

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

*As Engrossed: S3/6/17*

# A Bill

SENATE BILL 435

5 By: Senators Bond, L. Chesterfield, Elliott, J. English, J. Hutchinson  
6 By: Representatives Tucker, E. Armstrong, F. Allen, Davis, Blake  
7

## For An Act To Be Entitled

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

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18 TO AMEND THE FREEDOM OF INFORMATION ACT;  
19 TO AMEND THE LAW CONCERNING CONSOLIDATED  
20 WATERWORKS SYSTEMS; CONCERNING THE  
21 ISSUANCE OF REVENUE BONDS BY A  
22 CONSOLIDATED WATERWORKS SYSTEM; AND TO  
23 DECLARE AND EMERGENCY.  
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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28 SECTION 1. Arkansas Code § 25-19-105(b)(20), concerning the exemptions  
29 to the Freedom of Information Act of 1967, is amended to read as follows:

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

- 34 ~~(A)(i)~~ Home and mobile telephone numbers;
- 35 ~~(B)(ii)~~ Personal email addresses;
- 36 ~~(C)(iii)~~ Home and business addressees; and





1 if the fire department:

2 (i) Offers fire protection services to  
3 unincorporated areas; and

4 (ii) Has received approval by its quorum court for  
5 participation in an interlocal cooperation agreement; ~~and~~

6 (2) "Retail customer" means a person other than a municipality,  
7 improvement district, or other entity that:

8 (A) Sells and distributes water subject to regulation by  
9 the Department of Health;

10 (B) Maintains a service account with a public body formed  
11 under the Consolidated Waterworks Authorization Act § 25-20-301 et seq. for  
12 the provision of water to a person or the occupants of a single family  
13 dwelling, multitenant dwelling, business premises, or government facility;  
14 and

15 (C) Is not explicitly permitted to resell potable water to  
16 another person;

17 (3) "State" means a state of the United States and the District  
18 of Columbia;

19 (4) "Surplus water" means water available for distribution or  
20 sale aside from water necessarily required of the public body for  
21 distribution to its existing retail customers;

22 (5) "Wastewater system" means a wastewater and collection system  
23 formed under state law that includes without limitation land, mains,  
24 interceptors, collector lines, manholes, force mains, valves, pumping  
25 stations, pumps, treatment and pretreatment plants and units thereof, other  
26 real and personal property, buildings, structures, other improvements, and  
27 facilities as necessary or advisable for the proper and efficient operation  
28 of the wastewater system; and

29 (6) "Water system" means and includes a waterworks and  
30 distribution system in its entirety or any integral parts of thereof which is  
31 formed under state law and includes without limitation land, mains,  
32 pipelines, hydrants, meters, valves, standpipes, storage tanks, storage  
33 basins, pumping tanks, intakes, wells, clear water wells, impounding  
34 reservoirs, lakes, watercourses, pumps, purification plants and units  
35 thereof, filtration plants and units thereof, as well as all other real and  
36 personal property, buildings, structures, and other improvements or

1 facilities as necessary or advisable for the proper and efficient operation  
2 of the water system.

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4 SECTION 3. Arkansas Code § 25-20-306(a), concerning the general powers  
5 of a public body, is amended to add an additional subdivision to read as  
6 follows:

7 (15) Own and operate a wastewater system that the public body  
8 acquires from a municipality, county, corporation, organization, other public  
9 body, or entity from which the public body simultaneously acquires or  
10 previously acquired a water system;

11 (16) Manage or operate a water system under a contract executed  
12 by the public body and a municipality, county, corporation, organization,  
13 other public body, or entity authorized by law to own and operate the water  
14 system;

15 (17) Purchase goods and services under applicable law for the  
16 public body; and

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

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

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

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

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

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36 SECTION 5. Arkansas Code § 25-20-307(c)(2), concerning the operation

1 of consolidated waterworks system, is amended to read as follows:

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

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

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

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

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

28

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

31 (2) Sell surplus water to any municipality, improvement  
32 district, or other ~~person engaged in the business of selling and distributing~~  
33 ~~water to consumers, whether the municipality, improvement district, or other~~  
34 person entity that sells and distributes water subject to regulation of the  
35 Department of Health, whether the municipality, improvement district, or  
36 other entity is located within or outside the jurisdictions of the public

1 body's participating agencies.

