

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

As Engrossed: S3/20/19

A Bill

SENATE BILL 481

5 By: Senator A. Clark
6 By: Representative Love
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING RETAIL WATER AND
10 WASTEWATER PROVIDERS AND RELATED SERVICE; AND FOR
11 OTHER PURPOSES.
12
13

Subtitle

15 TO AMEND THE LAW CONCERNING RETAIL WATER
16 AND WASTEWATER PROVIDERS AND RELATED
17 SERVICE.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code Title 14, Chapter 229, is amended to add an
23 additional subchapter to read as follows:

24 Subchapter 2 – Oversight of Retail Water and Wastewater Service
25 Providers
26

27 14-229-201. Definition – Findings.

28 (a) As used in this subchapter, "provider" means any provider of
29 retail water or wastewater service.

30 (b) The General Assembly finds that:

31 (1) Oversight of providers in the state is primarily handled by
32 the Arkansas Natural Resources Commission, the Department of Health, and the
33 Arkansas Department of Environmental Quality;

34 (2) The oversight of these providers is spread out and results
35 in the inability of a single entity to monitor and help initiate necessary
36 changes in public access of water, rate structures, the sustainability of the



1 providers, and the protection of consumer rights;

2 (3) While local control is important, the current landscape of
3 providers has the potential to create inefficiencies in service and
4 instability in fiscal management;

5 (4) Combining smaller providers may be necessary in some areas
6 in order to guarantee dependable and plentiful provision of water and to
7 avoid unsustainable rate increases;

8 (5) Many providers have an aging workforce, and there is a need
9 for education of the governing bodies of these providers concerning the
10 importance of recruiting and retaining an expert workforce;

11 (6) Training of local, state, and federal leaders on issues
12 surrounding water provider personnel, finances, compliance, and environmental
13 factors is needed; and

14 (7) Education of public school students regarding the importance
15 of water is necessary.

16
17 14-229-202. Fiscal distress – Improvement plans – Rates and rate
18 studies.

19 (a)(1) For the purposes of this section, a provider is in fiscal
20 distress if the provider:

21 (A) Fails to obtain a rate study as required by this
22 section;

23 (B) Fails to implement a completed rate study required
24 under this section; or

25 (C) Has been found by the Arkansas Department of
26 Environmental Quality or the Department of Health to be in significant
27 noncompliance with rules of the Arkansas Department of Environmental Quality
28 or the Department of Health because of inadequate funds for operation,
29 maintenance, and compliance.

30 (2) A provider may be found by the Arkansas Natural Resources
31 Commission to be subject to this section if a member of a provider's
32 governing body does not receive the training required under § 14-229-205.

33 (b)(1) Upon the identification of a provider in fiscal distress, the
34 commission may:

35 (A) Evaluate, determine, and mandate the implementation of
36 rates necessary to adequately address current and future costs under this

1 section;

2 (B) Mandate and assist in the consolidation of the
3 provider or certain functions of the provider with another provider; and

4 (C) Mandate and assist the provider in developing an
5 improvement plan to address fiscal, operational, refurbishment, and
6 replacement concerns.

7 (2) The commission shall maintain and publish on the
8 commission's website a list of providers in fiscal distress.

9 (c)(1) A provider shall obtain a rate study on the following schedule:

10 (A) By July 1, 2022, and every five (5) years thereafter
11 for a provider that serves five hundred (500) or fewer customers;

12 (B) By July 1, 2023, and every five (5) years thereafter
13 for a provider that serves five hundred one (501) to one thousand (1,000)
14 customers; and

15 (C) By July 1, 2024, and every five (5) years thereafter
16 for a provider that serves more than one thousand (1,000) customers.

17 (2)(A) Rates shall adequately address costs for:

18 (i) Operation and maintenance;

19 (ii) Debt service;

20 (iii) Required reserves;

21 (iv) Depreciation;

22 (v) Future capital expenses;

23 (vi) An annual audit or agreed-upon procedures and
24 compilation report; and

25 (vii) Other expenses as necessary.

