

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 83rd General Assembly  
3 Regular Session, 2001  
4

As Engrossed: S2/12/01 H3/9/01

# A Bill

Act 982 of 2001  
SENATE BILL 311

5 By: Senators B. Walker, Hoofman, Argue, Riggs, Gwatney  
6 By: Representatives Magnus, Salmon, T. Steele, *Bond, Napper, W. Walker, Ledbetter, J. Elliott,*  
7 *Creekmore, Hutchinson, Lendall, D. Elliott, Bevis, Bright, J. Lewellen, Rackley*  
8  
9

## For An Act To Be Entitled

11 AN ACT TO AMEND THE INTERLOCAL COOPERATION ACT TO  
12 AUTHORIZE PUBLIC AGENCIES TO CREATE CONSOLIDATED  
13 WATERWORKS SYSTEMS; TO AMEND ARKANSAS CODE 25-20-  
14 104; *TO DECLARE AN EMERGENCY; AND FOR OTHER*  
15 *PURPOSES.*  
16

## Subtitle

18 TO AMEND THE INTERLOCAL COOPERATION ACT  
19 TO AUTHORIZE PUBLIC AGENCIES TO CREATE  
20 CONSOLIDATED WATERWORKS SYSTEMS; TO  
21 AMEND ARKANSAS CODE 25-20-104.  
22  
23

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

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

### SUBCHAPTER 3 - CONSOLIDATED WATERWORKS SYSTEMS

#### 25-20-301. Title.

30 This subchapter may be referred to and cited as the "Consolidated  
31 Waterworks Authorization Act".  
32

#### 25-20-302. Creation.

34 (a) Any two (2) or more public agencies entering into an interlocal  
35 agreement under the Interlocal Cooperation Act, beginning at § 25-20-101, for  
36 the purpose of consolidating their waterworks systems are hereby authorized to

1 create a public body corporate and politic as a separate legal entity for the  
2 purpose of constructing, owning, managing, operating, financing, improving,  
3 extending, acquiring, reconstructing, equipping, selling, leasing, contracting  
4 concerning, dealing in, disposing of, and maintaining such consolidated  
5 waterworks system.

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

12 (1) Specify any limitations on the exercise of the public body's  
13 powers, including such matters, if any, as to which the participating public  
14 agencies reserve rights to approve, disapprove, or otherwise participate in  
15 any exercise of the public body's powers;

16 (2) Provide for such reasonable franchise fees, payments in lieu  
17 of taxes, or other payments by the public body to the participating public  
18 agencies as the public agencies may deem appropriate;

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

25 (4) Set forth such other matters, not inconsistent with this  
26 subchapter, with respect to the creation and operation of the public body as  
27 the participating public agencies may deem necessary or appropriate.

28 (c)(1) An application to create a public body under this subchapter  
29 shall then be prepared, setting forth:

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

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

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

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

35 (E) The manner in which commissioners of the public body  
36 will be appointed or elected and the residency requirements, if any,

1 applicable to commissioners in addition to those set forth in this subchapter;

2 (F) The voting rights of each commissioner;

3 (G) Special procedures for amending the certificate of  
4 incorporation, if any; and

5 (H) Such other matters, not inconsistent with this  
6 subchapter, with respect to the creation and operation of the public body as  
7 the participating public agencies may deem necessary or appropriate.

8 (2) The application shall be signed on behalf of each  
9 participating public agency by an authorized official of such public agency.

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

15 (A) Receive and file the application;

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

18 (C) Make and issue a certificate of incorporation under the  
19 seal of the state setting forth the name of the public body and the names of  
20 the participating public agencies; and

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

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

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

35 (2) The amendment shall be signed by an officer or other  
36 authorized person of the public body, who shall certify that the certificate

1 of incorporation has been duly amended in accordance with the procedures of  
2 this subchapter and, as applicable, in the manner prescribed in the then  
3 existing certificate of incorporation. Upon filing of the amendment with the  
4 Secretary of State in the manner provided in this section, the Secretary of  
5 State shall make and issue an amendment to the certificate of incorporation.

6  
7 25-20-303. Contributions of public agency properties.