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

5 (a) Whenever any public body created under this subchapter shall own  
6 or operate a consolidated waterworks system and shall desire to acquire,  
7 construct, or equip improvements, betterments, and extensions thereto, it may  
8 issue revenue bonds under the provisions of this section to pay for them. The  
9 procedure for issuance of bonds shall be as provided in this section.

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

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

19 (2) The rates to be charged for the water or other services of  
20 the consolidated waterworks system or the specified portion of the  
21 consolidated waterworks system with revenues pledged to the payment of the  
22 bonds shall be sufficient to provide:

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

25 (B) For the operation and maintenance of the consolidated  
26 waterworks system or the specified portion of the consolidated waterworks  
27 system with revenues pledged to the payment of the bonds; and

28 (C) An adequate depreciation account for the consolidated  
29 waterworks system or the specified portion of the consolidated waterworks  
30 system with revenues pledged to the payment of the bonds.

31  
32 SECTION 11. Arkansas Code § 25-20-310, concerning improvements and  
33 financing of improvements with bonds, is amended to add an additional  
34 subsection to read as follows:

35 (j)(1)(A) Prior to a proposed issuance of revenue bonds by a public  
36 body, the public body shall publish one (1) time in a newspaper of general

1 circulation in the participating public agencies:

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

3 (ii) The maximum principal amount of bonds

4 contemplated to be sold;

5 (iii) A general description of the project

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

7 (iv) The date, time, and location of a public

8 meeting at which members of the public may obtain further information

9 regarding the bonds and the project.

10 (B) Notice under subdivision (j)(1)(A) of this section

11 shall be published at least ten (10) days prior to the date of the hearing

12 described in subdivision (j)(1)(A)(iv) of this section.

13 (2) The chief executive officer of the public body or his or her

14 designee shall be responsible for conducting the hearing and shall request

15 all public comments that might pertain to the proposed issuance of bonds by

16 the public body.

17 (3)(A) Upon compliance with the provisions of this section,

18 other notice, hearing, or approval by the public body, any participating

19 public agency or any governmental unit shall not be required as a condition

20 to the issuance by a public body of its contemplated bonds or any interim

21 financing with respect thereto.

22 (B) The provisions of the Revenue Bond Act of 1987, § 19-

23 9-601 et seq., do not apply to this section and revenue bonds or interim

24 financing issued hereunder.

25 (C) Notwithstanding the provisions of subdivision

26 (i)(3)(A) of this section, the participating public agencies that have

27 entered into the interlocal agreement forming the public body may, in the

28 interlocal agreement, impose additional procedural requirements as a

29 precedent for the issuance of revenue bonds by a public body, and if that is

30 the case, the public body shall comply with those requirements prior to the

31 issuance of the bonds and any interim financing.

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

36 (a) Within the first ~~ninety (90)~~ one hundred eighty (180) days of each

1 calendar year, each public body created under this subchapter shall make a  
2 written report to the governing bodies of the participating public agencies  
3 concerning its activities for the preceding calendar year.  
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5 SECTION 13. Arkansas Code Title 25, Chapter 20, Subchapter 3, is  
6 amended to add an additional section to read as follows:

7 25-20-324. Interim financing.

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

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

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

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

23 (d) The public body may use, as distinguished from pledge, any  
24 available revenues to pay or to apply to the payment of the principal of and  
25 interest on the notes and may use the proceeds of revenue bonds, either alone  
26 or with other available revenues, to pay the principal and interest on the  
27 notes.

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

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36 SECTION 14. EMERGENCY CLAUSE. It is found and determined by the

1 General Assembly of the State of Arkansas that the Freedom of Information Act  
2 of 1967, § 25-19-101 et seq., places undue restrictions on water systems;  
3 that, in order to satisfy such restrictions, a water system must forego  
4 certain undertakings to the detriment of the water system and its customers;  
5 and that this act is immediately necessary so that a water system may provide  
6 information to its utility partners, other government offices, and certain  
7 members of the public in order for the water system to serve its community as  
8 efficiently and effectively as possible. Therefore, an emergency is declared  
9 to exist, and this act being immediately necessary for the preservation of  
10 the public peace, health, and safety shall become effective on:

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

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

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

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