26 (B)(i) The rates recommended in the rate study that is
27 obtained and chosen by the provider shall be implemented by the provider.

28 (ii) Except as provided in subdivision
29 (c)(2)(B)(iii) of this section, an increase in rates recommended in the rate
30 study shall be implemented within one (1) year of the receipt of the rate
31 study.

32 (iii) If recommended rates increase the provider's
33 rates by fifty percent (50%) or more from the fiscal year before the rate
34 study was completed, the provider may phase in the rate increase over a two-
35 year period.

36 (d)(1) The commission shall determine by rule the requirements of the

1 rate study, including without limitation a review of the provider's
2 refurbishment and replacement account and asset management plan.

3 (2) The rate study shall use as its basis the guidelines of the
4 American Water Works Association and the Water Environment Federation.

5 (e) A provider shall deposit a minimum of five percent (5%) per annum
6 of gross revenues in a dedicated replacement and refurbishment account within
7 twelve (12) months of implementation of the rate, unless a different amount
8 is determined by a rate study.

9 (f)(1) The commission shall maintain an approved list of entities to
10 conduct rate studies required by this section, including without limitation
11 the Arkansas Rural Water Association, professional engineers, certified
12 public accountants, economists, and actuaries.

13 (2) If a provider chooses an entity to conduct the rate study
14 that is not on the approved list of entities, the entity is required to have
15 conducted at least one (1) rate study in the state in the previous five-year
16 period.

17 (g)(1) To ensure fiscal soundness, the commission shall consider and
18 approve a new provider with fewer than three hundred (300) customers within
19 the proposed service area only if:

20 (A) The Department of Health or the Arkansas Department of
21 Environmental Quality determines that public health or the environment is
22 threatened without the approval of the new provider; or

23 (B) There is no other viable alternative.

24 (2) A new provider with fewer than three hundred (300) customers
25 seeking approval shall:

26 (A) Be organized through a political subdivision,
27 including without limitation an improvement district, a county, or a
28 municipality;

29 (B) Demonstrate the ability to remain fiscally
30 sustainable; and

31 (C) Complete a technical, financial, and managerial
32 capacity review conducted by the Department of Health or the Arkansas
33 Department of Environmental Quality.

34 (h)(1) A provider that plans to undertake a major development project
35 shall obtain a rate study or amend the provider's existing rate study to
36 include consideration of the financial impact of the major development

1 project on the fiscal sustainability of the provider before the major
2 development project.

3 (2) As used in this section, "major development project" means a
4 project that exceeds twenty percent (20%) or more of gross revenues of the
5 immediately preceding fiscal year.

6 (i) A provider shall file its most recent rate study annually with
7 Arkansas Legislative Audit at the same time the provider files its audit
8 report or agreed-upon procedures and compilation report as required under §
9 14-234-120.

10 (j)(1) The commission shall annually identify and notify a provider if
11 the provider is in fiscal distress.

12 (2) The provider may appeal the finding to the Pulaski County
13 Circuit Court.

14 (k)(1) A provider found to be in fiscal distress shall file an
15 improvement plan with the commission, including without limitation specific
16 action to be taken to correct financial, technical, and managerial
17 deficiencies within ninety (90) days of the finding of fiscal distress.

18 (2)(A) Upon receipt of the improvement plan under this
19 subsection, the commission shall review the improvement plan and:

20 (i) Approve the improvement plan in whole or in
21 part;

22 (ii) Modify the improvement plan; or

23 (iii) Deny the improvement plan.

24 (B) If a provider is found to be in fiscal distress, the
25 commission may:

26 (i) Order that the provider adopt and maintain a
27 rate structure necessary to transition the provider out of fiscal distress;

28 (ii) Order that the provider employ personnel for
29 the financial, technical, and managerial operation of the provider necessary
30 to transition the provider out of fiscal distress;

31 (iii) Petition the Pulaski County Circuit Court to
32 appoint a receiver to liquidate the operations of the provider; or

33 (iv) Take steps to reorganize, restructure, or
34 consolidate the provider.

