

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 H3/14/03

A Bill

HOUSE BILL 2349

5 By: Representative Childers
6
7

For An Act To Be Entitled

9 AN ACT TO ALLOW FORMATIONS OF, AND CONVERSIONS
10 TO, PUBLIC WATER AUTHORITIES UNDER ARKANSAS CODE
11 § 4-35-101 ET SEQ. TO BE AUTHORIZED AND APPROVED
12 BY THE BOARD OF DIRECTORS AND, IF APPLICABLE, THE
13 MEMBERS; AND FOR OTHER PURPOSES.

Subtitle

15 TO ALLOW FORMATIONS OF, AND CONVERSIONS
16 TO, PUBLIC WATER AUTHORITIES UNDER
17 ARKANSAS CODE § 4-35-101 ET SEQ. TO BE
18 AUTHORIZED AND APPROVED BY THE BOARD OF
19 DIRECTORS AND, IF APPLICABLE, THE
20 MEMBERS.
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

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

27 4-28-225. Conversion to public water authority.

28 (a) A corporation which meets the definition of a qualified
29 corporation, as defined by § 4-35-103, may adopt a plan to convert its entity
30 status from that of a nonprofit corporation to a water authority pursuant to
31 §§ 4-35-101 through 4-35-306, unless the articles or bylaws require
32 otherwise, if the conversion is approved:

33 (1) By a majority of the members of the board of directors of
34 the corporation; and

35 (2) If the corporation has members, by two-thirds (2/3) of the
36 votes cast by the members, in person or by proxy, at a regular or special



1 meeting of the members at which a quorum is present.

2 (b) For purposes of this section, and unless the articles or bylaws
3 provide for a higher or lower quorum, ten percent (10%) of the votes entitled
4 to be cast on a matter must be represented, in person or by proxy, at a
5 meeting of members to constitute a quorum.

6
7 SECTION 2. Arkansas Code Title 4, Chapter 33, Subchapter 16 is amended
8 to read as follows:

9 4-33-1601. Conversion to a public water authority.

10 A corporation which meets the definition of a qualified corporation, as
11 defined by § 4-35-103, may adopt a plan to convert its entity status from
12 that of a nonprofit corporation to a water authority pursuant to §§ 4-35-101
13 through 4-35-306, unless the articles or bylaws require otherwise, if the
14 conversion is approved:

15 (1) By a majority of the members of the board of directors of
16 the corporation; and

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

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

21 (B) A majority of the members.

22
23 SECTION 3. Arkansas Code Title 4, Chapter 35 is amended to read as
24 follows:

25 ~~Chapter 35.~~

26 ~~Water Provider Corporations.~~

27 ~~Subchapter 1. General provisions.~~

28 ~~4-35-101. Authorization.~~

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

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

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

34
35 ~~4-35-102. Filing for incorporation.~~

36 ~~One (1) or more persons may act as the incorporator or incorporators of~~

1 ~~a corporation authorized by this subchapter by filing for incorporation in~~
2 ~~the same manner as for nonprofit corporations under the Arkansas Nonprofit~~
3 ~~Corporation Act of 1993, § 4-33-101 et seq.~~

4
5 ~~4-35-103. Conversion of nonprofit corporations.~~

6 ~~(a) A corporation organized under the Arkansas Nonprofit Corporation~~
7 ~~Act of 1993, § 4-33-101 et seq., or the Arkansas Nonprofit Corporation Act,~~
8 ~~§§ 4-28-201—4-28-206 and §§ 4-28-209—4-28-224, may convert to a~~
9 ~~corporation authorized by this subchapter by filing, with the circuit court~~
10 ~~of the county in which the main office or principal place of business of the~~
11 ~~corporation is located, signed and verified articles of incorporation and a~~
12 ~~statement that the nonprofit corporation desires to convert to a corporation~~
13 ~~authorized by this subchapter.~~

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

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

22 ~~(1) File the original of the articles in his or her office; and~~

23 ~~(2) Issue a certificate of incorporation to which he or she~~
24 ~~shall affix the other copy of the articles endorsed with the word "filed" and~~
25 ~~the month, day, and year of the filing and return the certificate of~~
26 ~~incorporation to the incorporators or their representative.~~

