

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

A Bill

SENATE BILL 912

5 By: Senator Salmon
6 By: Representatives Hyde, Nickels
7
8

For An Act To Be Entitled

10 AN ACT TO AMEND THE INTERLOCAL COOPERATION ACT TO
11 AUTHORIZE PUBLIC AGENCIES TO CREATE CONSOLIDATED
12 WASTEWATER SYSTEMS; AND FOR OTHER PURPOSES.
13

Subtitle

15 AN ACT TO AUTHORIZE PUBLIC AGENCIES TO
16 CREATE CONSOLIDATED WASTEWATER SYSTEMS.
17
18

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

21 SECTION 1. Arkansas Code Title 25, Chapter 20, is amended to add
22 an additional subchapter to read as follows:

SUBCHAPTER 5 – CONSOLIDATED WASTEWATER SYSTEMS

25-20-501. Title.

26 This subchapter may be referred to and cited as the “Consolidated
27 Wastewater Systems Act”.
28

25-20-502. Creation.

30 (a) Any two (2) or more public agencies entering into an interlocal
31 agreement under § 25-20-101 et seq. for the purpose of consolidating
32 wastewater systems may create a public body corporate and politic as a
33 separate legal entity for the purpose of constructing, owning, managing,
34 operating, financing, mortgaging, granting security interests in, improving,
35 extending, acquiring, reconstructing, equipping, selling, leasing,
36 contracting concerning, dealing in, disposing of, and maintaining a



1 consolidated wastewater system.

2 (b) The governing body of each public agency wishing to create a
 3 public body under this subchapter shall approve by ordinance or resolution or
 4 otherwise the filing of an application with the Secretary of State to create
 5 a public body under this subchapter and approve an interlocal agreement
 6 specifying the matters set forth in § 25-20-104. The interlocal agreement
 7 shall:

8 (1) Specify limitations on the exercise of the public body's
 9 powers including without limitation matters in which the participating public
 10 agencies reserve rights to approve, disapprove, or otherwise participate in
 11 any exercise of the public body's powers;

12 (2) Provide for reasonable franchise fees, payments in lieu of
 13 taxes, or other payments by the public body to the participating public
 14 agencies as the public agencies find appropriate;

15 (3) Specify the number of commissioners of the public body, the
 16 terms of office of the commissioners, the manner of appointing or electing
 17 the commissioners, the residency requirements, if any, applicable to
 18 commissioners in addition to those set forth in this subchapter, and the
 19 voting rights of each commissioner, which voting rights may vary by
 20 commissioner; and

21 (4) Set forth other matters consistent with this subchapter
 22 concerning the creation and operation of the public body as the participating
 23 public agencies find necessary or appropriate.

24 (c)(1) An application to create a public body under this subchapter
 25 shall set forth:

26 (A) A request that a public body corporate and politic be
 27 created under this subchapter;

28 (B) The proposed name for the public body;

29 (C) The names of the participating public agencies;

30 (D) The number of commissioners of the public body;

31 (E) The manner in which commissioners of the public body
 32 will be appointed or elected and the residency requirements, if any,
 33 applicable to commissioners in addition to those set forth in this
 34 subchapter;

35 (F) The voting rights of each commissioner;

36 (G) Special procedures for amending the certificate of

1 incorporation, if any; and

2 (H) Other matters consistent with this subchapter
 3 concerning the creation and operation of the public body as the participating
 4 public agencies find necessary or appropriate.

5 (2) The application shall be signed on behalf of each
 6 participating public agency by an authorized official of the public agency.

7 (d)(1) The Secretary of State shall examine the application and, if
 8 the Secretary of State finds that the name proposed for the public body is
 9 not identical with that of any other corporation, agency, or instrumentality
 10 of this state, so nearly similar as to lead to confusion and uncertainty, or
 11 otherwise deceptively misleading, the Secretary of State shall:

12 (A) Receive and file the application;

13 (B) Record it in an appropriate book of record in his or
 14 her office;

15 (C) Make and issue a certificate of incorporation under
 16 the seal of the state setting forth the name of the public body and the names
 17 of the participating public agencies; and

18 (D) Record the certificate in an appropriate book of
 19 record in his or her office.

