service to storm water facility users who fail or refuse to pay storm
22 water facility user charges, including the right not to accept payment of the
23 utility bill from any user without receiving at the same time payment of any
24 storm water facility charges owed by such user and not to re-establish utility
25 services until such time as all past due storm water facility service charges
26 owed by such user have been paid or the user of the storm water facility has
27 performed all acts and discharged all obligations required by the ordinances
28 or resolutions of the municipality, or both.

29

30 SECTION 11. Power of eminent domain.

31 (a)(1) Under this Act, every municipality shall have power to condemn
32 any works to be acquired and any land, rights, easements, franchise, and other
33 property, real or personal, deemed necessary or convenient for the
34 construction of any works, or for extensions, improvements, or additions to
35 them. In this connection, they may have and exercise all the rights, powers,
36 and privileges of eminent domain granted to municipalities under the laws

1 relating to them.

2 (2) Title to property condemned shall be taken in the name of the
3 municipality.

4 (3) Proceedings for such appropriation of property shall be under
5 and pursuant to the provisions of §§ 18-15-301 - 18-15-303 and any acts
6 supplemental to it. However, a municipality shall be under no obligation to
7 accept and pay for any property condemned or purchased except from the funds
8 provided pursuant to this Act.

9 (4)(A) In any proceedings to condemn, such orders may be made as
10 may be just to the municipality and to the owners of the property to be
11 condemned.

12 (B) An undertaking or other security may be required
13 securing the owners against any loss or damage to be sustained by reason of
14 the failure of the municipality to accept and pay for the property. However,
15 the undertaking or security shall impose no liability upon the municipality
16 except such as may be paid from funds provided under the authority of this
17 Act.

18 (b) In event of the acquisition by purchase the municipality may obtain
19 and exercise an option from the owner of the property for the purchase of it,
20 or may enter into a contract for the purchase of it, and the purchase may be
21 made upon such terms and conditions, and in such manner, as the committee may
22 deem proper.

23 (c) In event of the acquisition of any works already constructed by
24 purchase or condemnation, the municipality, at or before the time of the
25 adoption of the ordinance described in Section 14 of this Act, shall cause to
26 be determined what repairs, replacements, additions, and betterments will be
27 necessary in order that the works may be effective for their purpose. An
28 estimate of the cost of these improvements shall be included in the estimate
29 of cost required by Section 14 of this Act, and improvement shall be made upon
30 the acquisition of the works and as a part of the cost of them.

31

32 SECTION 12. Acquisition of encumbered property.

33 No property shall be acquired under this Act upon which any lien or
34 other encumbrance exists unless at the time the property is acquired a
35 sufficient sum of money be deposited in trust to pay and redeem the lien or
36 encumbrance in full.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

SECTION 13. Contracting with other political subdivisions.

(a)(1)(A) Any municipality operating storm water facilities as defined in this Act or which, as provided in this Act, has ordered the construction or acquisition of such works, in this section called the owner, is authorized to contract with one (1) or more other cities, towns, or political subdivisions within the state, in this section called the lessee.

(B) The lessees are authorized to enter into contracts with the owners, for the service of such works to the lessees and their inhabitants, but only to the extent of the capacity of the works without impairing the usefulness of them to the owners, upon such terms and conditions as may be fixed by the municipality and approved by ordinance of the respective contracting parties.

(2) No such contract shall be made for a period of more than fifteen (15) years or in violation of the provisions of an ordinance authorizing bonds under this subchapter or in violation of the provisions of the trust indenture.

(b)(1) The lessee shall, by ordinance, have power to establish, change, and adjust, so far as will not impair the rights of bondholders, rates and charges for the service rendered by the works against the owners of the premises served, in the manner provided in Section 24 of this Act for establishing, changing, and adjusting rates and charges for the service rendered in the municipality where the works are owned and operated, and the rates or charges shall be collected and shall be a lien as provided in Section 24 for rates and charges made by the owner.

(2) The necessary appurtenant works for connecting the works of the owner with the works of the lessee shall be constructed by the owner or the lessee upon such terms and conditions as may be set forth in the contract, and the cost, or that part of the cost of them which is to be borne by the owner, may be paid as a part of the cost of the works from the proceeds of bonds issued under this Act unless otherwise provided by the ordinance or trust indenture prior to the issuance of the bonds.