27 ~~(d) The new corporation shall obtain all the assets, liabilities, and~~
28 ~~obligations of the nonprofit corporation and the obligations of the nonprofit~~
29 ~~corporation shall cease to exist on the date that the Secretary of State~~
30 ~~issues the certificate of incorporation.~~

31
32 ~~4-35-104. Applicability of law.~~

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

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

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

6
7 ~~Subchapter 2. Public water authorities.~~

8
9 ~~4-35-201. Legislative intent.~~

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

17
18 ~~4-35-202. Definitions.~~

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

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

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

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

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

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

35 ~~(B) The above projects may include any lands or interest~~
36 ~~therein deemed by the board to be desirable in connection therewith, and~~

1 ~~necessary equipment for the proper functioning and operation of the buildings~~
2 ~~or facilities involved;~~

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

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

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

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

12
13 ~~4-35-203. Construction.~~

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

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

19
20 ~~4-35-204. Authority generally.~~

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

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

29
30 ~~4-35-205. Authority and procedure to incorporate.~~

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

35 ~~(1) Its resolution duly adopted by the board of directors of the~~
36 ~~qualified corporation which evidences the desire of the qualified corporation~~

1 ~~to convert into and become reconstituted and reincorporated as a water~~
2 ~~authority and which shall additionally certify that the qualified~~
3 ~~corporation;~~

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

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

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

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

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

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

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

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

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

26 ~~(F) Any other matters that the commission may designate~~
27 ~~and require;~~

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

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

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

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

3
4 ~~4-35-206. Execution and recording.~~

5 ~~(a) An application for reconstitution and certificate of incorporation~~
6 ~~shall be signed and acknowledged by a majority of the board of directors of a~~
7 ~~qualified corporation.~~

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

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

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

30 ~~(ii) The Secretary of State may require the payment~~
31 ~~of a reasonable filing and receipt fee not in excess of the filing fee~~
32 ~~charged by the Secretary of State in connection with the receipt and filing~~
33 ~~of a corporation's articles of incorporation.~~

34 ~~(B) Filing a copy of the application for reconstitution~~
35 ~~and a copy of the certificate of incorporation, as accepted and approved by~~
36 ~~the commission, with the Secretary of State shall serve to terminate and~~

1 ~~dissolve the previous corporate existence of the qualified corporation.~~

2

3 ~~4-35-207. Board of directors.~~

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

6 ~~(2) All powers of a water authority shall be exercised by its~~
7 ~~board of directors or pursuant to its authorization.~~

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

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

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

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

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

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

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

30

31 ~~4-35-208. Officers.~~

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

36 ~~(b) All officers of a water authority shall be persons who receive~~

1 ~~water service from the water authority.~~

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

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

6
7 ~~4-35-209. Powers generally.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

34 ~~(13) To invest in obligations that are direct or guaranteed~~
35 ~~obligations of the United States or other securities in which public funds~~
36 ~~may be invested under the laws of this state, any of its funds that the board~~

1 ~~may determine are not presently needed for its operational purposes;~~

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

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

6 ~~(16) To sell, convey, or otherwise dispose of any of its~~
 7 ~~properties that may have become obsolete or worn out, or that may no longer~~
 8 ~~be needed or useful in connection with, or in the operation of, any project.~~

9
 10 ~~4-35-210. Tax exemption of projects.~~

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

15
 16 ~~4-35-211. Issuance of bonds.~~

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

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

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

25 ~~(ii) The approximate principal amount of bonds~~
 26 ~~contemplated to be sold;~~

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

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

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

35 ~~(2) A water authority chair or his or her designee shall be~~
 36 ~~responsible for conducting the hearing and shall require all public comments~~

1 ~~which might pertain to the proposed issuance of bonds by the water authority,~~

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

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

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

14 ~~(e) As the water authority shall determine, bonds of the water~~
15 ~~authority may:~~

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

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

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

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

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

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

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

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

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

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

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

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

10
11 ~~4-35-212. Execution of bonds.~~

12 ~~(a) Bonds shall be executed by the manual or facsimile signature of~~
13 ~~the chair of the water authority and by the manual or facsimile signature of~~
14 ~~the secretary of the water authority.~~

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

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

19
20 ~~4-35-213. Security for bonds.~~

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

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

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

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

36 ~~(2) The collection, segregation, and application of the revenues~~

1 ~~generated from the operation of any project covered by the indenture;~~

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

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

7 ~~(5) The creation and maintenance of reserve and other special~~
 8 ~~funds; and~~