20 (2) A copy of the certificate of incorporation certified by the
 21 Secretary of State shall be admissible in evidence in any suit, action, or
 22 proceeding involving the validity or enforcement of or relating to any
 23 contract of the public body, and shall be conclusive proof of the filing and
 24 contents of the certificate and the effective creation of the public body
 25 under this subchapter, absent fraud in the premises being established.

26 (e)(1) Any certificate of incorporation issued by the Secretary of
 27 State under this subchapter may be amended from time to time in the manner
 28 provided in the certificate of incorporation then existing or, if the
 29 certificate of incorporation does not specify a procedure for its amendment,
 30 with the consent of a majority of the commissioners of the public body who
 31 are entitled to vote.

32 (2)(A) The amendment shall be signed by an officer or other
 33 authorized person of the public body, who shall certify that the certificate
 34 of incorporation has been amended in accordance with this subchapter and, as
 35 applicable, in the manner prescribed in the then-existing certificate of
 36 incorporation.

1 (B) On the filing of the amendment with the Secretary of
 2 State under this section, the Secretary of State shall make and issue an
 3 amendment to the certificate of incorporation.

4
 5 25-20-503. Contributions of public agency properties.

6 (a) Participating public agencies are authorized to contribute to a
 7 public body created under this subchapter such real and personal property of
 8 the participating public agencies as the participating public agencies find
 9 necessary or appropriate to the ownership and operation of a consolidated
 10 wastewater system by the public body, provided that:

11 (1) Any contributions of reserve funds held in trust under § 14-
 12 73-101 et seq. shall be made on the condition that the funds may be used only
 13 for the purposes described in the trust agreement and until so used shall
 14 remain in a trust fund that complies with the requirements of § 14-73-101 et
 15 seq.; and

16 (2) Any contribution of sales or use tax proceeds held or to be
 17 collected by participating public agencies for wastewater uses shall be used
 18 only for the uses designated in the ordinance providing for the approval of
 19 those funds.

20 (b) Contributions of properties under this section shall be on the
 21 terms and conditions and for consideration as the participating public
 22 agencies find just and proper, it being within the participating public
 23 agencies' discretion to contribute property with or without monetary
 24 consideration.

25 (c) Participating public agencies may execute contracts, leases,
 26 deeds, bills of sale, easements, assignments, and other instruments of
 27 conveyance as may be required or convenient to exercise the powers granted in
 28 this section.

29
 30 25-20-504. Board of commissioners.

31 (a)(1) Each public body created under this subchapter shall have a
 32 board of commissioners consisting of at least three (3) commissioners, with
 33 each commissioner residing within the jurisdiction of one (1) of the
 34 participating public agencies and otherwise meeting any residency
 35 requirements under the public body's certificate of incorporation.

36 (2) Each commissioner shall be appointed or elected in the

1 manner set forth in the public body's certificate of incorporation and shall
2 serve a term of office as specified in the interlocal agreement.

3 (b) The commissioners shall not receive compensation for their
4 services but shall be entitled to reimbursement of expenses incurred in the
5 performance of their duties.

6 (c) Before entering upon their duties, the commissioners shall take
7 and file with the Secretary of State an oath of office swearing to discharge
8 faithfully their duties in the manner provided by law.

9 (d)(1)(A) The board of commissioners shall meet and organize by
10 electing one (1) of their number as chair, one (1) as vice chair, one (1) as
11 secretary, and one (1) as treasurer.

12 (B) Officers shall be elected annually thereafter in like
13 manner.

14 (2) The duties of secretary and treasurer may be performed by
15 the same commissioner.

16 (3)(A) The secretary may cause copies to be made of all minutes
17 and other records and documents of the public body.

18 (B) The secretary may certify under the official seal of
19 the public body that the copies are true copies, and persons dealing with the
20 public body may rely upon the certification.

21
22 25-20-505. Powers and duties of board of commissioners.

23 (a) All powers, business, and affairs of any public body under this
24 subchapter shall be exercised and managed under the direction of its board of
25 commissioners, subject to any limitation under the public body's certificate
26 of incorporation or interlocal agreement.