8 Participating public agencies are authorized to contribute to a public  
9 body created under this subchapter such real and personal property of the  
10 participating public agencies as the participating public agencies shall deem  
11 necessary or appropriate to the ownership and operation of a consolidated  
12 waterworks system by the public body; provided, however, that any  
13 contributions of reserve funds held in trust under Title 14, Chapter 73,  
14 Subchapter 1 shall be made on the condition that such funds may be used only  
15 for the purposes described in the trust agreement and until so used shall  
16 remain in a trust fund complying with the requirements of Title 14, Chapter  
17 73, Subchapter 1. Contributions of properties under this section shall be upon  
18 such terms and conditions and for such consideration as the participating  
19 public agencies may determine to be just and proper, it being within the  
20 participating public agencies' discretion to contribute property with or  
21 without monetary consideration. Participating public agencies shall have power  
22 to execute any and all contracts, leases, deeds, bills of sale, easements,  
23 assignments, and other instruments of conveyance as may be required or  
24 convenient to exercise the powers granted in this section.

25  
26 25-20-304. Board of commissioners.

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

32 (2) Each commissioner shall be appointed or elected in the manner  
33 set forth in the public body's certificate of incorporation and shall serve a  
34 term of office as specified in the interlocal agreement.

35 (b) The commissioners shall receive no compensation for their services,  
36 but they shall be entitled to reimbursement of expenses incurred in the

1 performance of their duties.

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

5 (d)(1) The board of commissioners shall meet and organize by electing  
6 one of their number as chairman, one as vice-chairman, one as secretary, and  
7 one as treasurer and such officers shall be elected annually thereafter in  
8 like manner.

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

11 (3) The secretary may cause copies to be made of all minutes and  
12 other records and documents of the public body. The secretary may give  
13 certificates under the official seal of the public body to the effect that the  
14 copies are true copies, and all persons dealing with the public body may rely  
15 upon the certificates.

16  
17 25-20-305. Powers and duties of board of commissioners.

18 All powers of any public body created under this subchapter shall be  
19 exercised by or under the authority of, and the business and affairs of the  
20 public body managed under the direction of, its board of commissioners,  
21 subject to any limitation set forth in the public body's certificate of  
22 incorporation or interlocal agreement. The duties of the board of  
23 commissioners shall include, but not be limited to:

24 (a) Appointing a chief executive officer, who shall not be a member of  
25 the board of commissioners, and shall set compensation and other terms of  
26 employment for such officer;

27 (b) Approving all budgets of the public entity;

28 (c) Adopting such rules, regulations, and by-laws as the board of  
29 commissioners may deem necessary and expedient for the proper ownership and  
30 operation of the consolidated waterworks system, and altering, changing, or  
31 amending the rules, regulations, and by-laws at its discretion; and

32 (d) Performing such other duties as shall be set forth in the  
33 interlocal agreement.

34  
35 25-20-306. General powers of public body.

36 (a) In addition to exercising the powers set forth elsewhere in this

1 subchapter, and unless its certificate of incorporation or interlocal  
2 agreement provides otherwise, each public body created under this subchapter  
3 shall have the power to:

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

5 (2) Maintain such offices as it may deem appropriate;

6 (3) Execute and perform contracts;

7 (4) Sue and be sued;

8 (5) Apply for and receive permits, licenses, certificates, and  
9 approvals as may be necessary and own and operate facilities in accordance  
10 therewith;

11 (6) Employ the services of all personnel necessary to its  
12 operations and, in connection therewith, adopt and implement such healthcare,  
13 disability, bonus, retirement, and other employee benefit plans as the board  
14 of commissioners shall deem appropriate;

15 (7) Employ the services of professionals;

16 (8) Purchase insurance, maintain reserves for self-insurance, and  
17 become self-insured for the payment of compensation under the workers'  
18 compensation law by compliance with the requirements of § 11-9-404(a)(2),  
19 provided that deposit of an indemnity bond, letter of credit, or securities  
20 shall not be required;

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

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

28 (11) Borrow money on a secured or unsecured basis, and in  
29 connection therewith issue bonds, promissory notes, or other evidence of  
30 indebtedness, and make and deliver indentures, mortgages, pledges, security  
31 agreements, financing statements, and other instruments encumbering assets of  
32 the public body;

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

36 (13) Exercise such other powers, privileges, and authorities as

1 the participating public agencies shall have delegated to the public body by  
2 their interlocal agreement, subject to any restrictions imposed thereon by the  
3 interlocal agreement or applicable law; and

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

9 (b) A public body created under this subchapter shall constitute a  
10 separate legal entity, but, to the extent provided by state law or set forth  
11 in the certificate of incorporation of the public body or the interlocal  
12 agreement of the participating public agencies, shall be subject to the  
13 further supervision or regulation, or require the further approval or consent,  
14 of any participating public agency.