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

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

23 ~~(e) The indenture may contain provisions regarding the rights and~~
 24 ~~remedies of any trustee thereunder and the holders of the bonds and the~~
 25 ~~coupons and restricting the individual rights of action of the holders of the~~
 26 ~~bonds and coupons.~~

27
 28 ~~4-35-214. Bonds—Tax exemption.~~

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

32 ~~(b) This exemption shall include income, inheritance, and estate~~
 33 ~~taxes.~~

34
 35 ~~4-35-215. Proceeds from issuance of bonds.~~

36 ~~(a) The proceeds derived from all of the bonds other than refunding~~

1 ~~bonds may be used only to pay the costs of acquiring, constructing,~~
2 ~~improving, enlarging, and equipping the project with respect to which they~~
3 ~~were issued, as may be specified in the proceedings in which the bonds are~~
4 ~~authorized to be issued and all costs incidental thereto, including, without~~
5 ~~limitation:~~

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

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

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

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

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

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

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

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

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

29
30 ~~4-35-216. Refunding bonds.~~

31 ~~(a) A water authority, at any time and from time to time, may issue~~
32 ~~refunding bonds for the purpose of refunding the principal of and interest on~~
33 ~~any bonds of the water authority theretofore issued under this subchapter and~~
34 ~~then outstanding, whether or not the principal and interest shall have~~
35 ~~matured at the time of the refunding under this subchapter, and for the~~
36 ~~payment of any expenses incurred in connection with the refunding and any~~

1 ~~premium necessary to be paid in order to redeem or retire the bonds to be~~
2 ~~refunded.~~

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

6 ~~(c)(1) Any such refunding may be effected either by sale of the~~
7 ~~refunding bonds and the application of the proceeds thereof by immediate~~
8 ~~application or by escrow deposit, with the right to invest moneys in the~~
9 ~~escrow deposit until needed for the redemption, or by exchange of the~~
10 ~~refunding bonds for the bonds or interest coupons to be refunded thereby.~~

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

15 ~~(d) Any refunding bonds of the water authority shall be payable solely~~
16 ~~from the revenues out of which the bonds to be refunded were payable or from~~
17 ~~those other sources or other revenues which might be identified in the~~
18 ~~indenture.~~

19 ~~(e) All provisions of this subchapter pertaining to bonds of the water~~
20 ~~authority that are not inconsistent with the provisions of this section shall~~
21 ~~apply also to refunding bonds issued by the water authority, to the extent~~
22 ~~applicable.~~

23
24 ~~4-35-217. Dissolution.~~

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

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

32
33 CHAPTER 35. WATER AUTHORITY ACT

34 SUBCHAPTER 1 - GENERAL PROVISIONS

35
36 4-35-101. Legislative intent.

1 It is the intent of the General Assembly to provide a means by which a
2 nonprofit corporation involved in the sale, transmission, and distribution of
3 potable water to members of the general public and commercial, industrial,
4 and other users may form, or convert its entity status from that of a body
5 corporate to that of a public body politic and governmental entity, thereby
6 allowing the entity the opportunity to access the tax-exempt capital markets
7 and assuring the State of Arkansas and the customers of the entity of the
8 lowest water rates possible.

9
10 4-35-102. Title.

11 This chapter shall be known and may be cited as the "Water Authority
12 Act".

13
14 4-35-103. Definitions.

15 As used in this chapter:

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

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

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

23 (4) "Commission" means the Arkansas Soil and Water Conservation
24 Commission;

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

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

34 (B) A project may include any lands or interest in land deemed
35 by the board to be desirable in connection with the project, and necessary
36 equipment for the proper functioning and operation of the buildings or

1 facilities involved;

2 (7) "Qualified corporation" means any nonprofit corporation originally
3 formed pursuant to the Arkansas Nonprofit Corporation Act of 1993 codified at
4 § 4-33-101 et seq., the Arkansas Nonprofit Corporation Act codified at § 4-
5 28-201 et seq., or a predecessor statute, which, among other things,
6 provides, distributes, transmits, treats, pumps, or stores raw or potable
7 water to or for the benefit of members of the general public and commercial,
8 industrial, and other users or which proposes to accomplish, develop, or
9 construct any of the foregoing;

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

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

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

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

18
19 4-35-104. Construction.