(3) The income received by the owner under any such contract, if so provided in the ordinance or trust indenture, shall be deemed to be a part of the revenues of the works as defined in this subchapter and shall be applied as provided in this act for the application of such revenues.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

SECTION 14. Enactment of ordinance before construction or acquisition.

Before any municipality shall construct or acquire any works under this subchapter, the municipal council shall enact ordinances which shall:

(1) Set forth:

(A) A brief and general description of the works proposed to be constructed or purchased; and

(B) If the works are to be constructed, a reference to the preliminary report or plans and specifications which shall theretofore have been prepared and filed with the municipal clerk or recorder by an engineer chosen by such council;

(2) Set forth:

(A) The cost of the works estimated by the engineer chosen as prescribed; or

(B) The purchase price if the works are to be purchased;

(3) Order the construction or acquisition of the works, in which connection the ordinance will recite that the terms of the construction or acquisition, so far as they are not set out in the ordinance, will thereafter be fixed by the municipality.

(4) State the city department to have charge of the works and the construction or acquisition of them;

(5) Direct that revenue bonds of the municipality shall be issued pursuant to this Act in such an amount as may be found necessary to pay the cost of the works; and

(6) Contain such other provisions as may be necessary in the premises.

SECTION 15. Cost of works.

The cost of works under this subchapter shall be deemed to include:

(1) The cost of acquisition or construction of them;

(2) The cost of all property, rights, easements, and franchises deemed necessary or convenient for them and for the improvements determined upon as provided in Section 11 of this act.

(3) Interest upon bonds prior to and during construction or acquisition and for six (6) months after completion of construction or of acquisition of the improvements mentioned;

(4) Engineering and legal expenses;

- 1 (5) Expense for estimates of cost and of revenues;
- 2 (6) Expense for plans, specifications, and surveys;
- 3 (7) Other expenses necessary or incident to determining the feasibility
- 4 or practicability of the enterprise;
- 5 (8) Administrative expense; and
- 6 (9) Such other expenses as may be necessary or incident to the financing
- 7 authorized in this subchapter and the construction or acquisition of the works
- 8 and the placing of the works in operation and the maintenance and performance
- 9 of the things required in this subchapter or permitted in connection with any
- 10 of it.

11

12 SECTION 16. Issuance of revenue bonds and notes generally.

13 (a)(1) Nothing contained in this Act shall be so construed as to

14 authorize or permit any municipality to make any contract or to incur any

15 obligation of any kind or nature except such as shall be payable solely from

16 the funds provided under the authority of this Act.

17 (2)(A)(i) Funds for the payment of the entire cost of the works

18 and for the payment of any extraordinary expenses or liabilities arising from

19 the ownership, operation and maintenance of the works including, without

20 limitation, liabilities to customers of the works relating to rates charged by

21 the municipality for use of the works shall be provided by funds derived from

22 the operation of the works, by funds of the municipality appropriated for that

23 purpose, and by the issuance of municipal revenue bonds, the principal and

24 interest of which shall be payable solely from the special fund provided in

25 Section 22 for payment.

26 (ii) The bonds shall not, in any respect, be a

27 corporate indebtedness of the municipality within the meaning of any statutory

28 or constitutional limitations on them.

29 (B) All the details of the bonds shall be determined by

30 ordinance of the municipality.

31 (b)(1)(A) Any municipality owning or operating a storm water system,

32 however constructed or acquired, and desiring to construct improvements and

33 betterments to it, may borrow money to be used for these purposes, to

34 refinance or retire existing indebtedness related to the storm water system,

35 or to provide funds for preliminary expense prior to the issuance of revenue

36 bonds or to provide interim financing pending receipt of federal or state

1 grant-in-aid of loan disbursements.

2 (B) Such a loan shall be evidenced by revenue promissory
3 notes as set out in this section.

4 (2) The money so borrowed shall be deposited in a revenue note
5 fund and shall be used solely for the purposes authorized in this section.

6 (3) The notes evidencing the loan shall be authorized by the
7 legislative body of the municipality and shall be due in not exceeding five
8 (5) years from date and shall bear interest at such rate or rates as provided
9 in the ordinance authorizing their issuance, interest being payable
10 semiannually.

11 (4)(A) The note or notes shall be payable solely from the revenues
12 derived from the storm water system and shall not, in any event, constitute an
13 indebtedness of the municipality within the meaning of the constitutional
14 provisions or limitations.