15  
16 25-20-307. Operation of consolidated waterworks system.

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

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

32 (c) Unless the interlocal agreement provides otherwise, a public body  
33 created under this subchapter shall have full authority to fix, charge, and  
34 collect and from time to time change the rates for water and other goods and  
35 services provided by the public body. A public body shall have a reasonable  
36 time after its creation, or after its expansion by the addition of a new

1 participating public agency, to equalize any differentials in water rates  
2 among similarly situated classes of customers. It shall be a complete defense  
3 to any suit or claim based on the charging of differential rates for similarly  
4 situated classes of customers that:

5 (1) Within one (1) year of the creation or expansion of the  
6 public body, an independent expert completes a study of rates charged  
7 customers that shows a differential in rates among similarly situated classes  
8 of customers located within the jurisdictions of the participating public  
9 agencies, and the public body equalizes rates among similarly situated classes  
10 of customers within ten (10) years of the date of the rate study; or

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

22 (d) The inability of a public body to rely upon either "safe harbor"  
23 defense set out in subdivisions (c)(1) and (2) above shall not create any  
24 implication that the public body has failed to equalize any differentials in  
25 water rates among similarly situated classes of customers within a reasonable  
26 period of time after its creation or expansion.

27  
28 25-20-308. Out-of-area sales and services.

29 (a) Any public body created under this subchapter may:

30 (1) Extend its distribution system, and provide water and  
31 services, to any consumer located outside the jurisdictions of the public  
32 body's participating public agencies; and

33 (2) Sell surplus water to any municipality, improvement district,  
34 or other person engaged in the business of selling and distributing water to  
35 consumers, whether such municipality, improvement district, or other person is  
36 located within or outside the jurisdictions of the public body's participating



1 agencies.

2 (b) Sales of water and extensions of services authorized under this  
3 section may be made at such rates and on such other terms as the board of  
4 commissioners may deem just and reasonable, and the rates need not be the same  
5 as the rates charged customers within the jurisdictions of the public body's  
6 participating public agencies.

7  
8 25-20-309. Eminent domain.

9 Any public body created under this subchapter may acquire by the  
10 exercise of the power of eminent domain any real property that it may deem  
11 necessary for its purposes, in the manner prescribed in Title 18, Chapter 15,  
12 Subchapters 3 or 4,, or in the manner provided by any other statutory  
13 provisions under which one of the public body's participating public agencies  
14 may exercise a power of eminent domain. In exercising such power of eminent  
15 domain, the public body shall have the right by its agents or employees to  
16 peacefully enter upon any lands, structures, or rights-of-way to make surveys,  
17 tests, and measurements thereon, but is liable for any damage that may result  
18 by reason of its acts.

19  
20 25-20-310. Improvements – Financing with bonds.

21 (a) Whenever any public body created under this subchapter shall own or  
22 operate a consolidated waterworks system and shall desire to construct  
23 improvements, betterments, and extensions thereto, it may issue revenue bonds  
24 under the provisions of this section to pay for them. The procedure for  
25 issuance of bonds shall be as provided in this section.

26 (b) Bonds issued in accordance herewith shall be authorized by  
27 resolution of the board of commissioners. The bonds may be issued as  
28 registered bonds and may be exchangeable for bonds of another denomination or  
29 in another form. The bonds may be in such form and denominations, may have  
30 such date or dates, may be stated to mature at such time or times, may bear  
31 interest payable at such times and at such rate or rates, may be payable at  
32 such places within or without the state, may be subject to such terms of  
33 redemption in advance of maturity at such prices, and may contain such terms  
34 and conditions, all as the board of commissioners shall determine. The bonds  
35 shall have all the qualities of and shall be deemed to be negotiable  
36 instruments under the laws of the State of Arkansas, subject to provisions as

1 to registration as set forth above. The authorizing resolution may contain any  
2 other terms, covenants, and conditions that the board of commissioners deems  
3 reasonable and desirable, including, without limitation, those pertaining to  
4 the maintenance of various funds and reserves, the nature and extent of any  
5 security for payment of the bonds, the custody and application of the proceeds  
6 of the bonds, the collection and disposition of revenues, the investing for  
7 authorized purposes, and the rights, duties, and obligations of the public  
8 body and the holders and registered owners of the bonds.