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

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

28
29 4-35-105. Authority generally.

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

34 (b) It is specifically understood that, except for the provisions of
35 this chapter or the provisions of any other chapter which authorizes the
36 conversion of a qualified corporation to a water authority, no other statutes

1 shall govern or pertain to the creation of a water authority under this
2 chapter or the issuance of bonds by a water authority.

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

5 (d) The commission shall have the authority, including the powers set
6 forth in § 15-20-206, to promulgate rules and regulations for carrying out
7 the intent of this chapter.

8
9 4-35-106. No members.

10 A water authority shall not have members.

11
12 4-35-107. Freedom of Information Act.

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

15
16 4-35-108. Tax exemption of projects.

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

21
22 4-35-109. Exemption from jurisdiction of Arkansas Public Service
23 Commission.

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

27
28 4-35-110. Revenues.

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

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

1 (2) For the creation of adequate reserves.

2 (b) The revenues of the water authority shall be devoted first to the
3 payment of operating and maintenance expenses and the principal and interest
4 on outstanding obligations, and thereafter to reserves for improvements, new
5 construction, depreciation, and contingencies as the board of directors may
6 from time to time prescribe and to such other purposes approved by the board,
7 including rebates to water users.

8
9 4-35-111. Dissolution.

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

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

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

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

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

23
24 SUBCHAPTER 2 - FORMATION OF AND CONVERSION TO
25 A PUBLIC WATER AUTHORITY

26
27 4-35-201. Authority and procedure to form a water authority.

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

32 (1) Articles of constitution which shall state and include the
33 following information:

34 (A) The name of the water authority, which shall include
35 the words "public water authority", it being understood that the water
36 authority may adopt a fictitious operational name upon written request to and

1 approval by the commission and the Secretary of State;

2 (B) The location of the water authority's principal
3 office;

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

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

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

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

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

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

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

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

24 (5) Any other information and documents which the commission may
25 designate and require.

26
27 4-35-202. Authority and procedure to convert to a water authority.

28 (a) Whenever a qualified corporation desires to convert to and become
29 reconstituted as a water authority under and pursuant to this chapter, the
30 qualified corporation shall present to and file with the Arkansas Soil and
31 Water Conservation Commission:

32 (1) A resolution adopted by the board of directors of the
33 qualified corporation and, if the qualified corporation has members, the
34 members of the qualified corporation, which evidences the desire of the
35 qualified corporation to convert to and become reconstituted as a water
36 authority and which shall additionally certify that the qualified

1 corporation:

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

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

5 (C) Desires to realize interest rate savings as a result
6 of its conversion to and reconstitution as a water authority pursuant to this
7 chapter;

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

11 (A) The name of the water authority, which shall include
12 the words "public water authority", it being understood that the water
13 authority may adopt a fictitious operational name upon written request to and
14 approval by the commission and the Secretary of State;

15 (B) The location of the water authority's principal
16 office;

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

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

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

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

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

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

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

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

1 (6) Any other information and documents which the commission may
2 designate and require.

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

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

6 (B) Approval shall be obtained in the manner determined
7 prior to conversion under the qualified corporation's articles, bylaws, or
8 applicable statutes; and

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

10
11 4-35-203. Effect of formation - Filing with the Secretary of State.

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

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

32 (B) The Secretary of State may require the payment of a
33 reasonable filing and receipt fee not in excess of the filing fee charged by
34 the Secretary of State in connection with the receipt and filing of a
35 corporation's articles of incorporation.

36 (2) Filing a copy of the articles of constitution or articles of

1 conversion and reconstitution, as accepted and approved by the commission,
2 with the Secretary of State shall serve to terminate and dissolve the
3 previous corporate existence of the qualified corporation, effective as of
4 the date of the issuance of the certificate of existence.

5
6 4-35-204. Board of directors.

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

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

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

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

19 (C) A director may serve successive terms.

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

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

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

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

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

36 (2)(A) Except as provided in subdivision (c)(2)(C) of this

1 section, regular meetings of the board may be held without notice.

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

6 (C) Any board action to remove a director shall not be
7 valid unless each director is given at least seven (7) days' written notice
8 that the matter will be voted upon at a directors' meeting or unless notice
9 is waived.