35 (C) At the time the commission determines that the
36 provider is no longer in fiscal distress, the commission shall remove the

1 fiscal distress designation and notify the provider.

2 (1) If a provider is found to be in fiscal distress, the provider
3 shall not receive state financial assistance for water or wastewater
4 operations until an approved improvement plan is in place as approved by the
5 commission, unless the financial assistance is for the purposes under
6 subdivision (b)(1) of this section or is immediately necessary to ensure
7 preservation of the public peace, health, and safety, as determined by the
8 commission.

9 (m) If the provider is found to be in fiscal distress, the provider
10 shall obtain written authorization of the commission to:

11 (1) Incur additional debt;

12 (2) Accept assistance for the refurbishment or replacement of
13 facilities or construction of facilities not within the provider's
14 improvement plan; or

15 (3) Transfer assets to another entity.

16
17 14-229-203. Workforce recruitment and retention – Education.

18 A provider shall:

19 (1) Work with the Arkansas Municipal League and the Association
20 of Arkansas Counties to develop training for leaders of the political
21 subdivision;

22 (2) Provide suitable compensation and incentives for individuals
23 to consider a career with the provider; and

24 (3) Promote the recruitment, education, and licensing of
25 provider employees.

26
27 14-229-204. Municipal providers – Provision of water to nonresident
28 customers.

29 (a)(1) If a municipal provider is unable or unwilling to provide
30 service to a nonresident property owner residing in the provider's service
31 area, the Arkansas Natural Resources Commission may require the municipal
32 provider to release the nonresident property owner to a willing provider.

33 (2) If required by the willing provider, a nonresident property
34 owner may be required to pay the costs of necessary extensions to connect to
35 the willing provider.

36 (3) A municipal provider shall not release a service area of the

1 municipal provider if the release would invalidate or encumber the issuance
2 or retirement of a bond, promissory note, or certificate of indebtedness
3 related to the service area.

4 (b)(1) Municipal providers that are willing to provide service to
5 areas outside the municipal boundaries shall do so through agreements
6 executed by the municipal provider and the affected property owners.

7 (2) The agreements shall clearly define any prerequisite the
8 municipal provider has for service to those areas.

9 (3) Failure to clearly define any annexation requirement within
10 the executed agreement prohibits the municipal provider from requiring
11 annexation in exchange for service for those areas without agreement from the
12 affected property owners.

13 (c) If a municipal provider services customers outside the municipal
14 boundaries of the municipal provider and a majority of those customers
15 petition the municipal provider:

16 (1)(A)(i) One (1) additional member from the area served shall
17 be added to the municipal provider board for every twenty percent (20%) of
18 retail customers outside the municipal provider's municipal boundaries, up to
19 (2) additional members.

20 (ii) Subdivision (c)(1)(A)(i) of this section does
21 not apply to an area served by a municipal provider in which the municipal
22 provider has negotiated agreements with another provider for that area.

23 (B)(i) A member added to a municipal provider board under
24 subdivision (c)(1)(A) of this section shall be named by and serve at the
25 pleasure of the county judge for a two-year term, subject to approval by the
26 municipal provider board and subject to the removal procedures otherwise
27 provided by law.

28 (ii) In an area served under this subsection that
29 lies in two (2) counties, the county judges of the counties in question shall
30 alternate the appointment of the additional member to the municipal provider
31 board under this section; and

32 (2)(A) A separate governing board shall be created under
33 applicable law for the municipal provider if a separate governing board does
34 not exist for the municipal provider apart from the governing body of the
35 political subdivision.

36 (B) A person serving on the governing body of the

1 political subdivision may also serve on a separate governing board for the
2 municipal provider.