27 (b) The duties of the board of commissioners include without
28 limitation:

29 (1) Appointing a chief executive officer, who shall not be a
30 member of the board of commissioners, and setting compensation and other
31 terms of employment for such officer;

32 (2) Approving all budgets of the public entity;

33 (3) Adopting rules and by-laws that the board of commissioners
34 find necessary and expedient for the proper ownership and operation of the
35 consolidated wastewater system including adopting such rules and by-laws as
36 the commissioners find necessary and expedient regarding the discharge by any

1 person or entity of any wastewater into the consolidated wastewater system,
2 and altering, changing, or amending the rules and by-laws at its discretion;
3 and

4 (4) Performing other duties under the interlocal agreement.

5
6 25-20-506. General powers of public body.

7 (a) In addition to other powers under this subchapter, and unless the
8 certificate of incorporation or interlocal agreement provides otherwise, each
9 public body under this subchapter shall have the power to:

10 (1) Have perpetual succession as a body politic and corporate;

11 (2) Maintain offices it finds appropriate;

12 (3) Execute and perform contracts;

13 (4) Sue and be sued;

14 (5) Apply for and receive permits, licenses, certificates, and
15 approvals as may be necessary and own and operate facilities in accordance
16 therewith;

17 (6) Employ the services of all personnel necessary to its
18 operations and, in connection therewith, adopt and implement such healthcare,
19 disability, bonus, retirement, and other employee benefit plans as the board
20 of commissioners find appropriate;

21 (7) Employ the services of professionals;

22 (8) Purchase insurance, maintain reserves for self-insurance,
23 and become self-insured for the payment of workers' compensation under § 11-
24 9-404(a)(2), provided that the deposit of an indemnity bond, letter of
25 credit, or securities shall not be required;

26 (9) Purchase, receive, own, hold, improve, use, lease, sell,
27 convey, exchange, transfer, assign, mortgage, pledge, and otherwise acquire,
28 dispose of, and deal with real and personal property and any legal or
29 equitable interest therein in its own name;

30 (10) Apply for, receive, and use loans, grants, taxes,
31 donations, and contributions from any public agency or other lawful source,
32 including any proceeds from the sale of bonds;

33 (11) Borrow money on a secured or unsecured basis, and in
34 connection therewith issue bonds, promissory notes, or other evidence of
35 indebtedness, and make and deliver indentures, mortgages, pledges, security
36 agreements, financing statements, and other instruments encumbering assets of

1 the public body;

2 (12) Pay reasonable franchise fees, make payments in lieu of
3 taxes, or otherwise make payments to the participating public agencies in
4 such amounts as may be required or permitted by the participating public
5 agencies;

6 (13) Exercise such other powers, privileges, and authorities as
7 the participating public agencies have delegated to the public body by their
8 interlocal agreement, subject to any restrictions imposed thereon by the
9 interlocal agreement or applicable law; and

10 (14) Have such other and further powers relating to the
11 ownership and operation of wastewater systems as are now by law given to the
12 governing body of any participating public agency and do all other acts and
13 things necessary, convenient, or desirable to carry out the purposes of, and
14 to exercise the powers granted to the public body by, this subchapter.

15 (b) A public body created under this subchapter shall constitute a
16 separate legal entity, but to the extent provided by state law or set forth
17 in the certificate of incorporation of the public body or the interlocal
18 agreement of the participating public agencies, shall be subject to the
19 further supervision or regulation, or require the further approval or consent
20 of any participating public agency.

21
22 25-20-507. Operation of consolidated wastewater system.

23 (a) "Consolidated wastewater system" means and includes a wastewater
24 and collection system in its entirety, or any integral part thereof,
25 including land, mains, interceptors, collector lines, manholes, force mains,
26 valves, pumping stations, pumps, treatment and pretreatment plants and units
27 thereof, as well as all other real and personal property, buildings,
28 structures, or other improvements or facilities as may be necessary or
29 advisable for the proper and efficient operation of the public body's
30 facilities.

31 (b) Unless the interlocal agreement provides otherwise, a public body
32 under this subchapter shall have full authority to construct, own, manage,
33 operate, finance, improve, extend, acquire, reconstruct, equip, sell, lease,
34 contract concerning, deal in, dispose of, and maintain a consolidated
35 wastewater system. The assets of the public body may be located inside and
36 outside the jurisdictions of the public body's participating public agencies.

1 (c)(1) Unless the interlocal agreement provides otherwise, a public
2 body under this subchapter shall have full authority to fix, charge, and
3 collect and from time to time change the rates or charges for the use of and
4 the service rendered by the consolidated wastewater system and other goods
5 and services provided by the public body.