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

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

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

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

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

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

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

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

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

2 (A) Authorize the issuance of bonds or any related
3 matters;

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

6 (C) Elect, appoint, or remove directors or fill vacancies
7 on the board or on any of its committees; or

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

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

11 (A) In good faith;

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

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

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

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

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

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

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

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

33
34 4-35-205. Officers.

35 (a) The officers of a water authority shall consist of a president,
36 vice president, secretary, treasurer, and such other officers as the board of

1 directors shall deem necessary to accomplish the purposes for which a water
2 authority is organized.

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

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

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

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

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

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

16
17 4-35-206. Notice.

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

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

23 (1) When received;

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

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

30
31 4-35-207. Bylaws.

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

35 (b) The bylaws may contain any provision for regulating and managing
36 the affairs of the water authority that is not inconsistent with law or the

1 articles.

2
3 4-35-208. Amendment to articles or bylaws.

4 (a) Subject to subdivisions (c)(2) and (d) of this section, a water
5 authority may amend its articles or bylaws at any time by a majority of the
6 members of the board of directors at any regular or special meeting at which
7 a quorum is present.

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

11 (1) The name of the water authority;

12 (2) The text of each amendment adopted;

13 (3) The date of each amendment's adoption; and

14 (4) A statement that the amendment was approved by a sufficient
15 vote of the board of directors.

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

18 (2) However, any change with respect to the number of directors
19 or the procedure for electing or nominating directors shall first be approved
20 in writing by the commission and, if approved, shall be filed with the
21 commission.

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

25
26 4-35-209. Registered office and registered agent.

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

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

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

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

35 (1) The name of the water authority;

36 (2) The street address of its current registered office;

1 (3) If the current registered office is to be changed, the
2 street address of the new registered office;

3 (4) The name of its current registered agent; and

4 (5) If the current registered agent is to be changed, the name
5 of the new registered agent.

6
7 4-35-210. Powers generally.

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

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

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

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

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

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

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

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

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

25 (9) To sell and issue refunding bonds;

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

28 (11) To appoint, employ, and compensate such general managers,
29 executive directors, agents, architects, engineers, attorneys, accountants,
30 and other persons and employees as the business of the water authority may
31 require;

32 (12) To provide for such insurance as the board may deem
33 advisable;

34 (13) To invest in obligations that are direct or guaranteed
35 obligations of the United States or other securities in which public funds
36 may be invested under the laws of this state, any of its funds that the board

1 may determine are not presently needed for its operational purposes;

2 (14) To invest the proceeds of bonds or any debt service
3 reserves or sinking funds securing the payment of the bonds in any
4 obligations, securities, repurchase agreements or investment agreements
5 authorized or permitted by the resolution of the water authority authorizing
6 the same or the indenture securing the same;

7 (15) To contract, lease, and make lease agreements respecting
8 its properties, or any part thereof, as lessor or lessee, including financing
9 lease agreements;

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

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

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

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

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

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

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

30
31 SUBCHAPTER 3 - BOND PROVISIONS

32
33 4-35-301. Issuance of bonds.

34 (a) A water authority is authorized at any time and from time to time
35 to issue its interest-bearing bonds for the purpose of acquiring,
36 constructing, improving, enlarging, completing, and equipping one (1) or more

1 projects.

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

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

7 (ii) The maximum principal amount of bonds
8 contemplated to be sold;

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

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

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

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

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

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

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

30 (d) None of the bonds of a water authority shall ever constitute an
31 obligation or debt of the state, the city, or county in which the water
32 authority operates, the Arkansas Soil and Water Conservation Commission, or
33 any officer or director of the water authority, or a charge against the
34 credit or taxing powers of the state.

35 (e) As the water authority shall determine, bonds of the water
36 authority may:

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

3 (2) Be in such form and denominations as may be appropriate and
4 necessary;

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

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

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

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

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

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

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

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

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

28 (h) All bonds issued, other than financing leases, under the
29 provisions of this chapter shall be negotiable instruments within the meaning
30 of the negotiable instruments law of the state and shall be in registered
31 form.

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

34
35 4-35-302. Execution of bonds.

36 (a) Bonds shall be executed by the manual or facsimile signature of

1 the president of the water authority and by the manual or facsimile signature
2 of the secretary of the water authority.

