

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H3/13/03

A Bill

HOUSE BILL 2349

5 By: Representative Childers
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS NONPROFIT
10 CORPORATION ACT; AND FOR OTHER PURPOSES.

Subtitle

13 AN ACT TO AMEND THE ARKANSAS NONPROFIT
14 CORPORATION ACT.
15
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 *SECTION 1. Arkansas Code Title 4, Chapter 28, Subchapter 2 is amended*
20 *by adding an additional section to read as follows:*

21 *4-28-225. Conversion to public water authority.*

22 *(a) A corporation which meets the definition of a qualified*
23 *corporation, as defined by § 4-35-103, may adopt a plan to convert its entity*
24 *status from that of a nonprofit corporation to a water authority pursuant to*
25 *§§ 4-35-101 through 4-35-217, unless the articles or bylaws require*
26 *otherwise, if the conversion is approved:*

27 *(1) By a majority of the members of the board of directors of*
28 *the corporation; and*

29 *(2) If the corporation has members, by two-thirds (2/3) of the*
30 *votes cast by the members, in person or by proxy, at a regular or special*
31 *meeting of the members at which a quorum is present.*

32 *(b) For purposes of this section, and unless the articles or bylaws*
33 *provide for a higher or lower quorum, ten percent (10%) of the votes entitled*
34 *to be cast on a matter must be represented at a meeting of members to*
35 *constitute a quorum.*
36



1 SECTION 2. Arkansas Code Title 4, Chapter 33, Subchapter 16 is amended
2 to read as follows:

3 4-33-1601. Conversion to a public water authority.

4 A corporation which meets the definition of a qualified corporation, as
5 defined by § 4-35-103, may adopt a plan to convert its entity status from
6 that of a nonprofit corporation to a water authority pursuant to §§ 4-35-101
7 through 4-35-217, unless the articles or bylaws require otherwise, if the
8 conversion is approved:

9 (1) By a majority of the members of the board of directors of
10 the corporation; and

11 (2) If the corporation has members, by the lesser of:

12 (A) Two-thirds (2/3) of the votes cast by the members, in
13 person or by proxy, at a regular or special meeting of the members at which a
14 quorum, as defined in § 4-33-722, is present; or

15 (B) A majority of the members.

16
17 SECTION 3. Arkansas Code Title 4, Chapter 35 is amended to read as
18 follows:

19 ~~Chapter 35.~~

20 ~~Water Provider Corporations.~~

21 ~~Subchapter 1. General provisions.~~

22 ~~4-35-101. Authorization.~~

23 ~~(a) There is authorized the creation of water provider corporations.~~

24 ~~(b) A water provider corporation shall be a public body and a body~~
25 ~~corporate and politic.~~

26 ~~(c) A water provider corporation shall be organized to provide potable~~
27 ~~water and other associated service to Arkansas residents.~~

28
29 ~~4-35-102. Filing for incorporation.~~

30 ~~One (1) or more persons may act as the incorporator or incorporators of~~
31 ~~a corporation authorized by this subchapter by filing for incorporation in~~
32 ~~the same manner as for nonprofit corporations under the Arkansas Nonprofit~~
33 ~~Corporation Act of 1993, § 4-33-101 et seq.~~

34
35 ~~4-35-103. Conversion of nonprofit corporations.~~

36 ~~(a) A corporation organized under the Arkansas Nonprofit Corporation~~

1 ~~Act of 1993, § 4-33-101 et seq., or the Arkansas Nonprofit Corporation Act,~~
2 ~~§§ 4-28-201—4-28-206 and §§ 4-28-209—4-28-224, may convert to a~~
3 ~~corporation authorized by this subchapter by filing, with the circuit court~~
4 ~~of the county in which the main office or principal place of business of the~~
5 ~~corporation is located, signed and verified articles of incorporation and a~~
6 ~~statement that the nonprofit corporation desires to convert to a corporation~~
7 ~~authorized by this subchapter.~~

8 ~~(b) If the circuit court finds that the articles of incorporation~~
9 ~~conform to law and that the incorporation is for a lawful purpose and is in~~
10 ~~the best interests of the public, the court may issue an order approving~~
11 ~~conversion to a corporation authorized by this subchapter.~~

12 ~~(c) If the court approves the conversion, the articles of~~
13 ~~incorporation in duplicate, signed and verified, and a copy of the order of~~
14 ~~the court approving the conversion shall be transmitted to the Secretary of~~
15 ~~State, who shall, when a fee of one hundred dollars (\$100) has been paid:~~

16 ~~(1) File the original of the articles in his or her office; and~~
17 ~~(2) Issue a certificate of incorporation to which he or she~~
18 ~~shall affix the other copy of the articles endorsed with the word "filed" and~~
19 ~~the month, day, and year of the filing and return the certificate of~~
20 ~~incorporation to the incorporators or their representative.~~

21 ~~(d) The new corporation shall obtain all the assets, liabilities, and~~
22 ~~obligations of the nonprofit corporation and the obligations of the nonprofit~~
23 ~~corporation shall cease to exist on the date that the Secretary of State~~
24 ~~issues the certificate of incorporation.~~

25
26 ~~4-35-104. Applicability of law.~~

27 ~~(a) A corporation authorized by this subchapter shall be subject to~~
28 ~~the provisions of the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101~~
29 ~~et seq., except to the extent that the provisions of that chapter are in~~
30 ~~conflict with this subchapter.~~

31 ~~(b) A corporation authorized by this subchapter shall have the right~~
32 ~~to perpetual succession as a body politic and corporate.~~

33 ~~(c) In addition to other powers, the corporation may own and operate~~
34 ~~facilities necessary to provide potable water and associated services to~~
35 ~~Arkansas residents.~~

36

~~Subchapter 2. Public water authorities.~~

~~4-35-201. Legislative intent.~~

~~It is the intent of the General Assembly to provide a means by which a not-for-profit corporation involved in the sale, transmission, and distribution of potable water to members of the public and others may convert its entity status from that of a body corporate to that of a body politic, thereby allowing such an entity the opportunity to access the tax-exempt capital markets and thereby assuring the State of Arkansas and the customers of such an entity of the lowest water rates possible.~~

~~4-35-202. Definitions.~~

~~As used in this subchapter, unless the context otherwise requires:~~

~~(1) "Board" means the board of directors of a water authority;~~

~~(2) "Bond" means any bond, promissory note, lease purchase agreement, or other evidence of indebtedness of any nature along with all debt-securing instruments of every nature related thereto;~~

~~(3) "Commission" means the Arkansas Soil and Water Conservation Commission or its successors;~~

~~(4) "Indenture" means a mortgage, indenture of mortgage, deed of trust, trust agreement, loan agreement, security agreement, or trust indenture executed by the water authority as security for any bonds;~~

~~(5)(A) "Project" means any raw or potable water intake, treatment, distribution, transmission, storage, pumping, well site, well field, or other facility, or any combination of the foregoing, which has as its purpose the provision of raw or potable water to members of the public and commercial, industrial, or other users, along with any and all other appurtenances, equipment, betterments, or improvements related thereto.~~

~~(B) The above projects may include any lands or interest therein deemed by the board to be desirable in connection therewith, and necessary equipment for the proper functioning and operation of the buildings or facilities involved;~~

~~(6) "Qualified corporation" means any not-for-profit corporation which provides, distributes, transmits, treats, pumps, or stores raw or potable water to or for the benefit of members of the general public and commercial, industrial, and other users;~~

1 ~~(7) "State" means the State of Arkansas;~~

2 ~~(8) "United States" means the United States of America or any of~~
3 ~~its agencies or instrumentalities; and~~

4 ~~(9) "Water authority" means that body politic and governmental~~
5 ~~entity organized pursuant to the provisions of this subchapter.~~

6
7 ~~4-35-203. Construction.~~

8 ~~(a) This subchapter shall be liberally construed in conformity with~~
9 ~~its intent.~~

10 ~~(b) All acts and activities of a water authority performed pursuant to~~
11 ~~the authority of this subchapter are legislatively determined and declared to~~
12 ~~be essential governmental functions.~~

13
14 ~~4-35-204. Authority generally.~~

15 ~~(a) There is conferred upon a water authority the authority to take~~
16 ~~such action and to do, or cause to be done, such things as shall be necessary~~
17 ~~or desirable to accomplish and implement the purposes and intent of this~~
18 ~~subchapter according to the import of this subchapter.~~