15 (B) It shall be plainly stated on the face of each note that
16 the same has been issued under the provisions of this subchapter and that it
17 does not constitute an indebtedness of the municipality within any
18 constitutional or statutory limitations.

19 (5) The notes shall be subordinate to any outstanding revenue
20 bonds theretofore issued by the municipality.

21 (6)(A) It shall be no objection to the subsequent issue of any
22 revenue bonds that a portion of the proceeds received from the sale of the
23 revenue bonds is to be used to retire the indebtedness permitted by this
24 section.

25 (B) If the proceeds of the bonds are so used, then the
26 improvements constructed or purchased with the proceeds of the loan authorized
27 by this section shall be considered to be a portion of improvements
28 constructed or purchased with the revenue bonds subsequently issued.

29 (7) All interest paid on the revenue bonds shall be exempt from
30 State of Arkansas income tax.

31

32 SECTION 17. Terms, execution, and sale of bonds.

33 (a)(1) Revenue bonds issued under this subchapter shall bear interest at
34 such rate or rates, payable annually or at shorter intervals, and shall mature
35 at such time or times as may be determined by ordinance.

36 (2) The bonds may be made redeemable before maturity, at the

1 option of the municipality, at not more than the par value thereof and a
2 premium of five percent (5%), under such terms and conditions as may be fixed
3 by the ordinance authorizing the issuance of the bonds.

4 (3) The principal and interest of the bonds may be made payable in
5 any lawful medium.

6 (4) The ordinance shall determine the form of the bonds, including
7 the interest coupons to be attached to them, and shall fix the denomination or
8 denominations of the bonds and the place or places of payment of the principal
9 and interest of them, which may be at any bank or trust company within or
10 without the state.

11 (5) The bonds shall contain a statement on their face that the
12 municipality shall not be obligated to pay them or the interest on them except
13 from the special fund provided from the net revenues of the works.

14 (6) All such bonds shall be, shall have, and are declared to have
15 all the qualities and incidents of negotiable instruments under the negotiable
16 instruments laws of the state.

17 (7)(A) The bonds shall be exempt from all taxation, state, county,
18 and municipal.

19 (B) This exemption shall include income taxation and
20 inheritance taxation, as well as all forms of property taxation.

21 (8) Provisions may be made for the registration of any of the
22 bonds in the name of the owner as to principal alone.

23 (b) Bonds shall be executed in the same manner as other bonds issued by
24 municipalities are executed.

25 (c)(1) The bonds shall be sold by the municipality in such a manner as
26 may be determined to be for the best interests of the municipality and subject
27 to the approval of the municipal council.

28 (2) Any surplus of bond proceeds over and above the cost of the
29 works shall be paid into the sinking fund provided for in Section 22.

30 (3) If the proceeds of the bonds, by error or calculation or
31 otherwise, shall be less than the cost of the works, additional bonds may in
32 like manner, be issued to provide the amount of the deficit and, unless
33 otherwise provided in the ordinance authorizing the issuance of the bonds
34 first issued or in the trust indenture executed in connection with them, shall
35 be deemed to be the same issue as the antecedent bonds, secured by a lien of
36 equal rank and in all other respects upon a parity with them.

1 (4) Prior to the preparation of the definitive bonds, temporary
2 bonds may, under like restrictions, be issued with or without coupons,
3 exchangeable for definitive bonds upon the issuance of the latter.
4

5 SECTION 18. Additional bonds authorized.

6 (a) The municipal council may provide by the ordinance authorizing the
7 issuance of the bonds, or in the trust indenture executed in connection with
8 it, that additional bonds may thereafter be authorized and issued, at one time
9 or from time to time, under such limitations and restrictions as may be set
10 forth in the ordinance or trust indenture, for the purpose of extending,
11 improving, or bettering the works authorized under this Act when deemed
12 necessary in the public interest.

13 (b) Unless otherwise provided in the ordinance or in the trust indenture
14 executed pursuant to it, the additional bonds will be secured and be payable
15 from the revenues of the works equally with all other bonds issued pursuant to
16 the ordinance, without preference or distinction between any one (1) bond and
17 any other bond by reason of priority of issuance or otherwise. However, any
18 provisions of the ordinance or trust indenture subordinating the lien of
19 subsequent issues, or otherwise regulating the priorities as between
20 successive issues, will be controlling.

21
22 SECTION 19. Issuance of additional bonds.