6 (2) A public body shall have a reasonable time after its
7 creation, or after its expansion by the addition of a new participating
8 public agency, to equalize any differentials in sewer rates or charges among
9 similarly situated classes of customers.

10 (3) It shall be a complete defense to any suit or claim based on
11 the charging of differential rates or charges for similarly situated classes
12 of customers that:

13 (A) Within one (1) year of the creation or expansion of
14 the public body, an independent expert completes a study of rates or charges
15 charged to customers that shows a differential in rates or charges among
16 similarly situated classes of customers located within the jurisdictions of
17 the participating public agencies, and the public body equalizes rates or
18 charges among similarly situated classes of customers within ten (10) years
19 of the date of the rate study; or

20 (B)(i) Within one (1) year of the creation or expansion of
21 the public body, an independent expert completes an engineering study of the
22 consolidated wastewater system infrastructure located within the jurisdiction
23 or jurisdictions of the participating public agencies that identifies
24 improvements needed to create a uniform infrastructure quality throughout the
25 jurisdictions, rate differentials among otherwise similarly situated classes
26 of customers are reasonably calculated to recover from customers located in
27 the jurisdictions in which the improvements are made the costs incurred in
28 making the improvements, and the public body equalizes rates or charges among
29 similarly situated classes of customers within ten (10) years of the date of
30 the engineering study.

31 (ii) The inability of a public body to rely upon
32 either safe harbor defense under subdivisions (c)(3)(A) and (c)(3)(B)(i) of
33 this section shall not create any implication that the public body has failed
34 to equalize any differentials in wastewater rates or charges among similarly
35 situated classes of customers within a reasonable period of time after its
36 creation or expansion.

1 (d) If any rate or charge established is not paid within thirty (30)
2 days after it is due, the amount of the rate or charge together with a
3 penalty of ten percent (10%) and a reasonable attorney's fee may be:

4 (1) Charged by the public body; and

5 (2) Recovered by the public body in a suit filed in the circuit
6 court where any part of the consolidated wastewater system is located.

7
8 25-20-508. Out-of-area sales and services.

9 (a) A public body under this subchapter may extend its collection
10 system and provide wastewater services to any customer located outside the
11 jurisdictions of the public body's participating public agencies.

12 (b) Use of the consolidated wastewater system and extensions of
13 services under this section may be made at such rates and charges and on such
14 other terms as the board of commissioners finds just and reasonable, and the
15 rates and charges need not be the same as the rates and charges charged
16 customers within the jurisdictions of the public body's participating public
17 agencies.

18
19 25-20-509. Eminent domain.

20 (a) A public body under this subchapter may acquire by the exercise of
21 the power of eminent domain any real property, rights, easements, franchises,
22 and other property that it finds necessary for its purposes under § 18-15-301
23 et seq. or § 18-15-401 et seq. or in the manner provided by law under which
24 one (1) of the public body's participating public agencies may exercise a
25 power of eminent domain.

26 (b) In exercising the power of eminent domain, a public body shall
27 have the right by its agents or employees to peacefully enter upon any lands,
28 structures, or rights-of-way to make surveys, tests, and measurements thereon
29 but is liable for any damage that may result by reason of its actions.

30
31 25-20-510. Improvements – Financing with bonds.

32 (a) If a public body under this subchapter owns or operates a
33 consolidated wastewater system and desires to construct improvements,
34 betterments, and extensions thereto, it may issue revenue bonds under this
35 section for the payment thereof.

36 (b) The issuance of bonds shall be authorized by resolution of the

1 board of commissioners.

2 (c) The bonds may be issued as registered bonds and may be
3 exchangeable for bonds of another denomination or in another form.

4 (d) The bonds may be in such form and denominations, may have such
5 date or dates, may be stated to mature at such time or times, may bear
6 interest payable at such times and at such rate or rates, may be payable at
7 such places within or without the state, may be subject to such terms of
8 redemption in advance of maturity at such prices, and may contain such terms
9 and conditions as the board of commissioners determines.

10 (e) The bonds shall have all the qualities of and shall be negotiable
11 instruments under the laws of the State of Arkansas, subject to provisions as
12 to registration under this section.