19 ~~(b) It is specifically understood that, except for the provisions of~~
20 ~~this subchapter, no other statutes shall govern or pertain to the creation of~~
21 ~~a water authority under this subchapter or the issuance of bonds by a water~~
22 ~~authority.~~

23
24 ~~4-35-205. Authority and procedure to incorporate.~~

25 ~~Whenever a qualified corporation desires to convert into and become~~
26 ~~reconstituted and reincorporated as a water authority under and pursuant to~~
27 ~~this subchapter, the qualified corporation shall present to and file with the~~
28 ~~Arkansas Soil and Water Conservation Commission:~~

29 ~~(1) Its resolution duly adopted by the board of directors of the~~
30 ~~qualified corporation which evidences the desire of the qualified corporation~~
31 ~~to convert into and become reconstituted and reincorporated as a water~~
32 ~~authority and which shall additionally certify that the qualified~~
33 ~~corporation:~~

34 ~~(A) Was initially formed as a not-for-profit corporation;~~

35 ~~(B) Does not have the ability to directly access the tax-~~
36 ~~exempt capital markets other than through a conduit issuer; and~~

1 ~~(C) Desires to realize interest rate savings as a result~~
2 ~~of its conversion and reconstitution as a water authority pursuant to this~~
3 ~~subchapter;~~

4 ~~(2) Its application for reconstitution and certificate of~~
5 ~~incorporation which shall state and include the following information:~~

6 ~~(A) The name of the water authority, which shall be the~~
7 ~~"Public Water Authority of the State of Arkansas", or some other name of~~
8 ~~similar import, it being understood that the water authority may adopt a~~
9 ~~fictitious operational name upon written request to and approval by the~~
10 ~~commission;~~

11 ~~(B) The location of the water authority's principal office~~
12 ~~and the number of directors of the water authority, which shall be subject to~~
13 ~~change and modification as provided in the water authority's bylaws;~~

14 ~~(C) The names and addresses of the initial board of~~
15 ~~directors of the qualified corporation;~~

16 ~~(D) The name and address of the agent for service of~~
17 ~~process of the qualified corporation;~~

18 ~~(E) Any other matters that the initial board of directors~~
19 ~~of the qualified corporation may deem necessary and appropriate; and~~

20 ~~(F) Any other matters that the commission may designate~~
21 ~~and require;~~

22 ~~(3) A copy of the qualified corporation's bylaws, along with any~~
23 ~~other information which the initial board of directors of the qualified~~
24 ~~corporation may deem necessary and appropriate;~~

25 ~~(4) A statement and certification from the Secretary of State~~
26 ~~that the proposed name of the water authority is not identical to that of any~~
27 ~~other water authority in the state or so nearly similar as to lead to~~
28 ~~confusion and uncertainty;~~

29 ~~(5) That filing and review fee that the commission may designate~~
30 ~~and determine from time to time; and~~

31 ~~(6) Any other information and documents which the commission may~~
32 ~~designate and require.~~

33
34 ~~4-35-206. Execution and recording.~~

35 ~~(a) An application for reconstitution and certificate of incorporation~~
36 ~~shall be signed and acknowledged by a majority of the board of directors of a~~

1 ~~qualified corporation.~~

2 ~~(b)(1) When an application for reconstitution and certificate of~~
3 ~~incorporation and other required documents have been so filed with and~~
4 ~~accepted by the Arkansas Soil and Water Conservation Commission as evidenced~~
5 ~~by the issuance by the commission of its certificate of existence in that~~
6 ~~form that the commission may deem appropriate, the water authority referred~~
7 ~~to therein shall come into existence and shall constitute a body corporate~~
8 ~~and politic and a political subdivision of the state under the name set forth~~
9 ~~in the certificate of incorporation, whereupon the water authority shall be~~
10 ~~vested with the rights and powers granted in this subchapter and~~
11 ~~contemporaneously therewith, the qualified corporation shall cease to exist~~
12 ~~and all assets and liabilities of every nature, including, without~~
13 ~~limitation, all real property, personal property, contractual obligations,~~
14 ~~lending obligations outstanding, rights afforded borrowers of federal and~~
15 ~~state funds, and other tangible and intangible assets and liabilities of~~
16 ~~every nature, without need for further action or approval by any third party,~~
17 ~~shall be vested in and shall accrue to the benefit of the water authority.~~

18 ~~(2) All meetings and records of the water authority shall be~~
19 ~~subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.~~

20 ~~(3)(A)(i) A copy of a water authority's application for~~
21 ~~reconstitution and certificate of incorporation shall additionally be filed~~
22 ~~in the office of the Secretary of State after its receipt, acceptance, and~~
23 ~~approval by the commission.~~

24 ~~(ii) The Secretary of State may require the payment~~
25 ~~of a reasonable filing and receipt fee not in excess of the filing fee~~
26 ~~charged by the Secretary of State in connection with the receipt and filing~~
27 ~~of a corporation's articles of incorporation.~~

28 ~~(B) Filing a copy of the application for reconstitution~~
29 ~~and a copy of the certificate of incorporation, as accepted and approved by~~
30 ~~the commission, with the Secretary of State shall serve to terminate and~~
31 ~~dissolve the previous corporate existence of the qualified corporation.~~

32
33 ~~4-35-207. Board of directors.~~

34 ~~(a)(1) A water authority shall have a board of directors composed of~~
35 ~~the number of directors provided in its certificate of incorporation.~~

36 ~~(2) All powers of a water authority shall be exercised by its~~

1 ~~board of directors or pursuant to its authorization.~~

2 ~~(b)(1) Directors shall be elected and determined and shall serve in~~
3 ~~accordance with those procedures that a water authority may specify in its~~
4 ~~bylaws.~~

5 ~~(2) A water authority's bylaws shall contain provisions and~~
6 ~~procedures for the election and appointment of its directors that are~~
7 ~~identical in nature to those same provisions and procedures as contained in~~
8 ~~the qualified corporation's bylaws, unless approval to modify and amend such~~
9 ~~procedures is expressly granted in writing by the Arkansas Soil and Water~~
10 ~~Conservation Commission.~~

11 ~~(c)(1)(A) A majority of the members of a board shall constitute a~~
12 ~~quorum for the transaction of business.~~

13 ~~(B) No vacancy in the membership of a board shall impair~~
14 ~~the right of a quorum to exercise all the powers and duties of a water~~
15 ~~authority.~~

16 ~~(2) A director shall continue in office until the director's~~
17 ~~successor is properly elected and accepts office.~~

18 ~~(d) The members of a board and the officers of a water authority shall~~
19 ~~serve without compensation, except that they may be reimbursed for actual~~
20 ~~expenses incurred in and about the performance of their duties.~~

21 ~~(e) All proceedings of a board shall be reduced to writing by the~~
22 ~~secretary of the water authority and appropriately recorded and maintained in~~
23 ~~a well-bound book.~~

24
25 ~~4-35-208. Officers.~~

26 ~~(a) The officers of a water authority shall consist of a chair, vice~~
27 ~~chair, secretary, treasurer, and such other officers as a board shall deem~~
28 ~~necessary to accomplish the purposes for which a water authority is~~
29 ~~organized.~~

30 ~~(b) All officers of a water authority shall be persons who receive~~
31 ~~water service from the water authority.~~

32 ~~(c) The offices of secretary and treasurer may, but need not, be held~~
33 ~~by the same person.~~

34 ~~(d) All officers of a water authority shall be elected by the board~~
35 ~~and shall serve for those terms of office as specified in the bylaws.~~

36

1 ~~4-35-209. Powers generally.~~

2 ~~A water authority shall have the following powers, together with all~~
3 ~~powers incidental thereto or necessary to the discharge thereof:~~

4 ~~(1) To have succession in its designated name;~~

5 ~~(2) To sue and be sued and to prosecute and defend suits in any~~
6 ~~court having jurisdiction of the subject matter and of the parties;~~

7 ~~(3) To make use of a seal and to alter it at pleasure;~~

8 ~~(4) To adopt and alter bylaws for the regulation and conduct of~~
9 ~~its affairs and business;~~

10 ~~(5) To acquire, whether by purchase, gift, lease, devise, or~~
11 ~~otherwise, property of every description which a board of directors may deem~~
12 ~~necessary to the acquisition, construction, equipment, improvement,~~
13 ~~enlargement, operation, administration, or maintenance of a project, and to~~
14 ~~hold title thereto;~~

15 ~~(6) To construct, enlarge, equip, improve, maintain, administer,~~
16 ~~and operate one (1) or more projects;~~