23 Nothing contained in this Act shall prevent the issuance of additional
24 bonds, from time to time, if the bonds shall be authorized by law. However,
25 all such additional bonds shall be subordinate to bonds issued pursuant to
26 Sections 16-18 of this act in respect to the application of revenues to such
27 additional bonds unless the additional bonds consist of revenue bonds issued
28 under this subchapter, the issuance of which was expressly authorized in the
29 ordinance or indenture governing prior bonds of similar character. In this
30 event, the additional bonds and such prior bonds will have a parity of lien
31 unless the governing ordinance or indenture shall provide to the contrary.

32
33 SECTION 20. Securing of bonds by trust indenture.

34 (a)(1) In the discretion of the municipal council, bonds issued under
35 this subchapter may be secured by a trust indenture by and between the
36 municipality and a corporate trustee, which may be any domestic or nonresident

1 trust company or bank having the powers of a trust company.

2 (2) The trust indenture may convey or mortgage the works or any
3 part of it.

4 (b) The ordinance authorizing the revenue bonds and fixing the details
5 of it may provide that the trust indenture may contain such provisions for
6 protecting and enforcing the rights and remedies of the bondholders as may be
7 reasonable and proper, not in violation of law, including covenants setting
8 forth the duties of the municipality in relation to the construction or
9 acquisition of the works and the improvement, operation, repair, maintenance,
10 and insurance of them, and the custody, safeguarding, and application of all
11 moneys, and may provide that the works shall be contracted for, constructed,
12 and paid for under the supervision and approval of consulting engineers
13 employed or designated by the municipality and satisfactory to the original
14 bond purchasers, successors, assigns or nominees. The bond purchasers, etc.
15 may be given the right to require that the security given by contractors and
16 by any depository of the proceeds of bonds or revenues of the works or other
17 moneys pertaining to them be satisfactory to the purchasers, successors,
18 assigns, or nominees.

19 (c) The indenture may set forth the rights and remedies of the
20 bondholders or the trustee, restricting the individual right of action of
21 bondholders as is customary in trust indentures securing bonds and debentures
22 of corporations.

23 (d) Except as otherwise provided in this Act, the council may provide by
24 ordinance, or in the trust indenture, for the payment of the proceeds of sale
25 of the bonds and the revenues of the works to such officer, board, or
26 depository as it may determine for the custody of them and for the method of
27 disbursement of them, with such safeguards and restrictions as it may
28 determine.

29

30 SECTION 21. Enforcement of rights by bondholders or trustee.

31 (a)(1) Any holder of any bonds issued under this act, or any of the
32 coupons attached to them, and the trustee, if any, except to the extent the
33 rights given in this act may be restricted by the ordinance authorizing
34 issuance of the bonds or by the trust indenture, may either, at law or in
35 equity, by suit, action, mandamus, or other proceeding, protect and enforce
36 any and all rights granted under this act or under the ordinance or trust

1 indenture.

2 (2) A bondholder or trustee may enforce and compel performance of
3 all duties required by this Act or by the ordinance or trust indenture to be
4 performed by the municipality issuing the bonds, including the making and
5 collecting of reasonable and sufficient charges and rates for service rendered
6 by the works.

7 (b) If there is any failure to pay the principal or interest of any of
8 the bonds on the date named for payment, any court having jurisdiction of the
9 action may appoint a receiver to administer the works on behalf of the
10 municipality and the bondholders or trustee, except as so restricted, with
11 power to charge and collect, or by mandatory injunction or otherwise, to cause
12 to be charged and collected, rates sufficient to provide for the payment of
13 the expenses of operation, repair and maintenance and also to pay any bonds
14 and interest outstanding and to apply the revenue in conformity with this
15 subchapter and the ordinance or trust indenture.

16

17 SECTION 22. Sinking fund to pay bonds and interest.

18 (a)(1) At or before the issuance of any bonds under this subchapter, the
19 municipality shall, by ordinance, create a sinking fund for the payment of
20 bonds and the interest on them and the payment of the charges of banks or
21 trust companies for making payment of the bonds or interest and shall set
22 aside and pledge a sufficient amount of the net revenues of the works, meaning
23 the revenues of the works remaining after the payment of the reasonable
24 expense of operation, repair and maintenance.