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

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

8
9 4-35-303. Security for bonds.

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

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

19 (c) The bond resolution of the water authority authorizing the bonds
20 or indenture may contain, all as the board of directors shall deem advisable
21 and as shall not be in conflict with the provisions of this subchapter, any
22 agreements and provisions customarily contained in instruments securing
23 evidences of indebtedness, including, without limiting the generality of the
24 foregoing:

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

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

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

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

34 (5) The creation and maintenance of reserve and other special
35 funds; and

36 (6) The rights and remedies available in the event of default to

1 the holders of the bonds or the trustees under the indenture, bond, or
2 resolution.

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

16 (e) The indenture, bond, or resolution may contain provisions
17 regarding the rights and remedies of any trustee thereunder and the holders
18 of the bonds and the coupons and restricting the individual rights of action
19 of the holders of the bonds and coupons.

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

25 (2) The receiver shall have the power and authority to operate
26 and maintain the facilities in receivership and to charge and collect
27 payments, fees, rents, and charges sufficient to provide for the payment of
28 any costs of receivership and operating expenses of the project in
29 receivership and to apply the revenues derived from the facilities in
30 receivership in conformity with this chapter and the resolution or trust
31 indenture securing the bonds in default.

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

34 (g) The relief provided for in this section shall be construed to be
35 in addition and supplemental to the other remedies provided for in this
36 chapter and the remedies that may be provided for in the resolution or trust

1 indenture authorizing or securing the bonds, and shall be so granted and
2 administered as to accord full recognition to priority rights of bondholders
3 as to the pledge of revenues from and mortgage lien on or security interest
4 in facilities as specified in and fixed by the resolution or trust indenture
5 authorizing or securing successive issues of bonds.

6
7 4-35-304. Bonds - Tax exemption.

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

11 (b) This exemption shall include income, inheritance, and estate
12 taxes.

13
14 4-35-305. Proceeds from issuance of bonds.

15 (a) The proceeds derived from all of the bonds other than refunding
16 bonds may be used only to pay the costs of acquiring, constructing,
17 improving, enlarging, and equipping the project with respect to which they
18 were issued, as may be specified in the proceedings in which the bonds are
19 authorized to be issued and all costs incidental thereto, including, without
20 limitation:

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

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

27 (3) The purchase price of and the cost of installing equipment
28 for the project;

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

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

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

36 (7) Costs associated with the obtaining of default insurance,

1 ratings, and other credit enhancements of every nature; and

2 (8) Other operational expenses, reserves, and other accounts of
3 every nature.

4 (b) If any of the proceeds derived from the issuance of bonds remains
5 undisbursed after completion of the project and the making of all such
6 expenditures, the balance shall be used to pay principal of and interest on
7 the bonds to fund a debt service reserve or for the redemption of bonds of
8 the same issue.

9
10 4-35-306. Refunding bonds.

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

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

22 (c)(1) Any of the refunding may be effected either by sale of the
23 refunding bonds and the application of the proceeds by immediate application
24 or by escrow deposit, with the right to invest moneys in the escrow deposit
25 until needed for the redemption, or by exchange of the refunding bonds for
26 the bonds or interest coupons to be refunded thereby.

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

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

35 (e) All provisions of this chapter pertaining to bonds of the water
36 authority that are not inconsistent with the provisions of this section shall

1 apply also to refunding bonds issued by the water authority, to the extent
2 applicable.

3
4 SECTION 4. Transitional rules.

5 (a)(1) With respect to any water authority which was formerly a
6 qualified corporation, as defined in § 4-35-103, and which converted to and
7 became reconstituted as a water authority pursuant to Act 117 of 2001, had
8 members prior to the conversion, and did not cause a member vote to be taken
9 with respect to the conversion, then in the event any such water authority
10 causes a vote to be taken of its former members to approve the conversion,
11 such vote of the members shall be retroactive to the original date of
12 conversion.

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

15 (3) This transitional rule applies to any water authority that:

16 (A) Was formed prior to the effective date of this act;
17 and

18 (B) Causes its former members to vote to ratify and
19 approve its conversion on or before January 1, 2005.

20 (4) This transitional rule shall have no effect with respect to
21 a water authority formed prior to the effective date of this act and which
22 did not or does not cause a member vote to be taken in connection with a
23 conversion.

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

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

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