17 ~~(7) To borrow money for any of its purposes;~~

18 ~~(8) To sell and issue its interest bearing bonds;~~

19 ~~(9) To sell and issue refunding bonds;~~

20 ~~(10) To secure any of its bonds by pledge and indenture as~~
21 ~~provided in this subchapter;~~

22 ~~(11) To appoint, employ, and compensate such general managers,~~
23 ~~executive directors, agents, architects, engineers, attorneys, accountants,~~
24 ~~and other persons and employees as the business of the water authority may~~
25 ~~require;~~

26 ~~(12) To provide for such insurance as the board may deem~~
27 ~~advisable;~~

28 ~~(13) To invest in obligations that are direct or guaranteed~~
29 ~~obligations of the United States or other securities in which public funds~~
30 ~~may be invested under the laws of this state, any of its funds that the board~~
31 ~~may determine are not presently needed for its operational purposes;~~

32 ~~(14) To contract, lease, and make lease agreements respecting~~
33 ~~its properties, or any part thereof;~~

34 ~~(15) To exercise the power of eminent domain in accordance with~~
35 ~~the procedures prescribed by § 18-15-301 et seq.; and~~

36 ~~(16) To sell, convey, or otherwise dispose of any of its~~

1 ~~properties that may have become obsolete or worn out, or that may no longer~~
2 ~~be needed or useful in connection with, or in the operation of, any project.~~

3
4 ~~4-35-210. Tax exemption of projects.~~

5 ~~Each project, and all income therefrom, is determined and declared by~~
6 ~~the General Assembly to be public property used exclusively for a public~~
7 ~~purpose and shall be exempt from ad valorem taxation by all taxing~~
8 ~~authorities.~~

9
10 ~~4-35-211. Issuance of bonds.~~

11 ~~(a) A water authority is authorized at any time and from time to time~~
12 ~~to issue its interest bearing bonds for the purpose of acquiring,~~
13 ~~constructing, improving, enlarging, completing, and equipping one (1) or more~~
14 ~~projects.~~

15 ~~(b)(1)(A) Prior to a water authority's proposed issuance of bonds, the~~
16 ~~water authority shall publish one (1) time in a newspaper of general~~
17 ~~circulation in the affected county or counties:~~

18 ~~(i) Notice of the proposed issuance of bonds;~~

19 ~~(ii) The approximate principal amount of bonds~~
20 ~~contemplated to be sold;~~

21 ~~(iii) A general description of the project~~
22 ~~contemplated to be constructed with bond proceeds; and~~

23 ~~(iv) The date of a public meeting at which members~~
24 ~~of the public may obtain further information regarding the sale of the bonds~~
25 ~~and the development of the project.~~

26 ~~(B) Notice under subdivision (b)(1)(A) of this section~~
27 ~~shall be published at least ten (10) days prior to the date of the hearing~~
28 ~~described in subdivision (b)(1)(A)(iv) of this section.~~

29 ~~(2) A water authority chair or his or her designee shall be~~
30 ~~responsible for conducting the hearing and shall require all public comments~~
31 ~~which might pertain to the proposed issuance of bonds by the water authority.~~

32 ~~(3) Upon compliance with the provisions of this section, no~~
33 ~~other notice, hearing, or approval by any other entity or governmental unit~~
34 ~~shall be required as a condition to the issuance by a water authority of its~~
35 ~~contemplated bonds.~~

36 ~~(c) The principal of and the interest on any bonds may be payable out~~

1 ~~of the revenues derived from the projects with respect to which the bonds are~~
2 ~~issued or from any other source available to a water authority.~~

3 ~~(d) None of the bonds of a water authority shall ever constitute an~~
4 ~~obligation or debt of the state, the city or county in which the water~~
5 ~~authority operates, the Arkansas Soil and Water Conservation Commission, or~~
6 ~~any officer or director of the water authority, or a charge against the~~
7 ~~credit or taxing powers of the state.~~

8 ~~(e) As the water authority shall determine, bonds of the water~~
9 ~~authority may:~~

10 ~~(1) Be issued at any time and from time to time as may be~~
11 ~~appropriate and necessary;~~

12 ~~(2) Be in such form and denominations as may be appropriate and~~
13 ~~necessary;~~

14 ~~(3) Have such date or dates as may be appropriate and necessary;~~

15 ~~(4) Mature at such time or times and in such amount or amounts,~~
16 ~~provided that no bonds may mature more than forty (40) years after the date~~
17 ~~of issuance, as may be appropriate and necessary;~~

18 ~~(5) Bear interest payable at such times and at such rate or~~
19 ~~rates as may be established by the board, as may be appropriate and~~
20 ~~necessary;~~

21 ~~(6) Be payable at such place or places within or without the~~
22 ~~State of Arkansas, as may be appropriate and necessary;~~

23 ~~(7) Be subject to such terms of redemption in advance of~~
24 ~~maturity at such prices, including such premiums, as may be appropriate and~~
25 ~~necessary; and~~

26 ~~(8) Contain such other terms and provisions as may be~~
27 ~~appropriate or necessary.~~

28 ~~(f)(1) Bonds of a water authority may be sold at either public or~~
29 ~~private sale in such manner and from time to time as may be determined by the~~
30 ~~board of directors to be most advantageous.~~

31 ~~(2) The water authority may pay all expenses, premiums, and~~
32 ~~commissions that the board may deem necessary or advantageous in connection~~
33 ~~with the authorization, sale, and issuance of its bonds.~~

34 ~~(g) All bonds shall contain a recital that they are issued pursuant to~~
35 ~~the provisions of this subchapter, which recital shall be conclusive that~~
36 ~~they have been duly authorized pursuant to the provisions of this subchapter.~~

1 ~~(h) All bonds issued under the provisions of this subchapter shall be~~
2 ~~and are declared to be negotiable instruments within the meaning of the~~
3 ~~negotiable instruments law of the state and shall be in registered form.~~

4
5 ~~4-35-212. Execution of bonds.~~

6 ~~(a) Bonds shall be executed by the manual or facsimile signature of~~
7 ~~the chair of the water authority and by the manual or facsimile signature of~~
8 ~~the secretary of the water authority.~~

9 ~~(b) In case any of the officers whose signatures appear on the bonds~~
10 ~~shall cease to be such officer before the delivery of the bonds, their~~
11 ~~signatures shall nevertheless be valid and sufficient for all purposes.~~

12 ~~(c) The bonds shall be sealed with the seal of the water authority.~~

13
14 ~~4-35-213. Security for bonds.~~

15 ~~(a) The principal of and interest on bonds may be secured by a pledge~~
16 ~~of the revenues of a water authority of that project financed by the water~~
17 ~~authority through its issuance of bonds or from any other source that the~~
18 ~~water authority may deem necessary and appropriate, and may be secured by the~~
19 ~~creation of a mortgage and security interest encumbering the real property of~~
20 ~~the water authority, or security interest in all personal property and~~
21 ~~revenues of the water authority as set forth in the indenture.~~

22 ~~(b) The trustee under any indenture may be a trust company or bank~~
23 ~~having trust powers, whether located within or without the state.~~

24 ~~(c) The indenture may contain, all as the board of directors shall~~
25 ~~deem advisable and as shall not be in conflict with the provisions of this~~
26 ~~subchapter, any agreements and provisions customarily contained in~~
27 ~~instruments securing evidences of indebtedness, including, without limiting~~
28 ~~the generality of the foregoing:~~

29 ~~(1) Provisions respecting the nature and extent of the security;~~

30 ~~(2) The collection, segregation, and application of the revenues~~
31 ~~generated from the operation of any project covered by the indenture;~~

32 ~~(3) Covenants to always operate the project as a revenue-~~
33 ~~producing undertaking and to charge and collect, including the obligation to~~
34 ~~increase from time to time, sufficient revenue to maintain income at required~~
35 ~~levels;~~

36 ~~(4) The maintenance and insurance of the project;~~

1 ~~(5) The creation and maintenance of reserve and other special~~
2 ~~funds; and~~

3 ~~(6) The rights and remedies available in the event of default to~~
4 ~~the holders of the bonds or the trustees under the indenture.~~

