

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 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: H3/18/09

A Bill

HOUSE BILL 1647

5 By: Representative Woods
6 By: Senator Madison
7
8

For An Act To Be Entitled

10 AN ACT TO EXTEND THE ABILITY TO PURCHASE RURAL
11 WATER SERVICE FACILITIES TO A MUNICIPALITY AFTER
12 ANNEXATION; AND FOR OTHER PURPOSES.
13

Subtitle

15 TO EXTEND THE ABILITY TO PURCHASE RURAL
16 WATER SERVICE FACILITIES TO A
17 MUNICIPALITY AFTER ANNEXATION.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code Title 14, Subtitle 12, is amended to add an
23 additional chapter to read as follows:

24 Chapter 208. Valuation Of Rural Water Service Properties And
25 Facilities Upon Annexation
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27 14-208-101. Definitions.

28 As used in this chapter:

29 (1) "Municipality" means both Arkansas municipal corporations
30 and consolidated municipal water improvement districts; and

31 (2) "Rural water service" means any entity under Arkansas law
32 that is not owned by a municipality and is a water association, water
33 improvement district, or water authority.
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35 14-208-102. Right to acquire rural water service properties,
36 facilities, and customers.



1 (a)(1) Unless otherwise agreed between a municipality that owns or
2 operates a water service and a rural water service, the inclusion by
3 annexation of any part of the assigned service area of a rural water service
4 within the boundaries of any Arkansas municipality shall not in any respect
5 impair or affect the rights of the rural water service to continue operations
6 and extend water service throughout any part of its assigned service area
7 unless a municipality that owns or operates a water service elects to
8 purchase from the rural water service all customers, distribution properties,
9 and facilities located within the municipality reasonably utilized or
10 reasonably necessary to serve customers of the rural water service within the
11 annexed areas under this chapter, excluding water sources, treatment plants,
12 and storage serving customers outside the annexed areas.

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14 (2)(A) Unless otherwise agreed between a municipality that owns
15 or operates a water service and a rural water service, a municipality may not
16 undertake or begin construction, operation, or extension of any equipment or
17 facilities for the supplying of water service to the annexed areas without
18 complying with this chapter.

19 (B) The affected rural water service is entitled to
20 injunctive relief for any violation of this chapter.

21 (b)(1) The municipality shall give written notice to the rural water
22 service prior to the municipality acquiring from the rural water service all
23 customers, distribution properties, and facilities reasonably utilized or
24 reasonably necessary to serve customers of the rural water service within the
25 annexed areas.

26 (2) The municipality and the rural water service shall meet and
27 negotiate in good faith the terms of the acquisition, including, as an
28 alternative, granting the rural water service an agreement to serve the
29 annexed area or portions of the annexed area.

30 (3)(A) Before an acquisition under this chapter by the
31 municipality, the municipality shall receive approval from the Arkansas
32 Natural Resources Commission that the action complies with the Arkansas Water
33 Plan under § 15-22-503.

34 (B) The commission shall:

35 (i) Approve the application under the Arkansas Water
36 Plan if it determines the requirements of § 15-22-223(b)(2)(B) are satisfied,

1 including costs derived from negotiation or appraisal;

2 (ii) Issue a letter to the municipality that the
3 proposed action is exempt from review under the Arkansas Water Plan; or

4 (iii) Deny the application under the Arkansas Water
5 Plan if it determines the requirements of § 15-22-223(b)(2)(B) are not
6 satisfied.

7 (c) An agreement reached under this chapter shall comply with § 15-22-
8 223.

9 (d) This chapter shall not limit applicable federal law, including
10 without limitation 7 U.S.C. § 1926(b).

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12 14-208-103. Procedures and valuation formula.

13 (a)(1)(A) If an agreement under § 14-208-102 can not be reached, the
14 municipality and the rural water service shall each select one (1) qualified
15 appraiser, and the two (2) appraisers selected shall then select a third
16 appraiser for the purpose of conducting appraisals to determine the value of
17 customers, distribution properties, and facilities of the rural water service
18 annexed by the municipality.

19 (B) The value of customers, distribution properties, and
20 facilities of the rural water service annexed by the municipality shall be
21 determined by using the factors set out in § 15-22-223(b)(2)(B).

22 (2) The agreement or decision of at least two (2) of the three
23 (3) appraisers is the value.

24 (3) If either the municipality or the rural water service is
25 dissatisfied with the decision of the appraisers, either may institute an
26 action in circuit court to challenge the reasonableness of the value
27 determined by the appraisers.

28 (b) The compensation required by this section shall be paid:

29 (1) To the rural water service at a time not later than one
30 hundred twenty (120) days following the date upon which the value is
31 certified;

32 (2) At a later date as mutually agreed upon by the parties; or

33 (3) As determined by the circuit court.

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35 14-208-104. Valuation data.

36 (a) The rural water service shall provide to the municipality all data

1 and information required to establish valuations under this chapter.

2 (b) Upon execution of an agreement reached under this chapter, the
3 municipality shall reimburse the rural water service for reasonable costs of
4 appraisal and incidental expenses associated with establishing valuation.

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6 SECTION 2. Arkansas Code § 15-22-223(b)(2)(B), concerning the
7 Arkansas Natural Resources Commission’s determination of approval of the
8 purchase of water services, is amended to read as follows:

9 (B) To determine the amount of payment, the commission
10 shall base its approval on the following factors:

11 (i) The impact of the transfer of the area on the
12 current provider’s existing indebtedness and its ability to repay the debt;

13 (ii) The value, including depreciation, of the
14 current provider’s facilities in the area to be transferred;

15 (iii) The amount of any expenditures by the current
16 provider for planning, design, or construction of service facilities outside
17 the area, including without limitation treatment, transmission, and storage
18 facilities, that are directly and reasonably allocable to the area to be
19 transferred;

20 (iv) Any demonstrated impairment of service or
21 increase in cost, including without limitation operation and maintenance, to
22 consumers of the current provider remaining after the transfer of the area;

23 (v) The impact of future lost revenues from the
24 current provider’s existing consumers in the area to be transferred, but only
25 until the indebtedness is retired;

26 (vi) Necessary and reasonable legal expenses and
27 professional fees; and

28 (vii) Other relevant factors as determined by the
29 commission.

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31 /s/ Woods
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