13 (f) The authorizing resolution may contain other terms, covenants, and
14 conditions that the board of commissioners finds reasonable and desirable,
15 including without limitation conditions concerning the maintenance of various
16 funds and reserves, the nature and extent of any security for payment of the
17 bonds, the custody and application of the proceeds of the bonds, the
18 collection and disposition of revenues, the investing for authorized
19 purposes, and the rights, duties, and obligations of the public body and the
20 holders and registered owners of the bonds.

21 (g)(1) The authorizing resolution may provide for the execution of a
22 trust indenture between the public body and any financial institution within
23 or without the State of Arkansas.

24 (2) The trust indenture may contain any terms, covenants, and
25 conditions found desirable by the board of commissioners including without
26 limitation conditions concerning the maintenance of various funds and
27 reserves, the nature and extent of any security for the payment of the bonds,
28 the custody and application of the proceeds of the bonds, the collection and
29 disposition of revenues, the investing and reinvesting of any moneys during
30 periods not needed for authorized purposes, and the rights, duties, and
31 obligations of the public body and the holders and registered owners of the
32 bonds.

33 (h) An authorizing resolution and trust indenture relating to the
34 issuance and security of the bonds shall constitute a contract between the
35 public body and holders and registered owners of the bonds, which contract,
36 and all covenants, agreements, and obligations therein, shall be promptly

1 performed in strict compliance with the terms and provisions of the contract,
2 and the covenants, agreements, and obligations of the public body may be
3 enforced by mandamus or other appropriate proceeding in a court of proper
4 jurisdiction.

5 (i)(1) The resolution shall fix the minimum rate or rates for the use
6 of and the service rendered by the consolidated wastewater system to be
7 collected prior to the payment of all of the bonds, with exceptions as may be
8 provided in the resolution, and shall pledge the revenues derived from the
9 consolidated wastewater system or any specified portion of the consolidated
10 wastewater system for the purpose of paying the bonds and interest thereon.

11 (2) The rates to be charged for the services of the consolidated
12 wastewater system, or the specified portion of the consolidated wastewater
13 system with revenues pledged to the payment of the bonds, shall be sufficient
14 to provide for the payment of all principal of and interest on all bonds when
15 due, to provide for the operation and maintenance of the consolidated
16 wastewater system or the specified portion of the consolidated wastewater
17 system with revenues pledged to the payment of the bonds, and to provide an
18 adequate depreciation account for the consolidated wastewater system or the
19 specified portion of the consolidated wastewater system with revenues pledged
20 to the payment of the bonds.

21 (j)(1) The proceeds derived from the sale of the bonds shall be used
22 solely for the purpose of making betterments, improvements, and extensions to
23 the consolidated wastewater system owned and operated by the public body,
24 paying interest on the bonds during the period of construction of the
25 betterments, improvements, and extensions, establishing any necessary
26 reserves for the bonds, paying the costs of issuing the bonds, and paying any
27 other costs and expenditures of whatever nature incidental to the
28 accomplishment of the betterments, improvements, and extensions.

29 (2) The terms "betterments", "improvements", and "extensions"
30 include a wastewater and collection system, including land, mains,
31 interceptors, collector lines, manholes, force mains, valves, pumping
32 stations, pumps, treatment and pretreatment plants and units thereof, as well
33 as all other real and personal property, buildings, structures, or other
34 improvements or facilities that may be necessary or advisable for the proper
35 and efficient operation of the public body's consolidated wastewater system.

36 (k)(1) Bonds issued under this section shall be payable solely from

1 revenues derived from the consolidated wastewater system or any specified
2 portion of the consolidated wastewater system.

3 (2) The bonds shall not constitute in any event an indebtedness
4 of, nor pledge the faith and credit of, the State of Arkansas or the
5 participating public agencies within the meaning of any constitutional
6 provisions or limitations.

7 (3) It shall be plainly stated on the face of each bond that it
8 is issued under this subchapter and that it does not constitute an
9 indebtedness of the State of Arkansas or the participating public agencies
10 within any constitutional provisions or limitations, and that it is not
11 backed by the full faith and credit of the State of Arkansas or the
12 participating public agencies.

13 (4) The bonds and the interest thereon shall be exempt from all
14 state, county, and municipal taxation, including income taxation and
15 inheritance taxation.