5 ~~(d) If there is any default by a water authority in payment of the~~
6 ~~principal of or the interest on the bonds or in any of the agreements on the~~
7 ~~part of the water authority that may properly be included in any indenture~~
8 ~~securing the bonds, the bondholders or the trustee under any indenture, as~~
9 ~~authorized in such indenture, may either in law or in equity, by suit,~~
10 ~~action, mandamus, or other proceeding, enforce payment of the principal or~~
11 ~~interest and compel performance of all duties of the board and officers of~~
12 ~~the water authority and shall be entitled as a matter of right and regardless~~
13 ~~of the sufficiency of any such security to the appointment of a receiver in~~
14 ~~equity with all the powers of such receiver for the operation and maintenance~~
15 ~~of the project covered by such indenture and the collection, segregation, and~~
16 ~~applications of income and revenues therefrom.~~

17 ~~(e) The indenture may contain provisions regarding the rights and~~
18 ~~remedies of any trustee thereunder and the holders of the bonds and the~~
19 ~~coupons and restricting the individual rights of action of the holders of the~~
20 ~~bonds and coupons.~~

21
22 ~~4-35-214. Bonds — Tax exemption.~~

23 ~~(a) The principal of and interest on bonds issued under the authority~~
24 ~~of this subchapter shall be exempt from all state, county, and municipal~~
25 ~~taxes.~~

26 ~~(b) This exemption shall include income, inheritance, and estate~~
27 ~~taxes.~~

28
29 ~~4-35-215. Proceeds from issuance of bonds.~~

30 ~~(a) The proceeds derived from all of the bonds other than refunding~~
31 ~~bonds may be used only to pay the costs of acquiring, constructing,~~
32 ~~improving, enlarging, and equipping the project with respect to which they~~
33 ~~were issued, as may be specified in the proceedings in which the bonds are~~
34 ~~authorized to be issued and all costs incidental thereto, including, without~~
35 ~~limitation:~~

36 ~~(1) The costs of any land forming a part of the project and all~~

1 ~~easements which may pertain to or be associated with any project;~~

2 ~~(2) The costs of the labor, materials, and supplies used in any~~
3 ~~construction, improvement, and enlargement, including architect's and~~
4 ~~engineer's fees and the cost of preparing contract documents and advertising~~
5 ~~for bids, along with all other reasonable and necessary project costs;~~

6 ~~(3) The purchase price of and the cost of installing equipment~~
7 ~~for the project;~~

8 ~~(4) Legal, fiscal, accounting, and recording fees and expenses~~
9 ~~incurred in connection with the authorization, sale, and issuance of the~~
10 ~~bonds issued in connection with the project;~~

11 ~~(5) Interest on bonds for a reasonable period prior to, during,~~
12 ~~and after the time required for such construction and equipment;~~

13 ~~(6) The amount necessary to fund a debt service reserve in an~~
14 ~~amount deemed appropriate by the water authority;~~

15 ~~(7) Costs associated with the obtaining of default insurance,~~
16 ~~ratings, and other credit enhancements of every nature; and~~

17 ~~(8) Other operational expenses, reserves, and other accounts of~~
18 ~~every nature.~~

19 ~~(b) If any of the proceeds derived from the issuance of bonds remains~~
20 ~~undisbursed after completion of the project and the making of all such~~
21 ~~expenditures, the balance shall be used for the redemption of bonds of the~~
22 ~~same issue.~~

23
24 ~~4-35-216. Refunding bonds.~~

25 ~~(a) A water authority, at any time and from time to time, may issue~~
26 ~~refunding bonds for the purpose of refunding the principal of and interest on~~
27 ~~any bonds of the water authority theretofore issued under this subchapter and~~
28 ~~then outstanding, whether or not the principal and interest shall have~~
29 ~~matured at the time of the refunding under this subchapter, and for the~~
30 ~~payment of any expenses incurred in connection with the refunding and any~~
31 ~~premium necessary to be paid in order to redeem or retire the bonds to be~~
32 ~~refunded.~~

33 ~~(b) The proceeds derived from the sale of any refunding bonds shall be~~
34 ~~used only for the purposes for which the refunding bonds were authorized to~~
35 ~~be issued.~~

36 ~~(c)(1) Any such refunding may be effected either by sale of the~~

~~1 refunding bonds and the application of the proceeds thereof by immediate
2 application or by escrow deposit, with the right to invest moneys in the
3 escrow deposit until needed for the redemption, or by exchange of the
4 refunding bonds for the bonds or interest coupons to be refunded thereby.~~

~~5 (2) However, the holders of any bonds so to be refunded shall
6 not be compelled without their consent to surrender their bonds for payment
7 or exchange prior to the date on which they may be paid or redeemed by the
8 water authority under their respective provisions.~~

~~9 (d) Any refunding bonds of the water authority shall be payable solely
10 from the revenues out of which the bonds to be refunded were payable or from
11 those other sources or other revenues which might be identified in the
12 indenture.~~

~~13 (e) All provisions of this subchapter pertaining to bonds of the water
14 authority that are not inconsistent with the provisions of this section shall
15 apply also to refunding bonds issued by the water authority, to the extent
16 applicable.~~

~~17
18 4-35-217. Dissolution.~~

~~19 (a) A water authority shall be dissolved upon the expiration of its
20 term of existence as set forth in the water authority's application for
21 reconstitution and certificate of incorporation, if the term of existence is
22 less than perpetual in nature.~~

~~23 (b) A water authority may additionally be dissolved upon application to, and
24 the approval in writing by, the Arkansas Soil and Water Conservation
25 Commission.~~

~~26
27 CHAPTER 35. WATER AUTHORITY ACT~~

~~28 SUBCHAPTER 1 - GENERAL PROVISIONS~~

~~29
30 4-35-101. Legislative intent.~~

~~31 It is the intent of the General Assembly to provide a means by which a
32 nonprofit corporation involved in the sale, transmission, and distribution of
33 potable water to members of the general public and commercial, industrial,
34 and other users may form, or convert its entity status from that of a body
35 corporate to that of a public body politic and governmental entity, thereby
36 allowing the entity the opportunity to access the tax-exempt capital markets~~

1 and assuring the State of Arkansas and the customers of the entity of the
2 lowest water rates possible.

3
4 4-35-102. Title.

5 This chapter shall be known and may be cited as the "Water Authority
6 Act".

7
8 4-35-103. Definitions.

9 As used in this chapter:

10 (1) "Articles" means the articles of constitution or the articles of
11 conversion and reconstitution of a water authority;

12 (2) "Board" means the board of directors of a qualified corporation or
13 a water authority;

14 (3) "Bond" means any bond, promissory note, lease purchase agreement,
15 or other evidence of indebtedness issued, incurred, or entered into by a
16 water authority;

17 (4) "Commission" means the Arkansas Soil and Water Conservation
18 Commission;

19 (5) "Indenture" means a mortgage, indenture of mortgage, deed of
20 trust, trust agreement, loan agreement, security agreement, or trust
21 indenture executed by the water authority as security for any bonds;

22 (6)(A) "Project" means any raw or potable water intake, treatment,
23 distribution, transmission, storage, pumping, well site, well field, or other
24 facility, or any combination of the foregoing, which has as its purpose the
25 provision of raw or potable water to members of the public and commercial,
26 industrial, or other users, along with any and all other appurtenances,
27 equipment, betterments, or improvements related thereto.

28 (B) A project may include any lands or interest in land deemed
29 by the board to be desirable in connection with the project, and necessary
30 equipment for the proper functioning and operation of the buildings or
31 facilities involved;

32 (7) "Qualified corporation" means any nonprofit corporation originally
33 formed pursuant to the Arkansas Nonprofit Corporation Act of 1993 codified at
34 § 4-33-101 et seq., the Arkansas Nonprofit Corporation Act codified at § 4-
35 28-201 et seq., or a predecessor statute, which, among other things,
36 provides, distributes, transmits, treats, pumps, or stores raw or potable

1 water to or for the benefit of members of the general public and commercial,
2 industrial, and other users or which proposes to accomplish, develop, or
3 construct any of the foregoing;

4 (8) "State" means the State of Arkansas;

5 (9) "United States" means the United States of America or any of its
6 agencies or instrumentalities;

7 (10) "Water authority" means that public body politic and governmental
8 entity organized pursuant to the provisions of this chapter; and

9 (11) "Water users" means members of the public and commercial,
10 industrial, and other users who purchase their raw or potable water directly
11 from the water authority.

12
13 4-35-104. Construction.

14 (a) This chapter shall be liberally construed in conformity with its
15 intent. To this end, it shall not be necessary to comply with the general
16 provisions of other laws dealing with public facilities, their acquisition,
17 construction, leasing, encumbering, or disposition, including particularly,
18 without limitation, bidding and appraisal requirements.

19 (b) All acts and activities of a water authority performed pursuant to
20 the authority of this chapter are legislatively determined and declared to be
21 essential governmental functions.