9 (c) The authorizing resolution may provide for the execution of a trust  
10 indenture between the public body and any financial institution within or  
11 without the State of Arkansas. The trust indenture may contain any terms,  
12 covenants, and conditions that are deemed desirable by the board of  
13 commissioners including, without limitation, those pertaining to the  
14 maintenance of various funds and reserves, the nature and extent of any  
15 security for the payment of the bonds, the custody and application of the  
16 proceeds of the bonds, the collection and disposition of revenues, the  
17 investing and reinvesting of any moneys during periods not needed for  
18 authorized purposes, and the rights, duties, and obligations of the public  
19 body and the holders and registered owners of the bonds.

20 (d) Any authorizing resolution and trust indenture relating to the  
21 issuance and security of the bonds shall constitute a contract between the  
22 public body and holders and registered owners of the bonds, which contract,  
23 and all covenants, agreements, and obligations therein, shall be promptly  
24 performed in strict compliance with the terms and provisions of such contract,  
25 and the covenants, agreements, and obligations of the public body may be  
26 enforced by mandamus or other appropriate proceeding at law or in equity.

27 (e)(1) The resolution shall fix the minimum rate or rates for water to  
28 be collected prior to the payment of all of the bonds, with exceptions as may  
29 be provided in the resolution, and shall pledge the revenues derived from the  
30 consolidated waterworks system or any specified portion of the consolidated  
31 waterworks system for the purpose of paying the bonds and interest thereon.

32 (2) The rates to be charged for the services of the consolidated  
33 waterworks system, or the specified portion of the consolidated waterworks  
34 system with revenues pledged to the payment of the bonds, shall be sufficient  
35 to provide for the payment of all principal of and interest on all bonds as  
36 and when due, to provide for the operation and maintenance of the consolidated

1 waterworks system or the specified portion of the consolidated waterworks  
2 system with revenues pledged to the payment of the bonds, and to provide an  
3 adequate depreciation account for the consolidated waterworks system or the  
4 specified portion of the consolidated waterworks system with revenues pledged  
5 to the payment of the bonds.

6 (f)(1) The proceeds derived from the sale of the bonds shall be used  
7 solely for the purpose of making betterments, improvements, and extensions to  
8 the consolidated waterworks system owned and operated by the public body,  
9 paying interest on the bonds during the period of construction of the  
10 betterments, improvements, and extensions, establishing any necessary reserves  
11 for the bonds, paying the costs of issuing the bonds, and paying any other  
12 costs and expenditures of whatever nature incidental to the accomplishment of  
13 the betterments, improvements, and extensions.

14 (2) The terms "betterments," "improvements," and "extensions"  
15 include land, mains, pipelines, hydrants, meters, valves, standpipes, storage  
16 tanks, storage basins, pumping tanks, intakes, wells, clear water wells,  
17 impounding reservoirs, lakes, watercourses, pumps, purification plants and  
18 units thereof, filtration plants and units thereof, as well as all other real  
19 and personal property, buildings, structures or other improvements or  
20 facilities as may be necessary or advisable for the proper and efficient  
21 operation of the public body's consolidated waterworks system.

22 (g)(1) Bonds issued under the provisions of this section shall be  
23 payable solely from revenues derived from such consolidated waterworks system  
24 or any specified portion of the consolidated waterworks system.

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

29 (3) It shall be plainly stated on the face of each bond that it  
30 is issued under the provisions of this subchapter and that it does not  
31 constitute an indebtedness of the State of Arkansas or the participating  
32 public agencies within any constitutional provisions or limitations, and that  
33 it is not backed by the full faith and credit of the State of Arkansas or the  
34 participating public agencies.

35 (4) The bonds and the interest thereon shall be exempt from all  
36 taxation, state, county, and municipal. This exemption includes income

1 taxation and inheritance taxation.

2 (h)(1) The bonds may be sold in such manner, either at public or  
3 private sale, and upon such terms as the board of commissioners shall  
4 determine to be reasonable and expedient for effectuating the purposes of the  
5 public body.

