State of Arkansas *As Engrossed: H3/11/21*
93rd General Assembly **A Bill**
Regular Session, 2021 SENATE BILL 386

By: Senator A. Clark
By: Representative Love

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING RETAIL WATER PROVIDERS AND RELATED SERVICE; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING RETAIL WATER PROVIDERS AND RELATED SERVICE.

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

SECTION 1. Arkansas Code Title 14, Chapter 234, is amended to add an additional subchapter to read as follows:

Subchapter 8 — Oversight of Retail Water Providers

14-234-801. Findings — Definitions.

(a) The General Assembly finds that:

(1) Oversight of providers in the state is primarily handled by *the Arkansas Natural Resources Commission and the Department of Health;*

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

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

(4) Combining smaller providers may be necessary in some areas

in order to guarantee dependable and plentiful provision of water and to avoid unsustainable rate increases;

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

(6) Training of local, state, and federal leaders on issues surrounding provider personnel, finances, compliance, and environmental factors is needed.

(b) As used in this subchapter:

(1) "Commission" means the Arkansas Natural Resources Commission;

(2) "Provider" means any provider of retail water service; and

(3) "Provider board" means the governing body of a provider, whether the governing body is organized as a board, commission, committee, council, or other type of entity.

14-234-802. Fiscal distress — Improvement plans — Rates and rate studies.

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

(A) Fails to obtain a rate study as required under this section;

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

(C) Has been found by the commission to be in significant noncompliance with rules of the commission because of inadequate funds for operation and maintenance or inadequate compliance with rules of the commission.

(2) A provider may be found by the commission to be subject to this section if a member of the provider's board does not receive the training required under § 14-234-805.

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

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

(A) By July 1, 2024, and every five (5) years thereafter for a provider that serves five hundred (500) or fewer customers;

(B) By July 1, 2025, and every five (5) years thereafter for a provider that serves five hundred one (501) to one thousand (1,000) customers; and

(C) By July 1, 2026, and every five (5) years thereafter for a provider that serves more than one thousand (1,000) customers.

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

(i) Operation and maintenance;

(ii) Debt service;

(iii) Required reserves;

(iv) Depreciation;

(v) Future capital expenses;

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

(vii) Other expenses as necessary.

(B)(i) The rates recommended in the rate study that is obtained and chosen by the provider shall be implemented by the provider in the manner provided under the applicable law for modifying rates.

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

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

(d)(1) The commission shall determine by rule the requirements of the rate study, including without limitation a review of the provider's refurbishment and replacement account and asset management plan.

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

(B) The commission shall determine by rule an appropriate entity to provide guidelines for the rate study to use as its basis if guidelines of the American Water Works Association and the Water Environment Federation are unavailable.

(e) A provider shall deposit a minimum of five percent (5%) per annum of gross revenues in a dedicated refurbishment and replacement account within

twelve (12) months of implementation of the rate, unless a different amount is determined by a rate study.

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

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

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

(A) The commission determines that public health or the environment is threatened without the approval of the new provider; or

(B) There is no other viable alternative.

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

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

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

(C) Complete a technical, financial, and managerial capacity review conducted by the commission.

(h)(1) A provider that plans to undertake a major development project shall obtain a rate study or amend the provider's existing rate study before beginning the major development project to include consideration of the financial impact of the major development project on the fiscal sustainability of the provider.

(2) As used in this subsection, "major development project" means a project that exceeds twenty percent (20%) of gross revenues of the provider for the immediately preceding fiscal year.

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

14-234-120.

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

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

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

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

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

(ii) Modify the improvement plan; or

(iii) Deny the improvement plan.

(B) At the time the commission determines that the provider is no longer in fiscal distress, the commission shall remove the fiscal distress designation and notify the provider.

(l) If a provider is found to be in fiscal distress, the provider shall not receive state financial assistance for water operations until an improvement plan that has been approved by the commission is in place, unless the financial assistance is immediately necessary to ensure preservation of the public peace, health, and safety, as determined by the commission.