22
23 4-35-105. Authority generally.

24 (a) There is conferred upon a water authority the authority to take
25 action and to do, or cause to be done, the things that shall be necessary or
26 desirable to accomplish and implement the purposes and intent of this chapter
27 according to the import of this chapter.

28 (b) It is specifically understood that, except for the provisions of
29 this chapter or the provisions of any other chapter which authorizes the
30 conversion of a qualified corporation to a water authority, no other statutes
31 shall govern or pertain to the creation of a water authority under this
32 chapter or the issuance of bonds by a water authority.

33 (c) A water authority authorized by this chapter shall have the right
34 to perpetual succession as a public body politic and governmental entity.

35 (d) The commission shall have the authority, including the powers set
36 forth in § 15-20-206, to promulgate rules and regulations for carrying out

1 the intent of this chapter.

2
3 4-35-106. No members.

4 A water authority shall not have members.

5
6 4-35-107. Freedom of Information Act.

7 All meetings and records of the water authority shall be subject to the
8 Freedom of Information Act of 1967, § 25-19-101 et seq.

9
10 4-35-108. Tax exemption of projects.

11 Each project by a water authority, and all income from each project, is
12 determined and declared by the General Assembly to be public property used
13 exclusively for a public purpose and shall be exempt from ad valorem taxation
14 by all taxing authorities.

15
16 4-35-109. Exemption from jurisdiction of Arkansas Public Service
17 Commission.

18 Water authorities organized under this chapter shall be exempt in any
19 and all respects from the jurisdiction and control of the Arkansas Public
20 Service Commission.

21
22 4-35-110. Revenues.

23 (a) A water authority formed pursuant to this chapter shall be
24 operated without profit, but the rates, fees, rent, or other charges for
25 water and other facilities, supplies, equipment, or services furnished by the
26 water authority shall be sufficient at all times:

27 (1) To pay all operating and maintenance expenses necessary or
28 desirable for the prudent conduct of its affairs and the principal of and
29 interest on the obligations issued or assumed by the water authority in the
30 performance of the purposes for which it was organized; and

31 (2) For the creation of adequate reserves.

32 (b) The revenues of the water authority shall be devoted first to the
33 payment of operating and maintenance expenses and the principal and interest
34 on outstanding obligations, and thereafter to reserves for improvements, new
35 construction, depreciation, and contingencies as the board of directors may
36 from time to time prescribe and to such other purposes approved by the board,

1 including rebates to water users.

2
3 4-35-111. Dissolution.

4 (a)(1) A water authority shall be dissolved upon the expiration of its
5 term of existence as set forth in the water authority's articles, if the term
6 of existence is less than perpetual in nature.

7 (2) Upon the dissolution, a notice shall be filed with both the
8 Arkansas Soil and Water Conservation Commission and the Secretary of State.

9 (b)(1) A water authority may also be dissolved upon filing articles of
10 dissolution with, and the approval in writing by the commission.

11 (2) If approved by the commission, articles of dissolution shall
12 also be filed with the Secretary of State.

13 (c) Upon dissolution, any assets of a water authority remaining after
14 payment of claims and liabilities of the water authority shall be transferred
15 to another water authority, with approval of the commission, or to the State
16 of Arkansas or a subdivision of the state, including the commission.

17
18 SUBCHAPTER 2 - FORMATION OF AND CONVERSION TO
19 A PUBLIC WATER AUTHORITY

20
21 4-35-201. Authority and procedure to form a water authority.

22 Two (2) or more persons, which may include cities, counties, or other
23 public bodies, may form a water authority authorized by this chapter by
24 presenting to and filing with the Arkansas Soil and Water Conservation
25 Commission the following:

26 (1) Articles of constitution which shall state and include the
27 following information:

28 (A) The name of the water authority, which shall include
29 the words "public water authority", it being understood that the water
30 authority may adopt a fictitious operational name upon written request to and
31 approval by the commission;

32 (B) The location of the water authority's principal
33 office;

34 (C) The number of directors of the water authority, which
35 shall be at least five (5) and shall be subject to change as provided in this
36 chapter or in the water authority's bylaws;

1 (D) The names and addresses of the proposed initial board
2 of directors of the water authority;

3 (E) The name and address of the agent for service of
4 process of the water authority;

5 (F) The proposed geographic service area over which the
6 water authority will have jurisdiction; and

7 (G) Any other matters that the proposed initial board of
8 directors of the water authority may deem necessary and appropriate;

9 (2) A copy of the water authority's proposed bylaws, along with
10 any other information which the proposed initial board of directors of the
11 water authority may deem necessary and appropriate;

12 (3) A statement and certification from the Secretary of State
13 that the proposed name of the water authority is not identical to that of any
14 other water authority in the state or so nearly similar as to lead to
15 confusion and uncertainty;

16 (4) The filing and review fee that the commission may designate
17 and determine from time to time; and

18 (5) Any other information and documents which the commission may
19 designate and require.

20
21 4-35-202. Authority and procedure to convert to a water authority.

22 (a) Whenever a qualified corporation desires to convert to and become
23 reconstituted as a water authority under and pursuant to this chapter, the
24 qualified corporation shall present to and file with the Arkansas Soil and
25 Water Conservation Commission:

26 (1) A resolution adopted by the board of directors of the
27 qualified corporation and, if the qualified corporation has members, the
28 members of the qualified corporation, which evidences the desire of the
29 qualified corporation to convert to and become reconstituted as a water
30 authority and which shall additionally certify that the qualified
31 corporation:

32 (A) Was initially formed as a nonprofit corporation;

33 (B) Does not have the ability to directly access the tax-
34 exempt capital markets other than through a conduit issuer; and

35 (C) Desires to realize interest rate savings as a result
36 of its conversion to and reconstitution as a water authority pursuant to this

1 chapter;

2 (2) Articles of conversion and reconstitution which shall be
3 signed by a majority of the water authority's proposed initial board of
4 directors and which shall state and include the following information:

5 (A) The name of the water authority, which shall include
6 the words "public water authority", it being understood that the water
7 authority may adopt a fictitious operational name upon written request to and
8 approval by the commission;

9 (B) The location of the water authority's principal
10 office;

11 (C) The number of directors of the water authority, which
12 number shall be at least five (5) and shall be subject to change as provided
13 in this chapter or in the water authority's bylaws;

14 (D) The names and addresses of the proposed initial board
15 of directors of the water authority;

16 (E) The name and address of the agent for service of
17 process of the water authority;

18 (F) The proposed geographic service area over which the
19 water authority will have jurisdiction; and

20 (G) Any other matters that the proposed initial board of
21 directors of the water authority may deem necessary and appropriate;

22 (3) A copy of the water authority's proposed bylaws, along with
23 any other information which the proposed initial board of directors of the
24 water authority may deem necessary and appropriate;

25 (4) A statement and certification from the Secretary of State
26 that the proposed name of the water authority is not identical to that of any
27 other water authority in the state or so nearly similar as to lead to
28 confusion and uncertainty;

29 (5) The filing and review fee that the commission may designate
30 and determine from time to time; and

31 (6) Any other information and documents which the commission may
32 designate and require.

33 (b) In the event the qualified corporation has members:

34 (1)(A) Membership approval is required for the qualified
35 corporation to convert into and become reconstituted as a water authority.

36 (B) Approval shall be obtained in the manner determined

1 prior to conversion under the qualified corporation's articles, bylaws, or
2 applicable statutes; and

3 (2) After conversion, the water authority shall have no members.

4
5 4-35-203. Effect of formation - Filing with the Secretary of State.

6 (a) When articles of constitution or articles of conversion and
7 reconstitution and other required documents have been filed with and accepted
8 by the Arkansas Soil and Water Conservation Commission, as evidenced by the
9 issuance by the commission of its certificate of existence in that form that
10 the commission may deem appropriate, the water authority referred to in the
11 articles shall come into existence and shall constitute a public body politic
12 and governmental entity of the State of Arkansas under the name set forth in
13 the certificate of existence, whereupon the water authority shall be vested
14 with the rights and powers granted in this chapter; contemporaneously
15 therewith, with respect to a conversion the qualified corporation shall cease
16 to exist, and all assets and liabilities of every nature, including, without
17 limitation, all real property, personal property, contractual obligations,
18 lending obligations outstanding, rights afforded borrowers of federal and
19 state funds, and other tangible and intangible assets and liabilities of
20 every nature, without need for further action or approval by any third party,
21 shall be vested in and shall accrue to the benefit of the water authority.

