

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

SENATE BILL 435

5 By: Senator Bond
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE FREEDOM OF INFORMATION ACT OF
9 1967 CONCERNING WATER SYSTEMS; TO AMEND THE LAW
10 CONCERNING CONSOLIDATED WATERWORKS SYSTEMS;
11 CONCERNING THE ISSUANCE OF REVENUE BONDS BY A
12 CONSOLIDATED WATERWORKS SYSTEM; TO DECLARE AN
13 EMERGENCY; AND FOR OTHER PURPOSES.
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Subtitle

16
17 TO AMEND THE FREEDOM OF INFORMATION ACT;
18 TO AMEND THE LAW CONCERNING CONSOLIDATED
19 WATERWORKS SYSTEMS; CONCERNING THE
20 ISSUANCE OF REVENUE BONDS BY A
21 CONSOLIDATED WATERWORKS SYSTEM; AND TO
22 DECLARE AN EMERGENCY.
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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 § 25-19-105(b)(20), concerning the exemptions
28 to the Freedom of Information Act of 1967, is amended to read as follows:

29 (20)(A) Except as provided in subdivision (b)(20)(B) of this
30 section, personal ~~Personal~~ information of current and former public water
31 system customers and municipally owned utility system customers, including
32 without limitation:

- 33 ~~(A)(i)~~ Home and mobile telephone numbers;
- 34 ~~(B)(ii)~~ Personal email addresses;
- 35 ~~(C)(iii)~~ Home and business addressees; and
- 36 ~~(D)(iv)~~ Customer usage data~~;~~.



1 (B) Personal information of a current or former water
2 system customer or municipally owned utility system customer may be disclosed
3 to:

- 4 (i) The current or former water system customer;
- 5 (ii) A person who serves as the attorney, guardian,
6 or other representative of the current or former water system customer;
- 7 (iii) Any person for the purpose of:
 - 8 (a) Providing notice of termination or
9 impending termination of water service; or
 - 10 (b) Participating in research undertaken by
11 the United States government, a state agency, a county, a municipality, or an
12 organization that is exempt from taxation under 26 U.S.C. § 501(c)(3);
 - 13 (iv) A public utility;
 - 14 (v) A municipality or any department thereof;
 - 15 (vi) A county or any department thereof; or
 - 16 (vii) A state agency or any department thereof;

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18 SECTION 2. Arkansas Code § 25-20-103 is amended to read as follows:
19 25-20-103. Definitions.

20 As used in this chapter:

- 21 (1) "Public agency" means any:
 - 22 (A) School district;
 - 23 (B) Political subdivision of this state;
 - 24 (C) Agency of the state government or of the United
25 States;
 - 26 (D) Political subdivision of another state;
 - 27 (E) Water district created under the provisions of The
28 Regional Water Distribution District Act, § 14-116-101 et seq.;
 - 29 (F) Governing body of a municipal electric utility as
30 defined in § 25-20-402; and
 - 31 (G) Fire department organized under the laws of this state
32 if the fire department:
 - 33 (i) Offers fire protection services to
34 unincorporated areas; and
 - 35 (ii) Has received approval by its quorum court for
36 participation in an interlocal cooperation agreement; ~~and~~

1 follows:

2 (15) Own and operate a wastewater system that the public body
 3 acquires from a municipality, county, corporation, organization, other public
 4 body, or entity from which the public body simultaneously acquires or
 5 previously acquired a water system;

6 (16) Manage or operate a water system under a contract executed
 7 by the public body and a municipality, county, corporation, organization,
 8 other public body, or entity authorized by law to own and operate the water
 9 system;

10 (17) Purchase goods and services under applicable law for the
 11 public body; and

12 (18) Purchase professional services under § 19-11-1801 et seq.
 13 or by any method of competitive bidding including without limitation reverse
 14 auctions.