25 (2)(A) This amount shall be paid by the municipality into the
26 sinking fund at intervals to be determined by ordinance prior to issuance of
27 the bonds, for:

28 (i) The interest upon the bonds as interest shall
29 fall due;

30 (ii) The necessary fiscal agency charges for paying
31 bonds and interest;

32 (iii) The payment of the bonds as they fall due, or if
33 all bonds mature at one time, the proper maintenance of a sinking fund
34 sufficient for the payment of them at such time; and

35 (iv) A margin for safety and for the payment of
36 premiums upon bonds retired by call or purchase as provided in this

1 subchapter, which margin, together with any unused surplus of such margin
2 carried forward from the preceding year, shall equal ten percent (10%) of all
3 other amounts so required to be paid into the sinking fund.

4 (B) Required payments shall constitute a first charge upon
5 all the net revenues of the works.

6 (b)(1) Prior to the issuance of the bonds, the municipality, by
7 ordinance, may be given the right to use or direct the trustee to use the
8 sinking fund, or any part of it, in the purchase of any of the outstanding
9 bonds payable from it at the market price of them but not exceeding the price,
10 if any, at which they shall, in the same year, be payable or redeemable, and
11 all bonds redeemed or purchased shall be canceled and shall not again be
12 issued.

13 (2) After the payments into the sinking fund as required in this
14 section, the municipality, at any time, in its discretion, may transfer all,
15 or any part, of the balance of the net revenues after reserving an amount
16 deemed by the municipality sufficient for operation, repair, and maintenance
17 for an ensuing period of not less than twelve (12) months and for
18 depreciation, into the sinking fund or into a fund for extensions,
19 betterments, and additions to the works.

20

21 SECTION 23. Allocations of funds from bonds and revenues.

22 (a)(1)(A) Any specified portion of the proceeds of an issue of bonds
23 authorized under this subchapter may be allocated by the municipal council to
24 any particular project, or to new construction, as distinguished from the
25 purchase of works already constructed, or vice versa.

26 (B)(i) After such allocation, the designated portion of the
27 proceeds of the bond issue shall be kept separate and apart from the remaining
28 proceeds and shall be held by the municipality in trust for the performance of
29 the purposes specified, and none other.

30 (ii) The diversion of the funds to any other purpose
31 may be enjoined on the suit of the trustee under the indenture securing the
32 bonds, or on the suit of any of the bondholders, or on the suit of any person
33 whose property, under the ordinance of the council, is to be served by the
34 proposed works.

35 (2) In making the allocation, the council will be controlled by
36 the engineer's estimate of cost referred to in the initial ordinance.

1 (b)(1)(A) In the event of such allocation or proceeds, the bonds
2 themselves may be similarly and correspondingly segregated and allocated to
3 the respective purposes of the issue.

4 (B) Bonds segregated and allocated to one purpose, from the
5 standpoint of legality and in all other respects, shall be deemed to have been
6 issued to finance such purpose, and that alone.

7 (2)(A) Notwithstanding such allocation and segregation, all bonds
8 of the entire issue, unless the initial ordinance and the indenture securing
9 the bonds shall provide to the contrary, will be secured ratably and equally
10 by the revenues of the entire and aggregate works financed by the bond issue.

11 (B) Unless the ordinance and indenture shall so specifically
12 provide, the allocation of bond proceeds or segregation of bonds mentioned
13 will never have the effect of allocating the revenues from any particular
14 portion of the authorized works exclusively to any particular bonds.

15

16 SECTION 24. Rates and charges for services - Lien.

17 (a)(1) The council of the municipality shall have power, and it shall
18 be its duty, by ordinance to establish and maintain just and equitable rates
19 or charges for the use of and the service rendered by the works, to be paid by
20 various classes of users or property served of the storm water drainage
21 system of the municipality.

22 (2) The council may change and readjust the rates or charges from
23 time to time to such extent as will not render insecure the rights of the
24 holders of revenue bonds or violate any sinking fund agreement, or other
25 lawful agreement, with such bondholders.

26 (b) The rates or charges shall be sufficient in each year for the
27 payment of the proper and reasonable expense of operation, repair,
28 replacements, and maintenance of the works and for the payment of the sums
29 required in this Act to be paid into the sinking fund.

30 (c) Revenues collected pursuant to this section shall be deemed the
31 revenues of the works.

32 (d)(1)(A) No rates or charges shall be established until after a public
33 hearing, at which all the users of the works and owners of property served or
34 to be served by them and others interested shall have opportunity to be heard
35 concerning the proposed rates or charges.