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

(1) Incur additional debt;

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

(3) Transfer assets to another entity.

14-234-803. Workforce recruitment and retention — Education.

A provider shall:

(1) Work with the Association of Arkansas Counties and the Arkansas Municipal League to develop training for leaders of the county or municipality;

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

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

14-234-804. Municipal providers — Provision of water to nonresident customers — Advisory committee.

(a)(1) If a municipal provider is unable or unwilling to provide service to a nonresident property owner residing in the provider's service area, the commission may require the municipal provider to release the nonresident property owner to a willing provider.

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

(3) A municipal provider shall not release a service area of the municipal provider if the release would invalidate or encumber the issuance or retirement of a bond, promissory note, or certificate of indebtedness related to the service area.

(b)(1) A municipal provider that is willing to provide service to areas outside the municipal boundaries and within its service area shall do so through an application made by the affected property owner or through an agreement executed by the municipal provider and the affected property owner.

(2) If the municipal provider has a prerequisite that the affected property owner annex into the municipal boundaries before providing service, the prerequisite shall be clearly defined in an application or agreement.

(3) Failure to clearly define any annexation requirement within the application or agreement prohibits the municipal provider from requiring annexation in exchange for service for those areas without agreement from the affected property owner.

(c)(1) If a municipal provider services customers outside the municipal boundaries of the municipal provider and the number of those customers outside the municipal boundaries and in unincorporated areas equals or exceeds twenty percent (20%) of the total customer base of the municipal provider, a nonvoting advisory committee to the municipal provider board shall be created by the governing body of the municipality in which the

municipal provider is located.

(2) The makeup and duties of an advisory committee created under subdivision (c)(1) of this section shall be determined by the governing body of the municipality that creates the advisory committee.

(3) Two (2) nonresident customers from the area served outside the municipal boundaries and in unincorporated areas shall serve on the advisory committee.

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

(1) Is prohibited from providing water to potential customers within the municipal provider's service area by the political subdivision under which the municipal provider is organized;

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

(3) Is not following best management practices in providing water service.

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

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

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

(3) A consumer does not submit an application or enter into an agreement under subsection (b) of this section.

14-234-805. Training.

(a)(1)(A) Within one (1) year of election or appointment, a majority of the members of a provider board shall receive a minimum of eight (8) hours of provider training as promulgated by rule of the commission.

(B) A member of a provider board as of January 1, 2021, shall receive the training required under this section by December 31, 2022.

(2) If a majority of the members of a provider board do not receive the training required under this section, the commission may find the provider is subject to § 14-234-802.

(3) This section does not apply to a member of a provider board who has served on the provider board for ten (10) years or more.

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

(1) The Secretary of the Department of Health or his or her designee;

(2) The Director of the Arkansas Natural Resources Commission or his or her designee;

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

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

(5) The Executive Director of the Association of Arkansas Counties or his or her designee;

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

(7) The Chief Executive Officer of Central Arkansas Water or his or her designee;

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

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

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

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

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

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

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

(15) The President of the Arkansas Water and Wastewater Managers Association.

14-234-806. Rules.

The commission shall promulgate rules necessary to implement this subchapter.

14-234-807. Applicability.

This subchapter does not apply to:

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

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

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

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

(3) A privately owned provider that supplies the majority of its retail water service to nonresidential customers; or

(4) A water system operated jointly between two (2) municipalities in which each municipality is located in a different state.

SECTION 2. TEMPORARY LANGUAGE. DO NOT CODIFY. Rules.

(a) When adopting the initial rules to implement this act, the commission shall file the final rules with the Secretary of State for adoption under § 25-15-204(f):

(1) On or before January 1, 2022; or

(2) If approval under § 10-3-309 has not occurred by January 1, 2022, as soon as practicable after approval under § 10-3-309.

(b) The commission shall file the proposed rules with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2022, so that the Legislative Council may consider the rules for approval before January 1, 2022.

/s/A. Clark

APPROVED: 4/5/21