6 (2) The bonds may be sold at a price the board of commissioners  
7 may accept, including sale at discount.

8 (i)(1) The bonds shall be executed by manual or facsimile signature of  
9 the chairman of the board of commissioners and the manual or facsimile  
10 signature of the secretary of the board of commissioners or any other officer  
11 of the public body authorized to do so by resolution of the board of  
12 commissioners.

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

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

18  
19 25-20-311. Lien in favor of bondholders.

20 (a) The payment of the principal of bonds issued under this subchapter  
21 and the interest thereon may be secured by a lien on and security interest in  
22 the consolidated waterworks system or any specified portion of the  
23 consolidated waterworks system.

24 (b) It shall not be necessary to the perfection of the lien and pledge  
25 for such purposes that the trustee in connection with such bond issue or the  
26 holders of the bonds take possession of the collateral security.

27 (c) Subject to whatever restrictions may be contained in the resolution  
28 or indenture governing the bonds, any holder of bonds issued under the  
29 provisions of this subchapter may, either at law or in equity, enforce the  
30 mortgage lien and may, by proper suit, compel the performance of the duties of  
31 the officers of the issuing public body set forth in this subchapter.

32 (d) If there be default in the payment of the principal of or interest  
33 on any of the bonds, any court having jurisdiction in any proper action may  
34 appoint a receiver to administer the consolidated waterworks system, or the  
35 specified portion of the consolidated waterworks system pledged to the payment  
36 of the bonds, on behalf of the public body with power to charge and collect

1 rates sufficient to provide for the payment of the bonds and interest thereon  
2 and for the payment of the operating expenses, and to apply the income and  
3 revenues in conformity with this subchapter and the resolution or indenture  
4 providing for the issuance of the bonds.

5  
6 25-20-312. Refunding bonds.

7 (a) Bonds may be issued for the purpose of refunding any obligations  
8 issued under this subchapter or otherwise. Such refunding bonds may be  
9 combined with bonds issued under the provisions of § 25-20-310 into a single  
10 issue.

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

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

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

23  
24 25-20-313. Securing deposit of public funds.

25 Bonds issued under this subchapter shall be eligible to secure the  
26 deposit of public funds.

27  
28 25-20-314. No personal liability.

29 No commissioner or officer of the public body shall be liable personally  
30 for any reason arising from the issuance of bonds under this subchapter unless  
31 he or she shall have acted with a corrupt intent.

32  
33 25-20-315. Recreational use of property.

34 Any public body created under this subchapter shall have the same powers  
35 as a municipally owned waterworks system to use its properties for  
36 recreational purposes, subject to any restrictions applying to a municipally

1 owned waterworks system, as set forth in Title 14, Chapter 234, Subchapter 4.  
2 Consequently, the board of commissioners of a public body created under this  
3 subchapter shall be an "operating authority" as defined in Title 14, Chapter  
4 234, Subchapter 4, and any summons issued under Ark. Code Ann. § 14-234-401 et  
5 seq. shall be returnable to the municipal court of any municipality that is a  
6 participating public agency or is a municipality located within the  
7 jurisdiction of any participating public agency.

8  
9 25-20-316. Zoning exemption.

10 Any public body maintaining facilities in an area zoned subsequent to  
11 the construction of the facilities may add to, alter, expand, or change the  
12 facilities upon that land, or upon lands immediately adjacent thereto, without  
13 regard to the zoning regulation for the area if the board of commissioners  
14 deems the action necessary for the proper operation of its consolidated  
15 waterworks system.

16  
17 25-20-317. Tax exempt status of property owned and income.

18 Each public body created under this subchapter will be performing  
19 functions and will be a public instrumentality of the participating public  
20 agencies. Accordingly, all properties at any time owned by the public body,  
21 and the income therefrom, shall be exempt from all taxation in the state.

22  
23 25-20-318. Immunity.

24 This subchapter does not abrogate or in any other manner affect the  
25 immunity of the participating public agencies. Such immunity shall extend also  
26 to any public body created under this subchapter and to each commissioner,  
27 officer, and employee thereof.

28  
29 25-20-319. Franchise fees.