22 (b)(1)(A) A copy of a water authority's articles of constitution or
23 articles of conversion and reconstitution shall additionally be filed in the
24 office of the Secretary of State after its receipt, acceptance, and approval
25 by the commission.

26 (B) The Secretary of State may require the payment of a
27 reasonable filing and receipt fee not in excess of the filing fee charged by
28 the Secretary of State in connection with the receipt and filing of a
29 corporation's articles of incorporation.

30 (2) Filing a copy of the articles of constitution or articles of
31 conversion and reconstitution, as accepted and approved by the commission,
32 with the Secretary of State shall serve to terminate and dissolve the
33 previous corporate existence of the qualified corporation, effective as of
34 the date of the issuance of the certificate of existence.

35
36 4-35-204. Board of directors.

1 (a) A water authority shall have a board of directors composed of at
2 least five (5) members. The specific number of initial directors and their
3 terms of office shall be provided in its articles filed with the Arkansas
4 Soil and Water Conservation Commission. Changes to the number and terms of
5 directors may be provided in the articles or bylaws.

6 (b)(1) The initial directors of a water authority shall be approved by
7 the commission, and they shall serve in accordance with those procedures that
8 a water authority may specify in its bylaws.

9 (2)(A) A director shall continue in office until the director's
10 successor is properly elected and accepts office.

11 (B) Successor directors shall be elected either by the
12 board or by the water users, as set forth in the bylaws.

13 (C) A director may serve successive terms.

14 (3) It is permissible for the bylaws of a water authority to
15 provide that directors shall be selected from specific geographic areas
16 within the total geographic area serviced by a water authority.

17 (4) In the event a water authority wants to modify or amend the
18 procedures for election of directors, approval shall be expressly granted in
19 writing by the commission.

20 (c) Unless otherwise provided in the articles or bylaws, the following
21 shall apply to meetings of the board:

22 (1)(A) If the time and place of a directors' meeting is fixed by
23 the bylaws or the board, the meeting is a regular meeting. All other
24 meetings are special meetings.

25 (B) A board may permit any or all directors to participate
26 in a regular or special meeting by, or conduct the meeting through the use
27 of, any means of communication by which all directors participating may
28 simultaneously hear each other during the meeting. A director participating
29 in a meeting by this means is deemed to be present in person at the meeting.

30 (2)(A) Except as provided in subdivision (c)(2)(C) of this
31 section, regular meetings of the board may be held without notice.

32 (B) Except as provided in subdivision (c)(2)(C) of this
33 section, special meetings of the board shall be preceded by at least two (2)
34 days' notice to each director of the date, time, and place, but not the
35 purpose, of the meeting.

36 (C) Any board action to remove a director shall not be

1 valid unless each director is given at least seven (7) days' written notice
2 that the matter will be voted upon at a directors' meeting or unless notice
3 is waived.

4 (D) The presiding officer of the board, the president, or
5 twenty percent (20%) of the directors then in office may call and give notice
6 of a meeting of the board.

7 (3)(A) A director may at any time waive any notice required by
8 this chapter, the articles, or bylaws. Except as provided in subdivision
9 (c)(3)(B) of this section, the waiver shall be in writing, signed by the
10 director entitled to the notice, and filed with the minutes of the water
11 authority's records. A signed waiver delivered by facsimile transmittal
12 shall constitute a valid waiver of notice under this section.

13 (B) A director's attendance at or participation in a
14 meeting waives any required notice of the meeting unless the director, upon
15 arriving at the meeting or prior to the vote on a matter not noticed in
16 conformity with this chapter, the articles or bylaws, objects to lack of
17 notice and does not thereafter vote for or assent to the objected to action.

18 (4)(A) Except as provided in the bylaws, a majority of the
19 members of a board shall constitute a quorum for the transaction of business,
20 and a vote of a majority of a quorum shall constitute an act of the board.

21 (B) No vacancy in the membership of a board shall impair
22 the right of a quorum to exercise all the powers and duties of a water
23 authority.

24 (C) All powers of a water authority shall be exercised by
25 its board of directors or pursuant to its authorization.

26 (d)(1)(A) Unless prohibited or limited by the articles or bylaws, a
27 board of directors may create one (1) or more committees of the board and
28 appoint members of the board to serve on them.

29 (B) Each committee shall have two (2) or more directors
30 who shall serve at the direction of the board.

31 (2) A committee of the board may not:

32 (A) Authorize the issuance of bonds or any related
33 matters;

34 (B) Approve or recommend dissolution or the sale, pledge,
35 or transfer of all or substantially all of the water authority's assets;

36 (C) Elect, appoint, or remove directors or fill vacancies

1 on the board or on any of its committees; or

2 (D) Adopt, amend, or repeal the articles or bylaws.

3 (e)(1) A director shall discharge his or her duties as a director,
4 including his or her duties as a member of a committee:

5 (A) In good faith;

6 (B) With the care an ordinarily prudent person in a like
7 position would exercise under similar circumstances; and

8 (C) In a manner the director reasonably believes to be in
9 the best interests of the water authority.

10 (2) In discharging his or her duties, a director is entitled to
11 rely on information, opinions, reports, or statements, including financial
12 statements and other financial data, if prepared or presented by:

13 (A) One (1) or more officers or employees of the water
14 authority whom the director reasonably believes to be reliable and competent
15 in the matters presented;

16 (B) Legal counsel, public accountants, or other persons as
17 to matters the director reasonably believes are within the person's
18 professional or expert competence; or

19 (C) A committee of the board of which the director is not
20 a member, as to matters within its jurisdiction, if the director reasonably
21 believes the committee merits confidence.

22 (f) The members of the board of a water authority shall serve without
23 compensation, except that they may be reimbursed for actual expenses incurred
24 in the performance of their duties.

25 (g) All proceedings of a board shall be reduced to writing by the
26 secretary of the water authority and appropriately recorded and maintained.

27
28 4-35-205. Officers.

29 (a) The officers of a water authority shall consist of a president,
30 vice president, secretary, treasurer, and such other officers as the board of
31 directors shall deem necessary to accomplish the purposes for which a water
32 authority is organized.

33 (b) The offices of secretary and treasurer may be held by the same
34 person.

35 (c) All officers of a water authority shall be elected by the board
36 and shall serve for those terms of office as specified in the bylaws.

1 (d)(1) An officer may resign at any time by delivering notice to the
2 water authority.

3 (2)(A) A resignation is effective when the notice is effective
4 unless the notice specifies a future effective date.

5 (B) If a resignation is made effective at a future date
6 and the water authority accepts the future effective date, its board of
7 directors may fill the pending vacancy before the effective date if the board
8 provides that the successor does not take office until the effective date.

9 (e) A board may remove any officer at any time with or without cause.

10
11 4-35-206. Notice.

12 (a) Notice may be communicated in person, by telegraph, teletype,
13 telecopier, facsimile, or other similar form of wire or wireless
14 communication, or by mail or private carrier.

15 (b) Written notice, if in a comprehensible form, is effective at the
16 earliest of the following:

17 (1) When received;

18 (2) Two (2) days after its deposit in the United States mail, as
19 evidenced by the postmark, if mailed correctly addressed and with first class
20 postage affixed; or

21 (3) On the date shown on the return receipt, if sent by
22 registered or certificated mail, return receipt requested, and the receipt is
23 signed by or on behalf of the addressee.

24
25 4-35-207. Bylaws.

26 (a) The persons forming the water authority or the initial board of
27 directors shall adopt bylaws for the water authority and shall file a copy of
28 the executed bylaws with the Arkansas Soil and Water Conservation Commission.

29 (b) The bylaws may contain any provision for regulating and managing
30 the affairs of the water authority that is not inconsistent with law or the
31 articles.

32
33 4-35-208. Amendment to articles or bylaws.

34 (a) A water authority may amend its articles or bylaws at any time by
35 a majority of the members of the board of directors at any regular or special
36 meeting.

1 (b) Any amendment to the articles of a water authority shall be
2 delivered to and filed with both the Arkansas Soil and Water Conservation
3 Commission and the Secretary of State setting forth:

4 (1) The name of the water authority;
5 (2) The text of each amendment adopted;
6 (3) The date of each amendment's adoption; and
7 (4) A statement that the amendment was approved by a sufficient
8 vote of the board of directors.

9 (c)(1) Any amendment to the bylaws shall be filed by the secretary of
10 the water authority with the books and records of the water authority.

