

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4
5 By: Representative Dale

A Bill

HOUSE BILL 1943

For An Act To Be Entitled

8 AN ACT TO PROVIDE THE ARKANSAS NATURAL RESOURCES
9 COMMISSION WITH AUTHORITY TO ACT AS OR APPOINT A
10 RECEIVER FOR PUBLIC WATER OR SEWER SYSTEMS THAT FAIL
11 TO COMPLY WITH PUBLIC HEALTH LAWS OR FAIL TO
12 ADEQUATELY OPERATE THEIR SYSTEM; AND FOR OTHER
13 PURPOSES.

Subtitle

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17 AN ACT TO PROVIDE THE ARKANSAS NATURAL
18 RESOURCES COMMISSION WITH AUTHORITY TO
19 ACT AS OR APPOINT A RECEIVER FOR PUBLIC
20 WATER OR SEWER SYSTEMS THAT FAIL TO
21 COMPLY WITH PUBLIC HEALTH LAWS OR
22 ADEQUATELY OPERATE THEIR SYSTEMS.

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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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27 SECTION 1. Arkansas Code Title 15, Chapter 22, Subchapter 2 is amended
28 to add an additional section to read as follows:

29 15-22-224. Appointment of receiver.

30 (a) As used in this section:

31 (1) "Adequate financial operation" means operation of a public
32 water system or public sewer system in such a manner so that the system has
33 and will have the ability to provide sufficient funds for viable current and
34 future operations, including without limitation:

35 (A) Operating costs;

36 (B) Debt repayment;



1 (C) Replacement costs; and

2 (D) Depreciation costs;

3 (2) "Adequate managerial operation" means operation of a public
 4 water system or public sewer system by persons having sufficient leadership,
 5 knowledge, skills and abilities to manage the system for current and long-
 6 term viable operations of the system, including without limitation:

7 (A) A functioning governing body; and

8 (B) Adequate employee staffing;

9 (3) "Adequate technical operation" means operation of a public
 10 water system or public sewer system with sufficient facilities, equipment and
 11 personnel for current and long-term viable operations of the system,
 12 including without limitation:

13 (A) Employment of licensed operators;

14 (B) Timely repair or replacement of equipment; and

15 (C) Planning for long-term system continuation;

16 (4) "Public sewer system" means a sewer collection or treatment
 17 system subject to regulation under the Federal Water Pollution Control Act,
 18 33 U.S.C. 1251 et seq., as existing on January 1, 2011, or the Arkansas Water
 19 and Air Pollution Control Act, § 8-4-101 et seq., which is owned by a
 20 municipal corporation, a governmental corporation, or a nonprofit
 21 corporation, including without limitation:

22 (A) A municipality;

23 (B) A public facilities board;

24 (C) A public water authority;

25 (D) A water association;

26 (E) A regional water distribution district;

27 (F) A rural development authority;

28 (G) A sanitation authority;

29 (H) An improvement district; or

30 (I) A regional wastewater treatment district; and

31 (5) "Public water system" means a water system subject to
 32 regulation under the Safe Drinking Water Act, 42 U.S.C. 300f, as existing on
 33 January 1, 2011, which is owned by a municipal corporation, a governmental
 34 corporation, or a nonprofit corporation, including without limitation:

35 (A) A municipality;

36 (B) A public facilities board;

- 1 (C) A public water authority;
- 2 (D) A water association;
- 3 (E) A regional water distribution district;
- 4 (F) A rural development authority;
- 5 (G) A sanitation authority;
- 6 (H) An improvement district;
- 7 (I) A regional wastewater treatment district; or
- 8 (J) A consolidated waterworks.

9 (b)(1) Except as provided in subsection (g) of this section, a court
 10 having jurisdiction in any proper action, upon application of the Arkansas
 11 Natural Resources Commission or its successor or successors, may appoint a
 12 receiver to take charge of the public water system or public sewer system if
 13 a public water system or public sewer system for a period of not less than
 14 six (6) months:

15 (A) Has failed to provide for the adequate financial
 16 operation of the system, provide for the adequate managerial operation of the
 17 system, or provide for the adequate technical operation of the system; or

18 (B) Has failed to comply with:

19 (i) The Public Water System Service Act, § 20-28-101
 20 et seq., or rules promulgated in support of that act by the Arkansas
 21 Department of Health or any successor or successors; or

22 (ii) The Arkansas Water and Air Pollution Control
 23 Act, § 8-4-101 et seq. or rules promulgated in support of that act by the
 24 Pollution Control and Ecology Commission or any successor or successors and
 25 enforced by the Arkansas Department of Environmental Quality or any successor
 26 or successors.

27 (2) The receiver may:

28 (A) Administer the public water system or public sewer
 29 system;

30 (B) Make improvements to the public water system or public
 31 sewer system;

32 (C) Operate and maintain the public water system or public
 33 sewer system;

34 (D) Charge and collect rates and fees for the public water
 35 system or public sewer system sufficient to provide for the payment of:

36 (i) Any costs of receivership;

1 (ii) Debt service on any indebtedness secured by
 2 revenues of the public water system or public sewer system; and

3 (iii) Operation and maintenance expenses and costs
 4 of improvements to the public water system or public sewer system; and

5 (E) Apply the income and revenues of the public water
 6 system or public sewer system in conformity with Arkansas law.

7 (c) Notwithstanding any Arkansas law to the contrary, the Arkansas
 8 Natural Resources Commission may be appointed as receiver under this section.

9 (d)(1)(A) Before entering upon his or her duties, the receiver shall
 10 be sworn to perform them faithfully.

11 (B) With one (1) or more sureties approved by the court,
 12 the receiver shall execute a bond to the person and in such sum as the court
 13 shall direct, to the effect that he or she will:

14 (i) Faithfully discharge the duties of receiver in
 15 the action; and

16 (ii) Obey the orders of the court.

17 (2) Subdivision (d)(1) of this section does not apply if the
 18 Arkansas Natural Resources Commission is appointed as receiver under this
 19 section.

20 (e) The receiver may, under the control of the court:

21 (1) Bring and defend actions;

22 (2) Take and keep possession of the property of the public water
 23 system or public sewer system;

24 (3) Receive rents;

25 (4) Collect debts;

26 (5) Sell or otherwise dispose of all or part of the real or
 27 personal property of a public water system or public sewer system; and

28 (6) Take other actions concerning the public water system or
 29 public sewer system and its property as the court may authorize.

30 (f) Upon application by the Arkansas Natural Resources Commission to a
 31 court having jurisdiction and upon approval of the court, the receiver may
 32 sell, transfer, convey or donate the public water system or public sewer
 33 system to, or merge the public water system or public sewer system with,
 34 another public water system or public sewer system.

35 (g) Upon certification by the Department of Health that the public
 36 water system's or public sewer system's operation represents an immediate

1 public health threat or certification by the Arkansas Department of
2 Environmental Quality that the public sewer system is being operated in a
3 manner to allow the discharge of pollutants in quantities unacceptable under
4 applicable permits or state water quality standards and posing an imminent
5 threat to public health, a court having jurisdiction in any proper action
6 may, upon application of the Arkansas Natural Resources Commission,
7 immediately appoint a receiver to take charge of the public water system or
8 public sewer system.

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