30 Any participating public agency that is an Arkansas municipality or  
31 county, acting by ordinance or resolution of its governing body, may require a  
32 public body created under this subchapter to pay a reasonable franchise fee,  
33 upon which the public body may be permitted to occupy the streets, highways,  
34 or other public places within the jurisdiction of such public agency, and the  
35 ordinance or resolution shall be deemed prima facie reasonable, provided that  
36 no franchise fee shall exceed ten percent (10%) of the public body's operating

1 revenues that are attributable to gross income from water sales within such  
2 public agency's jurisdiction unless agreed to by the public body or approved  
3 by the voters of the public agency. No public body created under this  
4 subchapter shall be a "public utility" within the meaning of Title 4, Chapter  
5 200, Subchapter 1 or a "person, company, or corporation which has secured a  
6 franchise from any municipality" within the meaning of § 14-200-102. Any  
7 franchise fees charged under authority of this section shall be in addition to  
8 payments in lieu of taxes permitted by this subchapter.

9  
10 25-20-320. Payments in lieu of taxes.

11 A public body created under this subchapter shall make annual payments  
12 to the general fund of each participating public agency that is an Arkansas  
13 municipality or county, in lieu of taxes, in return for police, fire, and  
14 health protection and in return for administrative and other services  
15 furnished by the public agency. The payments shall be an operation and  
16 maintenance expense of the public body. In each calendar year the payments  
17 shall equal the amount the public agency would have received from the public  
18 body as real property taxes for the preceding calendar year if the public  
19 body's real property located in the public agency's jurisdiction, whether  
20 owned or leased by the public body, had been privately owned and subject to  
21 tax by the public agency. For purposes of this computation, the public body's  
22 real property shall be deemed to have an assessed value equal to twenty  
23 percent (20%) of book value as reflected by the public body's usual accounting  
24 procedures. Payments in lieu of taxes made under authority of this section  
25 shall be in addition to any franchise fees permitted by this subchapter.

26  
27 25-20-321. Annual Report and Audit.

28 (a) Within the first ninety (90) days of each calendar year, each  
29 public body created under this subchapter shall make a written report to the  
30 governing bodies of the participating public agencies concerning its  
31 activities for the preceding calendar year.

32 (b) Each report shall set forth a complete operating and financial  
33 statement covering its operation during the year, including without limitation  
34 an audit of the public body's revenues and expenses performed by an  
35 independent certified public accountant.

36

1 25-20-322. Provisions supplemental and controlling.

2 This subchapter shall be deemed to provide an additional and alternative  
3 method for the doing of the things authorized hereby and shall be regarded as  
4 supplemental and additional to powers conferred by other laws.

5  
6 25-20-323. Construction.

7 This subchapter shall be liberally construed to accomplish its intent  
8 and purposes and shall be the sole authority required for the accomplishment  
9 of its purposes, and to this end it shall not be necessary to comply with the  
10 provisions of other laws relating to the issuance and sale of the bonds by  
11 this subchapter authorized. This subchapter shall be construed as an  
12 additional and alternative method for the issuance and sale of bonds.

13  
14 SECTION 2. Arkansas Code 25-20-104(i) is amended to read as follows:

15 (i) In addition to the legal or administrative entities which may  
16 otherwise be legally created under Arkansas statutes, public agencies may  
17 create a separate legal entity in the form of a public body corporate and  
18 political pursuant to ~~§ 25-20-201 et seq.~~ Title 25, Chapter 20, Subchapter 2 for  
19 the purpose of constructing, operating, and maintaining a public library  
20 system, or pursuant to this act for the purpose of constructing, owning,  
21 operating, financing, and maintaining a consolidated waterworks system.

22  
23 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General  
24 Assembly that the Arkansas laws for the operation and management of municipal  
25 waterworks are inadequate to accommodate the merger of two (2) or more large  
26 municipal waterworks; that a new law is needed to protect the financial and  
27 governmental interests of the various municipalities involved in consolidating  
28 the various municipal waterworks systems; that the financial savings and  
29 economies of scale which are anticipated from the merger will make the  
30 consolidation in the best interest of the citizens of the merging  
31 municipalities; that the consolidation agreement was achieved through  
32 persistent and complex negotiations balancing the various municipal interests  
33 involved and it is therefore necessary that the law take effect at a time  
34 prescribed by that agreement. Therefore, an emergency is declared to exist  
35 and this act being immediately necessary for the preservation of the public  
36 peace, health and safety shall become effective on June 30, 2001.



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*/s/ B. Walker, et al.*

APPROVED: 3/21/2001