16 (1)(1) The bonds may be sold in such manner, either at public or
17 private sale, and upon such terms as the board of commissioners finds
18 reasonable and expedient for effectuating the purposes of the public body.

19 (2) The bonds shall be sold at a price the board of
20 commissioners accepts, including sale at discount.

21 (m)(1) The bonds shall be executed by manual or facsimile signature of
22 the chair of the board of commissioners and the manual or facsimile signature
23 of the secretary of the board of commissioners or any other officer of the
24 public body authorized to do so by resolution of the board of commissioners.

25 (2) In case any of the officers whose signatures appear on the
26 bonds cease to be such officers before delivery of the bonds, their
27 signatures shall be valid and sufficient for all purposes.

28 (3) Each bond shall be impressed or imprinted with the seal of
29 the public body.

30
31 25-20-511. Lien in favor of bondholders.

32 (a) The payment of the principal of bonds issued under this subchapter
33 and the interest thereon may be secured by a lien on and security interest in
34 the consolidated wastewater system or any specified portion of the
35 consolidated wastewater system.

36 (b) It shall not be necessary to the perfection of the lien and pledge

1 for such purposes that the trustee in connection with such bond issue or the
 2 holders of the bonds take possession of the collateral security.

3 (c) Subject to whatever restrictions may be contained in the
 4 resolution or indenture governing the bonds, any holder of bonds issued under
 5 this subchapter may enforce in a court of proper jurisdiction the mortgage
 6 lien and may compel the performance of the duties of the officers of the
 7 issuing public body under this subchapter.

8 (d) If there is default in the payment of the principal of or interest
 9 on any of the bonds, a court of proper jurisdiction may appoint a receiver to
 10 administer the consolidated wastewater system or the specified portion of the
 11 consolidated wastewater system pledged to the payment of the bonds on behalf
 12 of the public body with power to charge and collect rates sufficient to
 13 provide for the payment of the bonds and interest thereon and for the payment
 14 of the operating expenses, and to apply the income and revenues under this
 15 subchapter and the resolution or indenture providing for the issuance of the
 16 bonds.

17
 18 25-20-512. Refunding bonds.

19 (a) Bonds may be issued for the purpose of refunding any obligations
 20 issued under this subchapter or otherwise. Such refunding bonds may be
 21 combined with bonds issued under § 25-20-510 into a single issue.

22 (b) When bonds are issued under this section for refunding purposes,
 23 the bonds may either be sold or delivered in exchange for the outstanding
 24 obligations. If sold, the proceeds may be applied to the payment of the
 25 obligations refunded or deposited into escrow for the retirement thereof
 26 either at maturity or upon any authorized redemption date.

27 (c)(1) All bonds issued under this section shall be authorized,
 28 issued, and secured in the manner provided for other bonds issued under this
 29 subchapter and shall have all the attributes of such bonds.

30 (2) The resolution or indenture under which the refunding bonds
 31 are issued may provide that any of the refunding bonds shall have the same
 32 priority of lien on the revenues pledged for their payment as was enjoyed by
 33 the obligations refunded thereby.

34
 35 25-20-513. Securing deposit of public funds.

36 Bonds issued under this subchapter shall be eligible to secure the

1 deposit of public funds.

2
3 25-20-514. No personal liability.

4 A commissioner or officer of the public body shall not be liable
5 personally for any reason arising from the issuance of bonds under this
6 subchapter unless he or she acted with a corrupt intent.

7
8 25-20-515. Sewer payments by public agencies.

9 The public agencies shall be subject to the same rates and charges
10 established by the public body for services rendered to the public agencies
11 and shall pay the rates and charges when due.

12
13 25-20-516. Zoning exemption.

14 A public body maintaining facilities in an area zoned after the
15 construction of the facilities may add to, alter, expand, or change the
16 facilities upon that land or upon lands immediately adjacent thereto without
17 regard to the zoning regulation for the area if the board of commissioners
18 finds the action necessary for the proper operation of its consolidated
19 wastewater system.

20
21 25-20-517. Tax-exempt status of property owned and income.

22 Each public body under this subchapter is performing functions as and
23 is a public instrumentality of the participating public agencies, and all
24 properties at any time owned by the public body and the income therefrom
25 shall be exempt from all taxation in the state.