11 (2) However, any change with respect to the number of directors
12 or the procedure for electing or nominating directors shall first be approved
13 in writing by the commission and, if approved, shall be filed with the
14 commission.

15 (d) The commission shall approve in writing any amendment to the
16 articles or bylaws which changes the geographic service area over which the
17 water authority has jurisdiction.

18
19 4-35-209. Registered office and registered agent.

20 (a) Each water authority shall continuously maintain in this state:

21 (1) A registered office with the same address, which must
22 include a street address, as that of the registered agent; and

23 (2) A registered agent, who is an individual residing in this
24 state and whose office is identical with the registered office.

25 (b) A water authority may change its registered office or registered
26 agent by delivering to the commission and the Secretary of State for filing a
27 statement of change that sets forth:

28 (1) The name of the water authority;
29 (2) The street address of its current registered office;
30 (3) If the current registered office is to be changed, the
31 street address of the new registered office;

32 (4) The name of its current registered agent; and
33 (5) If the current registered agent is to be changed, the name
34 of the new registered agent.

35
36 4-35-210. Powers generally.

1 A water authority shall have the following powers, together with all
2 powers incidental thereto or necessary to the discharge thereof:

3 (1) To have succession in its designated name;

4 (2) To sue and be sued and to prosecute and defend suits in any
5 court having jurisdiction of the subject matter and of the parties;

6 (3) To make use of a seal and to alter it at pleasure;

7 (4) To adopt and alter bylaws for the regulation and conduct of
8 its affairs and business;

9 (5) To acquire, whether by purchase, gift, lease, devise, or
10 otherwise, property of every description which a board of directors may deem
11 necessary to the acquisition, construction, equipment, improvement,
12 enlargement, operation, administration, or maintenance of a project, and to
13 hold title thereto;

14 (6) To construct, enlarge, equip, improve, maintain, administer,
15 and operate one (1) or more projects;

16 (7) To borrow money for any of its purposes;

17 (8) To sell and issue its interest-bearing bonds;

18 (9) To sell and issue refunding bonds;

19 (10) To secure any of its bonds by pledge and indenture as
20 provided in this subchapter;

21 (11) To appoint, employ, and compensate such general managers,
22 executive directors, agents, architects, engineers, attorneys, accountants,
23 and other persons and employees as the business of the water authority may
24 require;

25 (12) To provide for such insurance as the board may deem
26 advisable;

27 (13) To invest in obligations that are direct or guaranteed
28 obligations of the United States or other securities in which public funds
29 may be invested under the laws of this state, any of its funds that the board
30 may determine are not presently needed for its operational purposes;

31 (14) To invest the proceeds of bonds or any debt service
32 reserves or sinking funds securing the payment of the bonds in any
33 obligations, securities, repurchase agreements or investment agreements
34 authorized or permitted by the resolution of the water authority authorizing
35 the same or the indenture securing the same;

36 (15) To contract, lease, and make lease agreements respecting

1 its properties, or any part thereof, as lessor or lessee, including financing
 2 lease agreements;

3 (16) To exercise the power of eminent domain in accordance with
 4 the procedures prescribed by §§ 18-15-301 through 18-15-309;

5 (17) To sell and convey, mortgage, pledge or otherwise dispose
 6 of any of its properties, assets, franchises, rights, privileges, licenses,
 7 rights of way and easements;

8 (18) To own and operate facilities necessary to provide potable
 9 water and associated services to Arkansas residents;

10 (19) To fix, regulate, and collect rates, fees, and rents, or
 11 other charges for water and any other facilities, supplies, equipment, or
 12 services furnished by the water authority;

13 (20) To do and perform all acts and things and have and exercise
 14 any and all powers as may be convenient or appropriate to effectuate the
 15 purposes for which the water authority is formed;

16 (21) To purchase, receive, or in any manner acquire, own, hold,
 17 and use any and all real and personal property or any interest therein on
 18 such terms as determined by the board of directors of the water authority to
 19 be in the best interest of the water authority; and

20 (22) To enter into water contracts for the purchase or sale of
 21 water on a wholesale basis, on such terms and conditions as the board of
 22 directors shall determine is in the best interest of the water authority.

23
 24 SUBCHAPTER 3 - BOND PROVISIONS

25
 26 4-35-301. Issuance of bonds.

27 (a) A water authority is authorized at any time and from time to time
 28 to issue its interest-bearing bonds for the purpose of acquiring,
 29 constructing, improving, enlarging, completing, and equipping one (1) or more
 30 projects.

31 (b)(1)(A) Prior to a water authority's proposed issuance of bonds, the
 32 water authority shall publish one (1) time in a newspaper of general
 33 circulation in the affected county or counties in which the project or
 34 projects are or will be located:

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

36 (ii) The maximum principal amount of bonds

1 contemplated to be sold;

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

4 (iv) The date, time, and location of a public
5 meeting at which members of the public may obtain further information
6 regarding the bonds and the development of the project.

7 (B) Notice under subdivision (b)(1)(A) of this section
8 shall be published at least ten (10) days prior to the date of the hearing
9 described in subdivision (b)(1)(A)(iv) of this section.

10 (2) A water authority president or his or her designee shall be
11 responsible for conducting the hearing and shall require all public comments
12 which might pertain to the proposed issuance of bonds by the water authority.

13 (3) Upon compliance with the provisions of this section, no
14 other notice, hearing, or approval by any other entity or governmental unit
15 shall be required as a condition to the issuance by a water authority of its
16 contemplated bonds.

17 (4) The requirements of this subsection shall not apply to the
18 issuance of bonds to refund bonds of the water authority for which a public
19 hearing was held.

20 (c) The principal of and the interest on any bonds may be payable out
21 of the revenues derived from the projects with respect to which the bonds are
22 issued or from any other source available to a water authority.

23 (d) None of the bonds of a water authority shall ever constitute an
24 obligation or debt of the state, the city, or county in which the water
25 authority operates, the Arkansas Soil and Water Conservation Commission, or
26 any officer or director of the water authority, or a charge against the
27 credit or taxing powers of the state.

28 (e) As the water authority shall determine, bonds of the water
29 authority may:

30 (1) Be issued at any time and from time to time as may be
31 appropriate and necessary;

32 (2) Be in such form and denominations as may be appropriate and
33 necessary;

34 (3) Have such date or dates as may be appropriate and necessary;

35 (4) Mature at such time or times and in such amount or amounts,
36 provided that no bonds may mature more than forty (40) years after the date

1 of issuance, as may be appropriate and necessary;

2 (5) Bear interest payable at such times and at such rate or
3 rates as may be established by the board, as may be appropriate and
4 necessary;

5 (6) Be payable at such place or places within or without the
6 State of Arkansas, as may be appropriate and necessary;

7 (7) Be subject to such terms of redemption in advance of
8 maturity at such prices, including such premiums, as may be appropriate and
9 necessary; and

10 (8) Contain such other terms and provisions as may be
11 appropriate or necessary.

12 (f)(1) Bonds of a water authority may be sold at either public or
13 private sale in such manner and from time to time as may be determined by the
14 board of directors to be most advantageous.

15 (2) The water authority may pay all expenses, premiums, and
16 commissions that the board may deem necessary or advantageous in connection
17 with the authorization, sale, and issuance of its bonds.

18 (g) All bonds shall contain a recital that they are issued pursuant to
19 the provisions of this chapter, which recital shall be conclusive that they
20 have been authorized pursuant to the provisions of this chapter.

21 (h) All bonds issued, other than financing leases, under the
22 provisions of this chapter shall be negotiable instruments within the meaning
23 of the negotiable instruments law of the state and shall be in registered
24 form.

25 (i) All bonds issued under this chapter shall be approved by
26 resolution adopted by the board of directors of the water authority.

27
28 4-35-302. Execution of bonds.

29 (a) Bonds shall be executed by the manual or facsimile signature of
30 the president of the water authority and by the manual or facsimile signature
31 of the secretary of the water authority.

32 (b) In case an officer whose signature appears on the bonds shall
33 cease to be such officer before the delivery of the bonds, his or her
34 signature shall nevertheless be valid and sufficient for all purposes.

35 (c) If there is a seal, the bonds shall be sealed with the seal of the
36 water authority.

1
2 4-35-303. Security for bonds.

3 (a) The principal of and interest on bonds may be secured by a pledge
4 of the revenues of a water authority of that project financed by the water
5 authority through its issuance of bonds or from any other source that the
6 water authority may deem necessary and appropriate, and may be secured by the
7 creation of a forecloseable mortgage and security interest encumbering the
8 real property of the water authority, or security interest in all personal
9 property and revenues of the water authority as set forth in the indenture.