3 (d) The commission shall intervene if a municipal provider:

4 (1) Is prohibited from providing water to potential customers by
5 the political subdivision under which the municipal provider is organized;

6 (2) Practices business irresponsibly in relation to consumer
7 rights; or

8 (3) Is not following best management practices in providing
9 water or wastewater service.

10 (e) Except as otherwise provided in this section, a consumer shall not
11 be denied access to service if suitable distribution and collection
12 infrastructure already exists or if the consumer is willing to pay for
13 suitable distribution and collection infrastructure, unless:

14 (1) A municipal provider has made the decision not to extend
15 service outside the municipal boundaries of the municipal provider; or

16 (2) An engineering, capacity, physical feasibility, or fiscal
17 feasibility issue exists as determined by a professional engineer or
18 certified public accountant.

19 (f) This section does not apply to a rural water association or any
20 provider that is not a municipal provider.

21
22 14-229-205. Training.

23 (a)(1)(A) Within one (1) year of election or appointment, a majority
24 of the members of a provider board shall receive a minimum of eight (8) hours
25 of provider training as promulgated by rule of the Arkansas Natural Resources
26 Commission.

27 (B) A current member of a provider board shall receive the
28 training required under this section by December 31, 2020.

29 (2) If a majority of the members of a provider board do not
30 receive the training required under this section, the commission may find the
31 provider is subject to § 14-229-202.

32 (b) The commission shall consult with an advisory training board of
33 members for the development of the training required under this section,
34 including without limitation:

35 (1) The Director of the Department of Health or his or her
36 designee;

1 (2) The Director of the Arkansas Department of Environmental
2 Quality or his or her designee;

3 (3) The Executive Director of the Arkansas Natural Resources
4 Commission or his or her designee;

5 (4) The State Director of the United States Department of
6 Agriculture Rural Development in Arkansas or his or her designee;

7 (5) The Chief Executive Officer of the Arkansas Rural Water
8 Association or his or her designee;

9 (6) The Executive Director of the Arkansas Municipal League or
10 his or her designee;

11 (7) The Executive Director of the Association of Arkansas
12 Counties or his or her designee;

13 (8) The Chair of the Board of Directors of Communities
14 Unlimited, Inc. or his or her designee;

15 (9) The Chair of the Arkansas Water Works and Water Environment
16 Association, Inc. or his or her designee;

17 (10) The Director of the Arkansas Environmental Training Academy
18 or his or her designee;

19 (11) The Chair of the House Committee on City, County, and Local
20 Affairs;

21 (12) The Vice Chair of the House Committee on City, County, and
22 Local Affairs;

23 (13) The Chair of the Senate Committee on City, County, and
24 Local Affairs; and

25 (14) The Vice Chair of the Senate Committee on City, County, and
26 Local Affairs.

27
28 14-229-206. Rules.

29 (a) The Arkansas Natural Resources Commission shall promulgate rules
30 necessary to implement this subchapter.

31 (b)(1) When adopting the initial rules to implement this subchapter,
32 the final rule shall be filed with the Secretary of State for adoption under
33 § 25-15-204(f):

34 (A) On or before January 1, 2020; or

35 (B) If approval under § 10-3-309 has not occurred by
36 January 1, 2020, as soon as practicable after approval under § 10-3-309.

1 (2) The commission shall file the proposed rule with the
2 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
3 2020, so that the Legislative Council may consider the rule for approval
4 before January 1, 2020.

5
6 14-229-207. Applicability.

7 This subchapter does not apply to:

8 (1) A water system regulated by the Arkansas Public Service
9 Commission as a public utility under § 23-1-101(9); or

10 (2) A municipal utility system owned or operated by a
11 municipality that provides electric service to retail customers in addition
12 to water service, including an electric utility system:

13 (A) Managed or operated by a nonprofit corporation under §
14 14-199-701 et seq.; or

15 (B) Owned or operated by a municipality or by a
16 consolidated utility district under the General Consolidated Public Utility
17 System Improvement District Law, § 14-217-101 et seq.

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21 /s/A. Clark
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