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16 SECTION 4. Arkansas Code § 25-20-307(a), concerning the operation of
 17 consolidated waterworks system, is amended to read as follows:

18 (a) "Consolidated waterworks system" means and includes:

19 (1) A waterworks and distribution system in its entirety, or
 20 any integral part thereof, including land, mains, pipelines, hydrants,
 21 meters, valves, standpipes, storage tanks, storage basins, pumping tanks,
 22 intakes, wells, clear water wells, impounding reservoirs, lakes,
 23 watercourses, pumps, purification plants and units thereof, filtration plants
 24 and units thereof, as well as all other real and personal property,
 25 buildings, structures, ~~or~~ and other improvements ~~or~~ and facilities as may be
 26 necessary or advisable for the proper and efficient operation of the public
 27 body's facilities; and

28 (2) One (1) or more wastewater systems, if any, acquired by the
 29 public body.

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31 SECTION 5. Arkansas Code § 25-20-307(c)(2), concerning the operation
 32 of consolidated waterworks system, is amended to read as follows:

33 (2) A public body shall have a reasonable time after its
 34 creation or after its expansion by the addition of a new participating public
 35 agency to equalize any differentials in ~~water~~ rates among similarly situated
 36 classes of customers.

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SECTION 6. Arkansas Code § 25-20-307(c)(3)(B), concerning the operation of consolidated waterworks system, is amended to read as follows:

(B) Within one (1) year of the creation or expansion of the public body, an independent expert completes an engineering study of the ~~water system~~ related infrastructure located within the jurisdiction of each participating public agency that identifies improvements needed to create a uniform infrastructure quality throughout the jurisdictions, rate differentials among otherwise similarly situated classes of customers are reasonably calculated to recover from customers located in the respective jurisdictions in which the improvements are made the costs incurred in making the improvements in such jurisdictions, and the public body equalizes rates among similarly situated classes of customers within ten (10) years after the date of the engineering study.

SECTION 7. Arkansas Code § 25-20-307(d), concerning the operation of consolidated waterworks system, is amended to read as follows:

(d) The inability of a public body to rely upon either safe harbor defense set out in subdivisions (c)(3)(A) and (B) of this section shall not create any implication that the public body has failed to equalize any differentials in ~~water~~ rates among similarly situated classes of customers within a reasonable period of time after its creation or expansion.

SECTION 8. Arkansas Code § 25-20-308(a)(2), concerning out-of-area sales and services, is amended to read as follows:

(2) Sell surplus water to any municipality, improvement district, or other ~~person engaged in the business of selling and distributing water to consumers, whether the municipality, improvement district, or other person~~ entity that sells and distributes water subject to regulation of the Department of Health, whether the municipality, improvement district, or other entity is located within or outside the jurisdictions of the public body's participating agencies.

SECTION 9. Arkansas Code § 25-20-310(a), concerning improvements and financing of improvements with bonds, is amended to read as follows:

(a) Whenever any public body created under this subchapter shall own

1 or operate a consolidated waterworks system and shall desire to acquire,
2 construct, or equip improvements, betterments, and extensions thereto, it may
3 issue revenue bonds under the provisions of this section to pay for them. The
4 procedure for issuance of bonds shall be as provided in this section.

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6 SECTION 10. Arkansas Code § 25-20-310(e), concerning improvements and
7 financing of improvements with bonds, is amended to read as follows:

8 (e)(1) The resolution shall fix the minimum rate or rates for water or
9 other services provided by the consolidated water system to be collected
10 prior to the payment of all of the bonds, with exceptions as may be provided
11 in the resolution, and shall pledge the revenues derived from the
12 consolidated waterworks system or any specified portion of the consolidated
13 waterworks system for the purpose of paying the bonds and interest thereon.

14 (2) The rates to be charged for the water or other services of
15 the consolidated waterworks system or the specified portion of the
16 consolidated waterworks system with revenues pledged to the payment of the
17 bonds shall be sufficient to provide:

18 (A) For the payment of all principal of and interest on
19 all bonds as and when due;

20 (B) For the operation and maintenance of the consolidated
21 waterworks system or the specified portion of the consolidated waterworks
22 system with revenues pledged to the payment of the bonds; and

23 (C) An adequate depreciation account for the consolidated
24 waterworks system or the specified portion of the consolidated waterworks
25 system with revenues pledged to the payment of the bonds.