10 (b) The trustee under any indenture may be a trust company or bank
11 having trust powers, whether located within or without the state.

12 (c) The bond resolution of the water authority authorizing the bonds
13 or indenture may contain, all as the board of directors shall deem advisable
14 and as shall not be in conflict with the provisions of this subchapter, any
15 agreements and provisions customarily contained in instruments securing
16 evidences of indebtedness, including, without limiting the generality of the
17 foregoing:

18 (1) Provisions respecting the nature and extent of the security;

19 (2) The collection, segregation, and application of the revenues
20 generated from the operation of any project covered by the bonds, the
21 resolution, or the indenture;

22 (3) Covenants to always operate the project as a revenue-
23 producing undertaking and to charge and collect, including the obligation to
24 increase from time to time, sufficient revenue to maintain income at required
25 levels;

26 (4) The maintenance and insurance of the project;

27 (5) The creation and maintenance of reserve and other special
28 funds; and

29 (6) The rights and remedies available in the event of default to
30 the holders of the bonds or the trustees under the indenture, bond, or
31 resolution.

32 (d) If there is any default by a water authority in payment of the
33 principal of or the interest on the bonds or in any of the agreements on the
34 part of the water authority that may properly be included in any indenture,
35 bond, or resolution securing the bonds, the bondholders or the trustee under
36 any bond, resolution, or indenture, as authorized in the bond, resolution, or

1 indenture, may either in law or in equity, by suit, action, mandamus, or
2 other proceeding, enforce payment of the principal or interest and compel
3 performance of all duties of the board and officers of the water authority
4 and shall be entitled as a matter of right and regardless of the sufficiency
5 of any such security to the appointment of a receiver in equity with all the
6 powers of the receiver for the operation and maintenance of the project
7 covered by the indenture, bond, or resolution and the collection,
8 segregation, and applications of income and revenues therefrom.

9 (e) The indenture, bond, or resolution may contain provisions
10 regarding the rights and remedies of any trustee thereunder and the holders
11 of the bonds and the coupons and restricting the individual rights of action
12 of the holders of the bonds and coupons.

13 (f)(1) In the event of a default in the payment of the principal of or
14 interest on any bonds issued under the provisions of this chapter, any court
15 having jurisdiction may appoint a receiver to take charge of the facilities
16 upon or in which there is a mortgage lien or security interest securing the
17 bonds in default.

18 (2) The receiver shall have the power and authority to operate
19 and maintain the facilities in receivership and to charge and collect
20 payments, fees, rents, and charges sufficient to provide for the payment of
21 any costs of receivership and operating expenses of the project in
22 receivership and to apply the revenues derived from the facilities in
23 receivership in conformity with this chapter and the resolution or trust
24 indenture securing the bonds in default.

25 (3) When the default has been cured, the receivership shall be
26 ended and the facilities returned to the water authority.

27 (g) The relief provided for in this section shall be construed to be
28 in addition and supplemental to the other remedies provided for in this
29 chapter and the remedies that may be provided for in the resolution or trust
30 indenture authorizing or securing the bonds, and shall be so granted and
31 administered as to accord full recognition to priority rights of bondholders
32 as to the pledge of revenues from and mortgage lien on or security interest
33 in facilities as specified in and fixed by the resolution or trust indenture
34 authorizing or securing successive issues of bonds.

35
36 4-35-304. Bonds - Tax exemption.

1 (a) The principal of and interest on bonds issued under the authority
2 of this subchapter shall be exempt from all state, county, and municipal
3 taxes.

4 (b) This exemption shall include income, inheritance, and estate
5 taxes.

6
7 4-35-305. Proceeds from issuance of bonds.

8 (a) The proceeds derived from all of the bonds other than refunding
9 bonds may be used only to pay the costs of acquiring, constructing,
10 improving, enlarging, and equipping the project with respect to which they
11 were issued, as may be specified in the proceedings in which the bonds are
12 authorized to be issued and all costs incidental thereto, including, without
13 limitation:

14 (1) The costs of any land forming a part of the project and all
15 easements which may pertain to or be associated with any project;

16 (2) The costs of the labor, materials, and supplies used in any
17 construction, improvement, and enlargement, including architect's and
18 engineer's fees and the cost of preparing contract documents and advertising
19 for bids, along with all other reasonable and necessary project costs;

20 (3) The purchase price of and the cost of installing equipment
21 for the project;

22 (4) Legal, fiscal, accounting, and recording fees and expenses
23 incurred in connection with the authorization, sale, and issuance of the
24 bonds issued in connection with the project;

25 (5) Interest on bonds for a reasonable period prior to, during,
26 and after the time required for the construction and equipment;

27 (6) The amount necessary to fund a debt service reserve in an
28 amount deemed appropriate by the water authority;

29 (7) Costs associated with the obtaining of default insurance,
30 ratings, and other credit enhancements of every nature; and

31 (8) Other operational expenses, reserves, and other accounts of
32 every nature.

33 (b) If any of the proceeds derived from the issuance of bonds remains
34 undisbursed after completion of the project and the making of all such
35 expenditures, the balance shall be used to pay principal of and interest on
36 the bonds to fund a debt service reserve or for the redemption of bonds of

1 the same issue.

2
3 4-35-306. Refunding bonds.

4 (a) A water authority, at any time and from time to time, may issue
5 refunding bonds for the purpose of refunding the principal of and interest on
6 any bonds of the water authority theretofore issued under this subchapter or
7 bonds originally issued by the qualified corporation and then outstanding,
8 whether or not the principal and interest shall have matured at the time of
9 the refunding under this subchapter, and for the payment of any expenses
10 incurred in connection with the refunding and any premium necessary to be
11 paid in order to redeem or retire the bonds to be refunded.

12 (b) The proceeds derived from the sale of any refunding bonds shall be
13 used only for the purposes for which the refunding bonds were authorized to
14 be issued.

15 (c)(1) Any of the refunding may be effected either by sale of the
16 refunding bonds and the application of the proceeds by immediate application
17 or by escrow deposit, with the right to invest moneys in the escrow deposit
18 until needed for the redemption, or by exchange of the refunding bonds for
19 the bonds or interest coupons to be refunded thereby.

20 (2) However, the holders of any bonds to be refunded shall not
21 be compelled without their consent to surrender their bonds for payment or
22 exchange prior to the date on which they may be paid or redeemed by the water
23 authority under their respective provisions.

24 (d) Any refunding bonds of the water authority shall be payable solely
25 from the revenues out of which the bonds to be refunded were payable or from
26 those other sources or other revenues which might be identified in the
27 indenture or resolution authorizing the bonds.

28 (e) All provisions of this chapter pertaining to bonds of the water
29 authority that are not inconsistent with the provisions of this section shall
30 apply also to refunding bonds issued by the water authority, to the extent
31 applicable.

32
33 SECTION 4. Transitional rule.

34 (a)(1) With respect to any water authority which was formerly a
35 qualified corporation, as defined in § 4-35-103, and which converted to and
36 became reconstituted as a water authority pursuant to Act 117 of 2001, had

1 members prior to the conversion, and did not cause a member vote to be taken
2 with respect to the conversion, then in the event any such water authority
3 causes a vote to be taken of its former members to approve the conversion,
4 such vote of the members shall be retroactive to the original date of
5 conversion.

6 (2) "Former members" means those members who existed as of the
7 day of the conversion.

8 (b)(1) This transitional rule applies to any water authority that:

9 (A) Was formed prior to the effective date of this act;
10 and

11 (B) Causes its prior members to vote to ratify and approve
12 its conversion on or before January 1, 2005.

13 (2) This transitional rule shall have no effect with respect to
14 a water authority formed prior to the effective date of this act and which
15 did not or does not cause a member vote to be taken in connection with a
16 conversion.

17 (c) With respect to those entities formed pursuant to the provisions
18 of Acts 1999, No. 1003, or Acts 2001, No. 117, prior to the effective date of
19 this act, they shall immediately be governed by the provisions of §§ 4-35-101
20 through 4-35-306 at the time this act becomes effective.

21
22 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
23 General Assembly of the State of Arkansas that the statutes relating to water
24 authorities and related laws need amending in order to better reflect the
25 intent and operation of those laws as originally drafted and to be consistent
26 with current trends. Therefore, an emergency is declared to exist and this
27 act being immediately necessary for the preservation of the public peace,
28 health, and safety shall become effective on:

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

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

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

35 /s/ Childers
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