26
27 25-20-518. Immunity.

28 (a) This subchapter does not affect the immunity of the participating
29 public agencies.

30 (b) Immunity extends to any public body created under this subchapter
31 and to each commissioner, officer, and employee thereof.

32
33 25-20-519. Franchise fees.

34 (a) A participating public agency that is an Arkansas municipality or
35 county, acting by ordinance or resolution of its governing body, may require
36 a public body under this subchapter to pay a reasonable franchise fee by

1 which the public body may be permitted to occupy the streets, highways, or
2 other public places within the jurisdiction of such public agency, and the
3 ordinance or resolution is prima facie reasonable, provided that a franchise
4 fee shall not exceed ten percent (10%) of the public body's operating
5 revenues that are attributable to gross income from wastewater services
6 within the public agency's jurisdiction unless agreed to by the public body
7 or approved by the voters of the public agency.

8 (b) A public body created under this subchapter is not a public
9 utility under § 14-200-101 et seq. or a person, company, or corporation which
10 has secured a franchise from any municipality under § 14-200-102.

11 (c) Any franchise fees charged under this section shall be in addition
12 to payments in lieu of taxes permitted under this subchapter.

13
14 25-20-520. Payments in lieu of taxes.

15 (a) A public body under this subchapter shall make annual payments to
16 the general fund of each participating public agency that is an Arkansas
17 municipality or county in lieu of taxes in return for police, fire, and
18 health protection and in return for administrative and other services
19 furnished by the public agency.

20 (b) The payments shall be an operation and maintenance expense of the
21 public body.

22 (c)(1) In each calendar year, the payments shall equal the amount the
23 public agency would have received from the public body as real property taxes
24 for the preceding calendar year if the public body's real property located in
25 the public agency's jurisdiction, whether owned or leased by the public body,
26 had been privately owned and subject to tax by the public agency.

27 (2) For purposes of this computation, the public body's real
28 property shall be deemed to have an assessed value equal to twenty percent
29 (20%) of book value as reflected by the public body's usual accounting
30 procedures.

31 (d) Payments in lieu of taxes under this section shall be in addition
32 to any franchise fees permitted under this subchapter.

33
34 25-20-521. Annual report and audit.

35 (a) Within the first ninety (90) days of each calendar year, each
36 public body under this subchapter shall make a written report to the

1 governing bodies of the participating public agencies concerning its
2 activities for the preceding calendar year.

3 (b) Each report shall set forth a complete operating and financial
4 statement covering its operation during the year including without limitation
5 an audit of the public body’s revenues and expenses performed by an
6 independent certified public accountant.

7
8 25-20-522. Provisions supplemental and controlling.

9 This subchapter provides an additional and alternative method for the
10 doing of the things authorized hereby and is supplemental and additional to
11 powers conferred by other laws.

12
13 25-20-523. Construction.

14 This subchapter shall be liberally construed to accomplish its intent
15 and purposes and shall be the sole authority required for the accomplishment
16 of its purposes, and to this end it shall not be necessary to comply with the
17 provisions of other laws relating to the issuance and sale of the bonds
18 authorized by this subchapter, and this subchapter shall be construed as an
19 additional and alternative method for the issuance and sale of bonds.

20
21 25-20-524. Property of public body.

22 (a) Regardless of the beginning date thereof, adverse possession or
23 adverse use of lands or easements owned by a public body created hereunder
24 shall not ripen into title or permanent right.

25 (b) This section shall have no application to any possession or use
26 which ripened into title or permanent right before the enactment of this
27 section.

28
29 SECTION 2. Arkansas Code § 25-20-104(i), concerning the creation of
30 public bodies by public agencies, is amended to read as follows:

31 (i) In addition to the legal or administrative entities which may
32 otherwise be legally created under Arkansas statutes, public agencies may
33 create a separate legal entity in the form of a public body corporate and
34 politic pursuant to:

35 (1) Section 25-20-201 et seq. for the purpose of constructing,
36 operating, and maintaining a public library system; ~~or~~

1 (2) Section 25-20-301 et seq. for the purpose of constructing,
2 owning, operating, financing, and maintaining a consolidated waterworks
3 system; or

4 (3) Section 25-20-501 et seq. for the purpose of constructing,
5 operating, financing, and maintaining a consolidated wastewater system.

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