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27 SECTION 11. Arkansas Code § 25-20-310, concerning improvements and
28 financing of improvements with bonds, is amended to add an additional
29 subsection to read as follows:

30 (j)(1)(A) Prior to a proposed issuance of revenue bonds by a public
31 body, the public body shall publish one (1) time in a newspaper of general
32 circulation in the participating public agencies:

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

34 (ii) The maximum principal amount of bonds
35 contemplated to be sold;

36 (iii) A general description of the project

1 contemplated to be financed or refinanced with bond proceeds; and

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

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

8 (2) The chief executive officer of the public body or his or her
9 designee shall be responsible for conducting the hearing and shall request
10 all public comments that might pertain to the proposed issuance of bonds by
11 the public body.

12 (3)(A) Upon compliance with the provisions of this section,
13 other notice, hearing, or approval by the public body, any participating
14 public agency or any governmental unit shall not be required as a condition
15 to the issuance by a public body of its contemplated bonds or any interim
16 financing with respect thereto.

17 (B) The provisions of the Revenue Bond Act of 1987, § 19-
18 9-601 et seq., do not apply to this section and revenue bonds or interim
19 financing issued hereunder.

20 (C) Notwithstanding the provisions of subdivision
21 (i)(3)(A) of this section, the participating public agencies that have
22 entered into the interlocal agreement forming the public body may, in the
23 interlocal agreement, impose additional procedural requirements as a
24 precedent for the issuance of revenue bonds by a public body, and if that is
25 the case, the public body shall comply with those requirements prior to the
26 issuance of the bonds and any interim financing.

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28 SECTION 12. Arkansas Code § 25-20-321(a), concerning the annual report
29 and audit relating to consolidated waterworks systems, is amended to read as
30 follows:

31 (a) Within the first ~~ninety (90)~~ one hundred eighty (180) days of each
32 calendar year, each public body created under this subchapter shall make a
33 written report to the governing bodies of the participating public agencies
34 concerning its activities for the preceding calendar year.

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36 SECTION 13. Arkansas Code Title 25, Chapter 20, Subchapter 3, is

1 amended to add an additional section to read as follows:

2 25-20-324. Interim financing.

3 (a) If the issuance of revenue bonds is authorized by resolution of
 4 the board of commissioners, any public body created under this subchapter is
 5 authorized to obtain interim financing pending the delivery of all or any
 6 part of the bonds from such sources and upon such terms as the board of
 7 commissioners of the public body shall determine.

8 (b)(1) As evidence of any indebtedness so incurred, the public body
 9 may execute and deliver its promissory note or notes and pledge to the
 10 payment thereof any revenues authorized by this subchapter to be pledged to
 11 revenue bonds and the proceeds of the revenue bonds when issued.

12 (2) The public body may secure the notes in the same manner as
 13 revenue bonds issued under this subchapter.

14 (c) The notes shall not in any event constitute an indebtedness of,
 15 nor pledge the faith and credit of, the State of Arkansas or the
 16 participating public agencies of the public body within the meaning of any
 17 constitutional or statutory limitation.

18 (d) The public body may use, as distinguished from pledge, any
 19 available revenues to pay or to apply to the payment of the principal of and
 20 interest on the notes and may use the proceeds of revenue bonds, either alone
 21 or with other available revenues, to pay the principal and interest on the
 22 notes.

23 (e) The notes may bear such date or dates, may mature at such time or
 24 times, not exceeding thirty-six (36) months from their respective dates, may
 25 bear interest at such rate or rates, may be in such form, may be executed in
 26 such manner, may be payable at such place or places, may contain such
 27 provisions for prepayment prior to maturity and may contain such other terms,
 28 covenants, and conditions as the resolution may provide, not inconsistent
 29 with the provisions of this subchapter pertaining to revenue bonds.

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 31 SECTION 14. EMERGENCY CLAUSE. It is found and determined by the
 32 General Assembly of the State of Arkansas that the Freedom of Information Act
 33 of 1967, § 25-19-101 et seq., places undue restrictions on water systems;
 34 that, in order to satisfy such restrictions, a water system must forego
 35 certain undertakings to the detriment of the water system and its customers;
 36 and that this act is immediately necessary so that a water system may provide

1 information to its utility partners, other government offices, and certain
2 members of the public in order for the water system to serve its community as
3 efficiently and effectively as possible. Therefore, an emergency is declared
4 to exist, and this act being immediately necessary for the preservation of
5 the public peace, health, and safety shall become effective on:

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

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

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

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