36 (B) After introduction of the ordinance fixing the rates or

1 charges, and before the ordinance is finally enacted, notice of the hearing,
2 setting forth the proposed schedule of the rates or charges, shall be given by
3 one (1) publication in a newspaper published in the municipality if there is
4 such a newspaper, but otherwise in a newspaper having general circulation in
5 the municipality, at least ten (10) days before the date fixed in the notice
6 for the hearing, which may be adjourned from time to time.

7 (2) After the hearing the ordinance establishing rates or charges,
8 either as originally introduced or as modified and amended, shall be passed
9 and put into effect.

10 (e) A copy of the schedule of the rates and charges established shall be
11 kept on file in the office of the city department having charge of the
12 operation of the works, and also in the office of the municipal clerk or
13 recorder and shall be open to inspection by all parties interested.

14 (f)(1) The rates or charges so established for any class of users or
15 property served shall be extended to cover any additional premises thereafter
16 served which fall within the same class, without the necessity of any hearing
17 or notice.

18 (2)(A) Any change or readjustment of the rates or charges may be
19 made in the same manner as the rates or charges were originally established as
20 provided in this section.

21 (B) If the change or readjustment is made substantially pro
22 rata as to all classes of service, no hearing or notice shall be required.

23 (g) The aggregate of the rates or charges shall always be sufficient for
24 the expense of operation, repair and maintenance and for the sinking fund
25 payments.

26 (h) All such rates or charges if not paid when due shall constitute a
27 lien upon the premises served by such works; said charges to constitute a lien
28 upon the fee title to the land and permanent improvements, even though the
29 occupant receiving the benefit of the service for which the rate or charge is
30 due has merely a leasehold interest (or other lesser state) in the premises.

31 (i) If any service rate or charge established shall not be paid within
32 thirty (30) days after it is due, the amount of it, together with a penalty of
33 ten percent (10%) and a reasonable attorney's fee, may be recovered by the
34 municipality in a chancery suit, filed in the chancery court of the county
35 where the works, or the greater part of them, shall be located, in the name of
36 the municipality or in the name of the trustee under the indenture securing

1 the revenue bonds, or in the name of the bondholders, to such extent as their
2 right to sue in their own name may be permitted under the trust indenture.

3

4 SECTION 25. Service payments by municipalities.

5 (a) A municipality shall be subject to the same charges and rates
6 established as provided in Section 24, or to charges and rates established in
7 harmony with them, for service rendered the municipality and shall pay the
8 rates or charges when due from corporate funds.

9 (b) The payments shall be deemed to be a part of the revenues of the
10 works as defined in this subchapter and shall be applied as provided in this
11 subchapter for the application of such revenues.

12

13 SECTION 26. Powers in addition to other municipal powers.

14 The powers conferred by this Act are in addition and supplemental to the
15 powers conferred by any other law.

16

17 SECTION 27. Permit conditions for discharges.

18 Municipalities shall provide discharge limits for storm water discharges
19 associated with industrial activities that are consistent with any permits
20 issued pursuant to the National Pollution Discharge Elimination System
21 (NPDES), unless the municipality is not in compliance with applicable
22 provisions of the NPDES permits issued to them for storm water, at which time
23 the municipality can request more restrictive discharge limits from ADPC&E.

24

25 SECTION 28. Water quality regulation authority not limited by this Act.

26 Nothing herein shall be construed to limit the power or authority of
27 the Arkansas Department of Pollution Control and Ecology and the Arkansas
28 Pollution Control and Ecology Commission with respect to regulation of the
29 waters of Arkansas.

30

31 SECTION 29. The provisions of this act shall apply only to

32 municipalities with a population of one hundred thousand (100,000) or more
33 that are required to comply with Environmental Protection Agency storm water
34 discharge limits.

35

36 SECTION 30. All provisions of this Act of a general and permanent

1 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
2 Code Revision Commission shall incorporate the same in the Code.

3

4 SECTION 31. If any provision of this Act or the application thereof to
5 any person or circumstance is held invalid, such invalidity shall not affect
6 other provisions or applications of the Act which can be given effect without
7 the invalid provision or application, and to this end the provisions of this
8 Act are declared to be severable.

9

10 SECTION 32. All laws and parts of law in conflict with this Act are
11 hereby repealed.

12

13

14

/s/Rep. Broadway

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36